Final Reports

VISION TEAMS

Imagining Allegheny County's Tomorrow

Presented to the County Executive January 2013

County of Allegheny

Steering Committee

In December of 2011, Allegheny County Executive (then-Elect) Rich Fitzgerald announced a six-member steering committee for his transition, as well as the creation of twelve vision teams that were charged with laying out a future vision for the county. The steering committee and vision teams were formed to provide a fresh perspective on how government operates, and should operate, and began a process that has resulted in recommendations on operations, efficiencies and policy for Allegheny County moving forward.

In making his selections, the Executive noted that with twelve years of experience on Allegheny County Council, he had already learned a great deal about the county and its operations, and was very comfortable setting priorities and making decisions about directors and administrators. The vision teams, he noted, are about our future and how we can continue to improve, promote and move Allegheny County forward.

To lead this process, the Executive selected six people who are well respected in the community, represent a sector of the county that plays an important role in our present and future, and could help he and his administration review and evaluate the recommendations that were receive in the process. Each of the six members took responsibility for the direct oversight of two of the vision teams, providing a constant contact for questions, concerns, advice and direction throughout the process. The members also had an opportunity to review the draft reports, attend any of the vision team meetings that they wished to, and have reviewed the final documents for presentation to the Executive.

The Steering Committee Members are:

Philip Ameris
Laborers' District Council of Western Pennsylvania

Esther Bush
Urban League of Greater Pittsburgh

Mike Dunleavy
International Brotherhood of Electrical Workers Local Union No. 5

Barbara McNees
Greater Pittsburgh Chamber

Mark Nordenberg
University of Pittsburgh

Audrey Russo
Pittsburgh Technology Council

Introduction

Embracing the charge of Allegheny County Executive Rich Fitzgerald to create a vision that continues to "improve, promote and move Allegheny County forward", community representatives, from both the public and private sector in twelve areas, under the leadership of a six member steering committee used a fresh set of eyes to focus on the intricacies of government operations. Particular emphasis was given to variables that the county government should employ to promote efficiencies that contribute to the vitality of our county and enhance the quality of lives of our residents.

Fusing their energies with the broad knowledge and expertise, the community representatives crafted a vision team report utilizing a variety of methodologies involving extensive research of best practices, analysis of operations, exploration of innovative approaches, community input through listening sessions and website, to address their respective charge.

After a significant analysis of all aspects of operations and the identification of creative strategies and specific recommendations in their respective area of expertise, the following 12 themes emerged for consideration by the County Executive:

1. Enter an era of increased accountability to increase efficiencies and effectiveness by delineating specific and measurable outcomes for departments.
2. Redefine visions for government functions that reflect greater both inter- and intra-governmental practices especially related to the economy, workforce development, human services, etc.
3. Evaluate staffing needs, facility design and spatial needs to achieve defined outcomes identified by all departments, as well as, guaranteeing that facilities are perceived and managed as valuable assets.
4. Use technological advances to manage data and facilitate the ability for the community to be actively and efficiently engaged in all aspects of government operations.
5. Explore various tax revenue models and entrepreneurial strategies to sustain financial integrity, address infrastructure needs, and contribute to economic growth.
6. Expand the diversity of the workforce to achieve social equity, economic vitality and increase international competitiveness.
7. Implement new strategies to achieve the highest level of public health with respect to the environment, physical and psychosocial needs of all our residents.
8. Embrace the belief that smart growth, environmentally responsible land development and preservation of green space contributes to the economic condition of the county.
9. Capitalize on the significant economic opportunity that is available in the energy and environmental sectors.
10. Implement strategies that ensure that modes of transportation address the current and future social and economic needs of the county.

11. Recognize that a strong correlation exists between corporate decision-making for relocation or expansion and available real estate and therefore a primary focus on commercial and real estate is warranted.

12. Espouse a culture that believes that innovation and entrepreneurship drive future economic growth and is inherently connected to the county's economic vitality; job growth, classic economic development, improved efficiencies and collaboration in the community, improved business process and infrastructure, talent, investment and entrepreneurship.

Using these fundamental beliefs as a point of departure, the respective vision teams (Note Appendix A) submitted comprehensive analyses to the Steering Committee, which in turn reviewed those reports with the County Executive and presented them to him for his internal review and consideration.

Courts Administration

VISION TEAMS

Imagining Allegheny County's Tomorrow

Tracey McCants Lewis, Chair

County of Allegheny

Executive Summary

With a commitment to address sustainability, intergovernmental relations and diversity/inclusion for the Office of the Public Defender, the Department of Court Records and the Allegheny County Sheriff's Office, the Courts Administration Vision Team focused on the interaction and relationship between the courts and the county and how it can be improved systemically, and by the use of technology.

Additionally, from a philosophical perspective, the Courts Administration Vision Team espoused that a successful workplace recognizes the vital importance of creating and maintaining an inclusive and diverse working environment. Most importantly, they concluded that it is imperative that the County Executive recognize the significant contribution diversity and inclusion can make culturally, socially and economically.

To that end, the recommendations put forth can be summarized under the following categories:

- **Guarantee Civil Liberties Within the Office of Public Defender (OPD)**
  - Guarantee that competent, diverse and effective legal counsel is provided to indigent defendants by increasing the financial, operational (adequate space to provide ethical counsel to clients, supervision, written and oral communication, sufficient and appropriate office resources, computers and basic office supplies, etc.) and human resources (adequate staffing levels, continuing education.)
  - Convert the OPD to a nonprofit organization [501(c) (3)] with an independent governing Board of Trustees; in conjunction with the creation of the OPD non-profit agency, mandate funding from the Commonwealth and the County under contracts for services.
  - Sustain fiscal integrity by lobbying the State to provide funding for public defender services, empower the OPD to control and authorize its own budget expenditures, and fund the OPD at the same level as the Office of District Attorney.
  - Create an Indigent Defense Advisory Board (IDAB) with outside advocates, including members of the private bar, to provide independent oversight and review of legal services and limit political / judicial influence over the OPD, OCC, and assignment of court-appointed counsel.
  - Authorize the IDAB to establish standardized policy and procedures for assignment of court-appointed counsel, compensation, and review of legal services.
  - Establish a standardized policy and written disclosure requirement for OPD ad related entities of personal, political, and familial associations with the judiciary, administration, and Great Lakes Behavioral Health Services.
- **Increase Efficiency and Accessibility Within the Department of Court Records**
  - Increase efficiency of operations by increasing data sharing and electronic filing; establish the same physical tracking system used in the Criminal Division in the Civil / Family and Register of Wills Divisions.
  - Increase public accessibility by relocation of public access computers, increases signage and installation of an elevator.

- With respect to storage, advocate to the State to allow electronic storage of files; Review the current storage system including reviewing the possibility of scanning older documents for easy accessibility and retrieval from storage.

- Consult with university experts to address issues related to structural integrity and the consolidation and computerization in document management issues in the Civil / Family Division and the Register of Wills.

- **Review and Recommend On Processes Used for Transport Within the Sheriff's Office**

  - Conduct an independent study to determine if the timely transport of prisoners from the Allegheny County Jail to court or rehabilitation facilities by the Allegheny County Sheriff's Office is a present concern that must be addressed.

  - Guarantee that all inmate paperwork is provided with the transport of the inmate.

Vision Team Charge

This Vision Team was charged with providing analysis and recommendations to the new County Executive concerning the Office of the Public Defender, the Department of Court Records and the Allegheny County Sheriff's Office. The review focused on the interaction and relationship between the courts and the county and how it can be improved, and the use of technology in that interrelationship. Further, the Vision Team was expected to address sustainability, intergovernmental relations (recognizing existing relationships and identifying potential new ones) and diversity/inclusion.

Scope of Work/Summary of Methodology

Scope of Work

The members of the Courts Administration Vision Team thank the Directors from the Office of the Public Defender, the Department of Court Records and the Sheriff's Office and their staff for the commitment and dedication to administration of services in Allegheny County. We also thank them for their openness and attention to this process of fact gathering for the completion of this report.

The members of the Vision Team were appointed based upon their legal, government, diversity management and technology expertise, as well as experience and commitment to ensuring that quality services are provided to the constituents of Allegheny County.

Summary of Methodology

The meeting schedule followed by the Vision Team follows:

Meeting Date and Time	Meeting Agenda Topic	Location
March 9, 2012 at 3:00 pm	Introductions / Scope	Duquesne University School of Law
April 6, 2012 at 8:30 am	Court Records	Courthouse (Conference Room 1)
April 20, 2012 at 8:30 am	Office of Public Defender	Courthouse (Conference Room 1)
April 25, 2012 at 10:00 am	Public Listening Session	Courthouse (Conference Room 1)
May 11, 2012 at 8:30 am	Sheriff's Office	Courthouse (Conference Room 1)
May 21, 2012 at 10:00 am	Technology Subcommittee Sheriff's Office Tour	Allegheny County Sheriff's Office
May 18, 2012 at 9:00 am	Recommendations	Courthouse (Conference Room 1)
May 23, 2012 10:00 am	Diversity Subcommittee	ACBA Offices – Kopper's Building
May 25, 2012 at 8:30 am	Recommendations	Courthouse (Exec Conference room)
June 1, 2012 at 8:30 am	Recommendation	Courthouse (Conference Room 1)
June 8, 2012 at 8:30 am	Office of Public Defender Subcommittee	Conference Call
June 22, 2012 at 8:30 am	Sheriff's Office	Courthouse (Conference Room 1)
June 24, 2012 7:00 pm	Union Steward	Bakery Square
June 29, 2012 8:30 am	Recommendations	Courthouse (Conference Room 1)
July 19, 2012 11:30 am	Review of Draft Report	The Rivers Club
August 10, 2012 8:30 am	Final Review of Report	Courthouse (Conference Room 1)

The Courts Administration Vision Team was separated into several subcommittees to address the various county departments and topics related to the charge of this committee. The following subcommittees were established:

- *Public Defender's Office Subcommittee*
- *Sheriff's Office Subcommittee*
- *Court Records Subcommittee*
- *Diversity/ Hiring Subcommittee*
- *Infrastructure / Morale Subcommittee*

- *Technology Subcommittee*

The Courts Administration Vision Team conducted site meetings with those divisions it was charged with reviewing.

The first site visit was scheduled for April 6, 2012 with Kate Barkman, Esq., Director of Allegheny County Department of Court Records. The Vision Team met with Director Barkman at the Allegheny County Courthouse where a tour of the department facilities took place. The first division visited was the Criminal Records Section. The Team then toured the department facilities in the City-County Building, consisting of the Storage sections, the Civil / Family Records section, and the Probate / Wills Records section. The Vision Team also had the opportunity to meet staff members of the Department of Court Records during the tour. Director Barkman also provided the Vision Team with April 14, 2009, Allegheny County Department of Court Records, Functional Review Report.[1] Director Barkman further provided a copy of the 2012 Budget Preparation Questions report for the Allegheny Department of Court Records.[2]

The second site visit was scheduled for April 20, 2012 with the Allegheny County Office of Public Defender. The Vision Team met with Elliot Howsie, Esq., Chief Public Defender. Mr. Howsie was appointed Chief Public Defender by County Executive Rich Fitzgerald in March 2012. The Vision Team took a tour of the Public Defender's Office at the County Office Building, 542 Forbes Avenue, Room 400. The Vision Team also met with various staff members of the Public Defender's Office and had an opportunity to discuss their perceived needs for the department.

On June 24, 2012 members of the Vision Team met with the Union Steward for the Steelworkers Local (the union represents attorneys in the Office of Public Defender, District Attorney's Office and advance degree staff in the Department of Court Records.) The Steward shared the union's concerns relating to negotiations with the county, condition of County facilities and hiring.

There were several external documents referenced by the Vision Team in preparation for the meeting with the Chief Public Defender. Those documents included the Spangenberg Group's *Review of the Allegheny County (Pennsylvania) Public Defender Office,* November 1995 Report[3]; the October 20, 2008 *Institute for Law and Policy Planning – Allegheny County Office of the Public Defender Assessment Final Report*[4] (also known as the Kalmanoff Report), the American Bar Association *Ten Principles of a Public Defense Delivery System Report*, February 2002[5]; and the 2011 ACLU of Pennsylvania report, *A Job Left Undone: Allegheny County's Fork in the Road An Analysis of Problems at the Allegheny County Office of the Public Defender the Cause Systemic Violations of Clients' Constitutional Right to Adequate Representation.*[6] In addition to these reports the Chief Public Defender also provided the Vision Team with a document detailing the office-wide resources needed (personnel, facilities, equipment and budgetary) to achieve the mission of

[1] A copy of the report is set forth as Attachment A.
[2] A copy of the report is set forth as Attachment B.
[3] A copy of the report is set forth as Attachment C.
[4] A copy of the report is set forth as Attachment D.
[5] A copy of the report is set forth as Attachment E.
[6] A copy of the report is set forth as Attachment F.

the office – "providing competent and effective legal counsel to the poor where representation is constitutionally required, thereby providing equal justice for the indigent, but also will facilitate the efficient and cost-effective operation of the entire criminal court system."[7] The Chief Public Defender also submitted to the Vision Team an organizational chart for the Office of Public Defender.[8]

The Vision Team also reviewed the Pennsylvania Joint State Government Commission Task Force on Services to Indigent Criminal Defendants – *A Constitutional Default: Services to the Indigent Criminal Defendants in Pennsylvania.*[9]

On May 5, 2012 the Vision Team met with Allegheny County Sheriff, William P. Mullen, to discuss the interaction between the Sheriff's Office, the Public Defender Office and the Department of Court Records. Sheriff Mullen provided the Vision Team with a copy of the *2011 Year in Review Report* for the Allegheny County Sheriff's Office.[10] On May 21, 2012 the Technology Subcommittee had the opportunity to visit the Sheriff's Office to review the technology systems utilized by that office.

[7] A copy of the document is set forth as Attachment G.
[8] A copy of the document is set forth as Attachment H.
[9] A copy of the report is set forth as Attachment I.
[10] A copy of the document is set forth as Attachment J.

Public Input

Allegheny County Chief Executive Rich Fitzgerald proposed that the individual Vision Teams host listening sessions to allow the public to weigh in on their work and to offer suggestions and recommendations about each team's area of review. The Courts Administration Vision Team Listening Session was scheduled for Wednesday April 25, 2012 from 10:00 am to 12:00 pm in the Gold Room, 4th floor of the Allegheny County Courthouse. Notice of the listening session was posted on the Allegheny County public website at http://www.alleghenycounty.us/news/2012/20120416a.aspx on April 16, 2012.

The Courts Administration Vision Team Listening Session was advertised and held as scheduled; however, no members of the public signed up to attend the meeting. The Vision Team did, however, meet with two deputy public defenders, Khadija Diggs (Deputy Director of Pre-Trial Division) and John Fenner (Deputy Director of Trial Division). Ms. Diggs and Mr. Fenner spoke openly about areas of concern in the office. A copy of the meeting minutes are provided as an attachment to this report.[1]

The Vision Team also requested the submission of written reports or testimony from individuals or organizations that were not able to attend the Listening Session. Three organizations responded to this request with the submission of written reports.

A report was received from Doug Williams, CEO of Renewal, Incorporated. Renewal, Inc. provides re-entry services for Allegheny County Jail inmates who are deemed eligible for alternative housing programming. Re-entry services offered through Renewal, Inc. include mental health services; specialized services for women; pre-employment readiness training; job placement; and a full menu of drug and alcohol services. The April 25, 2012 report titled *Comments Regarding Renewal, Inc.'s Relationship with the Public Defender's Office and the Allegheny County Court of Common Pleas* details the interactions between Renewal, Inc. and the Office of Public Defender.[2] Mr. Williams described the relationship with the Office of Public Defender as "great." He did note, however, that: "A more open line of communication between Renewal, Inc. and the Public Defender's Office could lower the population at the jail, save the County inmate health care costs and, most importantly, provide the residents with critical rehab and job training/placement services." The report also detailed the need for enhanced communication between the Public Defender's Office and the Allegheny County Jail. It was noted that the current referral information forwarded to Renewal, Inc. by the jail is not sufficient to enable Renewal, Inc. to prepare the services needed by the residents.

The second written report was received from Carol A. Hertz, Executive Director of The Program for Offenders, Inc. (TPFO). TPFO provides residential alternatives to incarceration, drug and alcohol treatment, and a wide range of support services to male and female offenders and their families in Allegheny County. TPFO submitted a May 23, 2012 written report titled, *Issues and Recommendations Concerning the Transfer Process from Allegheny County Jail to Alternative Housing*.[3] Ms. Hertz noted that the current transfer process of inmates utilized by the Allegheny County Jail to housing alternative organizations such as TPFO is "ineffective, inefficient, and prevents the County from realizing the long-term social and economic benefits that housing alternatives can provide." The report also provided recommendations to the Vision Team for modification of the transfer process to reduce those inefficiencies. A copy of the testimony / report is set forth as an attachment to this report.

[1] A copy of the Public Listening Meeting Minutes is set forth as Attachment K.
[2] A copy of Renewal Inc.'s written testimony is set forth as Attachment L.
[3] A copy of The Program for Offender's Inc.'s written testimony is set forth as Attachment M.

The final written testimony was provided by the Black Political Empowerment Project (B-PEP) titled *Problems of Inequity & Inequality in the Criminal Justice System – Issues of District Attorney's Office and the Public Defender's Office*.[4] This report indicated that the staff of the Office of Public Defender suffers from a low morale based upon funding and resource inequities in the Allegheny County criminal justice system. The report recommended that Allegheny County implement the recommendations provided in the Kalmanoff Report; support the creation of a statewide Pennsylvania Office for indigent defense; and implement the necessary changes to allow the Office of Public Defender to meet the American Bar Association's Ten Principles of a Public Defense Delivery System.

[4] A copy of the Black Political Empowerment Project's written testimony is set forth as Attachment N.

The Courts Administration Vision Team sets forth the following findings and recommendations related to the Allegheny County Office of Public Defender, the Allegheny County Department of Court Records, and the Allegheny County Sheriff's Office. Please note the recommendations are not provided in any particular order of importance or implementation.

The Allegheny County Office of Public Defender

The Courts Administration Vision Team focused much of its attention on the status of the Allegheny County Office of Public Defender ("OPD"). Unlike the other County offices within this team's scope of review, the services provided by the OPD, and more importantly, the quality of the services provided by the OPD, are regarded as "fundamental rights". The OPD's responsibilities, therefore, are critical elements of our system of justice, and as such, the Team gave a closer look to the operations of this office.

The OPD has been the subject of several state and county studies over the past ten years, all of which found numerous deficiencies in its operations. The Team reviewed each of those studies and supplemented those reports with their findings and recommendations with its own investigation and research. (See pages 2-6 above for a listing of all studies and research materials utilized by the Team.) Just as the researchers did in those studies, the Vision Team referenced the American Bar Association Ten Principles of a Public Defense Delivery System[1] as the standard against which the operations of the OPD should be evaluated. The categories set forth below generally mirror the criteria used in the ABA's Ten Principles.

Resources

Findings

General Resources

- The OPD's resources are severely limited ($7.5 million was allocated by the County in 2011) and as a result there are shortages in all areas, ranging from insufficient staffing to inadequate office space, deficient computer technologies, to low staff salaries and scarce supplies and office furniture.

- In contrast, the District Attorney's office received over $14 million in funding from the County in 2011 and suffers from far less office and staff shortages than the OPD.

[1] The ABA Ten Principles of a Public Defense Delivery System have gained wide acceptance as "an excellent blueprint for the fundamental criteria necessary to construct an effective public defense system." The Constitution Project, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* (Washington, D.C.; Constitution Project, 2009) 33; Mary Sue Backus and Paul Marcus, "The Right to Counsel in Criminal Cases, A National Crisis," 57 Hastings L.J. 1031, 1133. They are solidly grounded in the U.S. Supreme Court precedent and to constitute "the most widely accepted and used version of national standards for public defense systems." David Carroll, Phyllis Mann, and Jon Mosher, "The Judicial Underpinnings of the American Bar Association's Ten Principles of a Public Defense Delivery System and their Use in Defining Non-Representation under United States v. Cronic, 466 U.S. 648 (1984)" (NLADA, October 26, 2011)4, 5-10, http://nlada.net/sites/default/files/na_judicialunderpinningsofabatenprinciples_10262011.pdf. Moreover, within Pennsylvania, the Ten Principles have been endorsed by the Pennsylvania Bar Association, the Philadelphia Bar Association, the Allegheny County Bar Association, the Erie County Bar Association, the Centre County Bar Association and the Luzerne County Bar Association.

Staffing

- The OPD handles more than 31,000 cases per year and employs a total of 76 lawyers to represent the defendants/clients in each of those cases.

- The OPD's limited resources prevent it from hiring enough attorneys to comply with national caseload standards and to effectively represent its clients, and from hiring sufficient numbers of investigators, support staff and social workers to assist the overburdened staff attorneys.
- Currently, the OPD employs less than the 79 full-time equivalent staff attorneys mandated by the Doyle Consent Decree entered in 2005.

- The OPD's Investigative Division consists of approximately nine investigators, only; seven actually conduct investigations, (barely half of the total in 1998. The lack of investigators makes it difficult to adequately serve the attorneys' needs for timely and effective investigations.

- There is one social work-related position in the entire OPD, an "Ombudsman" who works exclusively in the Juvenile Division and whose contribution to the improvement of juvenile cases of what is necessary. The absence of social workers at the OPD is a significant void in the operation and adversely impacts the quality of service provided to its clients.

- There are insufficient numbers of support staff employed by the OPD. As a result, many attorneys perform their own clerical work. While no new part-time attorneys have been hired, many of those who have worked in the OPD office for many years have remained. These attorneys spent part of their time working on their county client files, while their ethical obligations require them to provide adequate attention to their private client files.

- The OPD has four part-time law student clerks employed during the school year. However, the clerks are often underutilized in the various OPD divisions because they are not provided appropriate training or supervision.

Salaries

- The salaries provided to OPD attorneys are below market. Accordingly, some attorneys seek to maintain part-time, non-legal jobs outside of their full-time OPD work in order to supplement their income.

- While there should not be a direct comparison, in contrast, the District Attorney's Office regularly provides Assistant District Attorneys with not only an annual cost-of-living adjustments, but with advances in "grade," which amount to more substantial pay increases and serve as an effective retention tool. These "Grade" pay raises occur roughly 3-5 years into an Assistant District Attorney's term in the office.

  In 2009, the OPD had no "Grade 3" lawyers, which is the first grade of advancement from the lowest grade of 4. Consequently, the OPD has no proper classification for attorneys with five or six years of experience who should be earning approximately $45,000 per year.

- Some of the OPD attorneys have never received a grade increase even though they were hired ten or more years prior, and many more have over five years' worth of experience.

- Lack of gradation in salary and benefits has caused a higher than average turnover rate among more experienced OPD attorneys, creating another largely hidden expense to the OPD.

- High staff turnover may lower OPD morale and leads to an increased sense that the office is a "training ground."

Equipment

- Supplies are generally scarce at the OPD. The OPD has been known to run out of paper and pens without the budget capacity to purchase additional supplies. Supply shortages are often made up by employees spending personal funds on necessary office supplies.

- It appears the OPD does not have sufficient file cabinets, office furniture, file racks, bookshelves, library materials, or other basic equipment necessary to operate with ease. What office furniture they have consists of used and sometimes damaged furniture donated to the office.

- The OPD has an antiquated information management system, often times receiving only used desktop computers from the County. There does not appear to be advanced technology systems in use by the OPD, including overhead projectors, computers and computer technicians to assist with trial presentations. There are insufficient numbers of computers and printers for OPD attorneys and support staff.

Facilities

- The OPD office space too small to house the staff and the equipment necessary for the office to function efficiently and comfortably.

- The entire OPD facility is in need of maintenance updates. At a minimum, new carpeting, new window blinds, repairing and replacing of existing air conditioning units, repainting of walls, new door locks and security systems, and a thorough cleaning of the entire space is recommended. .

Experts

- It remains difficult for OPD attorneys to obtain the expert witnesses necessary to properly present their cases. One reason for this is that some experts are reluctant to work for the OPD because it has a history of delayed payment for services rendered. There is also a chronic lack of funding available for the hiring of experts by OPD attorneys.

Recommendations

- In order to enable the OPD to provide competent and effective legal counsel to indigent defendants, additional resources should be allocated to the OPD on a yearly basis. The list of needs is extensive and is set forth in detail

n the footnotes of this report. Such crucial needs include, at a minimum, increases in staffing[2]; changes to salaries, promotions and benefits policies[3]; new equipment[4]; and improvements in facilities[5].

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[2] **Proposed Increased Staff**

Trial Division

- Three Second Line Supervisors
- Additional staff attorneys
- Additional support staff
- At least one social worker
- One paralegal/legal assistant to handle referrals from adult criminal courts to specialty courts

Pre-Trial Division

- One Second Line Supervisor
- Two attorneys
- One social worker with a Master's degree or higher

Juvenile Division

- Two social workers
- Six attorneys
- Two investigative interview staff
- One paralegal
- One legal secretary

Appellate Division

- One attorney
- One clerk/typist
- Three part-time law clerks
- Additional funding for attorneys to obtain capital case certification credits
- Additional funding for attorneys to pay for admission to PA Supreme Court Bar

[3] **C. Salaries, Promotions and Benefits**

- Authorize the Chief Public Defender to award merit-based promotions in the form of re-classifying attorneys in various levels, for example, as an Attorney 2, 3, or 4, with accompanying increases in salaries, in parity with those paid to staff attorneys in the District Attorney's office;
- Authorize the Chief Public Defender to afford staff the same holidays provided to employees of the District Attorney's Office and the Court of Common Pleas;
- Authorize the Chief Public Defender to award merit-based increases to support staff.

[4] **Essential New Equipment**

Trial Division

- Upgraded computers and 12 new CRT monitors with flat-screen monitors
- Access to nonpublic CPCMS for attorneys
- Two upgraded combination printer/copier/scanner machines
- Desk phones equipped with speakers for attorneys
- 25 new office chairs
- Equipment for video-conferencing visits between attorneys and Allegheny County Jail inmate clients

Pre-Trial Division - applies to both main defender office and the office in City Court

- Upgraded computers and workstations with drawers
- A new printer combined with a copier
- Multi-line phones with conference calling capabilities
- New office chairs
- Basic industrial office supplies, such as 2 and 3 hole paper punchers, staplers, staple removers, tape dispensers, scissors and desk lamps
- Bookshelves
- Small vacuum cleaner
- Pre-printed labels for client files
- User-friendly database enabling better analysis of work performed and better planning for upcoming work assignments
- Electronic access to criminal complaints and affidavits for cases
- Electronic access to "risk assessment" document and supporting information developed by the Allegheny County Pre-Trial Services Agency, Bail Division
- Electronic access to "Gag 1" documents relevant to clients

Juvenile Division

- New printer
- New fax machine capable of handling load of 50-150 pages per day
- Several new desktop and laptop computers
- Notebook/netbook to facilitate entry into Legal Edge, conflict checks, use of the court E-File system, and for assisting clients with obtaining essential information about proposed placements, etc., at Shuman Center
- Scanner specifically for use with paper exhibits and scanning for paper input for Legal Edge
- Dedicated printer with scanning capabilities at Shuman Center
- Access to the "Importer" to Legal Edge to make the program a more efficient case management system
- Netbooks for staff attorneys
- 5 new lateral filing cabinets
- 3-4 desk chairs
- 2-3 desk fans
- File racks and bins
- Coat racks

Appellate Division

- Updated computers
- Copier/printer/scanner combination machine
- High speed scanner that can convert to Optical Character Recognition ("OCR") to edit scans
- Acrobat Software to create and edit PDFs ("Adobe Pro")
- CD readers and burners
- Large capacity paper shredder to protect confidential records
- The following essential reference books:
    - Western PA Court of Common Pleas Judges Book
    - The Defender Association of Philadelphia Training Manuals
    - Trial Techniques by Thomas A. Mauet
    - PA Rules of Evidence with Trial Objections, 4th, by Charles B. Gibbons
    - PA Criminal Procedure, by Bruce Antkowiak
    - The Law of Arrest, Search and Seizure in PA, by David Rudovsky
    - PA Driving Under the Influence, by Timothy P. Wile, Marc A. Werlinsky

Hiring Process and Diversity

Findings

Hiring Process

- In recent years, the process utilized to fill open spots in the OPD has become bogged down. Moreover, no transition plans exist to compensate during the prolonged staffing shortages.

- The hiring process for the OPD, as per the Department of Human Resources, is as follows:

    - A Job Announcement is placed on the County's Website for an OPD Attorney. Interested applicants must submit a completed application, resume, a legal writing sample that demonstrates the applicant's legal research and writing skills, and an official academic law school transcript.

    - Applications are reviewed by the Human Resources Department to determine if the applicant meets the requirements of the position. If the applicant meets the requirements, the applicant is placed on the Allegheny County approved Merit Hiring Eligibility List.

    - If the OPD desires to make a request to fill the position, the department must initiate an electronic requisition to hire for the position. The requisition must be approved by Human Resources, the Budget Office, the County Manager and the Controller's Office.

    - Once a requisition is approved, the department may interview any of the applicants on the Allegheny County Approved Merit Hiring List.

    - Once the department has made a recommendation for hiring it submits an electronic PAA form requesting to hire the applicant. The department scans other relevant information in a scan file that includes the application, resume, copy of the Merit Hiring Eligibility List that includes the applicant's name on the list, and a copy of the approved requisition. The hiring request must be approved by Human Resources, the Budget Office, and the County Manager.

- PA Post-Conviction Relief Act-Practice and Procedure, by Thomas M. Place
- Law of Probation and Parole, West's PA Practice, Vol. 12.

[5] **Facilities Improvements**

All Divisions

- New carpeting as well as new flooring in the waiting room and reception area
- Thorough cleaning of entire office space
- Repair and replacement of air conditioning units
- Replacement of window blinds
- Cleaning of central air conditioning vents
- Repainting of all walls
- Installation of new door locks

- Because OPD's hiring is conducted by the County, the OPD itself is not involved in the screening of applicants. This process has resulted in the loss of excellent job applicants who are known to the OPD management or staff attorneys but whom the County fails to interview or hire because the OPD is not involved in the hiring process.

- The County's hiring process is very time-consuming and causes significant delays (from as long as three months to more than a year) in filling vacant positions for all OPD staff; even part-time law clerk positions (most of which are mandated by the Consent Decree with the ACLU) take several months to fill due to the delay by the County in processing the necessary paperwork.

- The delay in filling vacated attorney positions has a hampered the OPD's ability to meet its obligation of providing effective representation.

Staff Diversity

- While there is gender diversity in the OPD (38 of the 75 attorneys in the office are women and 37 are men), there is very little racial and ethnic diversity.

- Approximately 75% of the clients served by the OPD are people of color (65% to 70% African American and 5% to 10% Hispanic), yet only eight of the attorneys in the office are African American (six women and two men) and two are Hispanic.

    - Of the nine investigators in the office, eight are men and there is only one African American and one Native American.

    - Of the 31 support staff, 27 are women, nine are African American, two are biracial and one is Hispanic.

- There does not appear to be a diversity initiative or diversity training at the OPD. As a result of the dramatic difference between the racial and ethnic composition of the clientele served by the OPD, and the racial and ethnic composition of the OPD staff, as well as the lack of diversity training, there may be significant issues with cultural competency in the representation of clients.

Recommendations

The OPD should be authorized to:

- Fill all vacant attorney positions and hire additional staff attorneys without delay. (See footnote 16 for a detailed list of attorney staffing needs.)

- Hire more investigators, support staff and social workers for the office. (See footnote 16 for a detailed list of additional staffing needs.)

- Authorize the Chief Public Defender to award merit-based promotions in the form of re-classifying attorneys in various levels, for example, as an (Attorney 2, 3, or 4) with accompanying increases in salaries.

- Develop a diversity plan and conduct diversity training for all attorneys and staff on a yearly basis.

- Implement the County's version of the "Rooney Rule" in all hiring conducted by the OPD.

- Develop a pipeline of candidates for the OPD through:

    - The creation of a formal certified legal externship/law clerk program with the local law schools;

    - The creation of a formal/structured summer internship program (Neighborhood Legal Services Association could be used as a model).

- Hire candidates within the summer internship/clerkship program with an eye to increasing diversity.

    - Work with the Director of Diversity at the Allegheny County Bar Association (ACBA) to identify potential attorney candidates

- Hire an office manager who would be with charged, among other things, with:

    - interfacing with the County HR Department with respect to all hiring for the OPD;

    - interfacing with the Director of Diversity at the ACBA to try to increase diverse attorney hiring (this will require coordination with the County HR department);

    - creating and running the law clerk program and summer internship program for the office to develop a pipeline of candidates for the office;

    - creating and implementing the office's diversity plan and conducting diversity training;

    - conducting/coordinating new attorney and support staff training;

    - coordinating Continuing Legal Education (CLE) training programs; and developing an office policy manual.

Intake Process and Appointment of Counsel

Findings

- The OPD does not have a consistent intake process. It appears that not all pertinent information is received by Intake staff, who are not lawyers and have not been trained by lawyers. The intake staff typically obtains only contact information from potential clients with little, if any, discussion of information important to the case, such as the detailed facts, possible defenses, the names of possible witnesses and physical evidence or records.

- One of every four incarcerated individuals who appear to meet OPD eligibility requirements are not screened for representation by the OPD before their Preliminary Hearings take place.

- OPD attorneys may not be assigned to a case in a timely manner, which prevents them from having adequate time to prepare their cases properly. This delay also results in missed opportunities to resolve these cases at an

early stage of the process. This increases the costs of indigent defense. It also has a collateral effect on the costs of prosecution and the administration of justice and results in increasing costs for the county budget.

- In most cases a period of approximately four months transpires when little to no work is done on the case. This four-month "dead time" results in long waiting times, lost preparation time between clients and attorneys, multiple disciplinary board complaints, and increased costs for the criminal justice system and the County.

Recommendations

The OPD should be authorized to:

- Hire two legal assistants, preferably with law degrees, to assist with the defenders' responsibilities during the initial stages of client representation. The assistants' responsibilities should include managing client correspondence and bond reduction requests, initiating early investigation of cases (such as obtaining videotapes, phone records and other potentially exculpatory evidence), gathering information for purposes of filing pre-trial motions, and requesting discovery materials.

- Make arrangements with the District Attorney's Office to obtain the Criminal Information and any other relevant information available well in advance of the Formal Arraignment or the Pre-Trial Hearing.

- Fill vacant attorney positions throughout the office to enable the office to have sufficient numbers of attorneys to represent clients as early in the criminal proceedings as possible.

- Require supervisors to ensure that attorneys are assigned to clients' cases as early as possible. (See *Recommendation 2* under *Section VI-Caseload Management and Supervision*.)

Communications between Attorney and Client

Findings

- There is little confidential space for OPD attorneys to meet with their clients either in the OPD office or in the County Jail.

- Pre-Trial Attorneys appear to handle such a high volume of cases that they can only spend a few minutes to meet with each defendant prior to his or her hearing.

- Similarly, it appears that Trial Division Attorneys meet with their clients moments before the Pre-Trial Conference and frequently they do not have the opportunity to engage in subsequent communication with their clients until the next scheduled court appearance. These brief interactions do not supply attorneys with the opportunity to obtain vital information from clients or to adequately prepare cases for trial.

- It has been reported that some trial judges believe that public defenders are not meeting with their clients prior to key court appearances.

- Opportunities for confidential communications are difficult to facilitate. Often it may happen that on the day of an appearance communications will take place in a holding area, surrounded by other criminal defendants and law enforcement personnel, or in the courtroom itself.

Recommendations

The County should:

- Provide sufficient space in the OPD office and at the County Jail to enable OPD attorneys to conduct client interviews in private.

- Enable the OPD to fill vacant staff positions to reduce individual caseloads, enabling attorneys to devote more time to meeting with their clients in advance of trial.

- Require supervisors to direct OPD attorneys to regularly meet and communicate with their clients from their initial assignment to the conclusion of their representation of the client. (See *Recommendation 2* under *Section VI-Caseload Management and Supervision*.)

Horizontal Representation

Findings

- Horizontal representation is the manner in which the OPD assigns cases to individual attorneys. This means that one attorney does not represent his/her client throughout the entire case; rather, a different attorney is assigned at each stage of the criminal trial and appeals process.

- Pre-Trial Attorneys are not required to conduct any follow-up work on the case, which is considered to be the responsibility of the Trial Attorney alone.

- Clients frequently give their Pre-Trial Attorneys critical information, such as names of witnesses or physical evidence, but this information is rarely put into the client's file and consequently it is never seen by Trial Attorneys. Most client files are given to Trial Attorneys without anything more than cursory notes from Pre-Trial Attorneys.

- Some Pre-Trial Attorneys reportedly do not provide their full names to their clients at the Preliminary Hearings to prevent the clients from contacting them later.

Recommendations

The County should:

- Investigate if it would be appropriate to contract with the Allegheny County Bar Association, rather than the reporting service currently under contract by the County, to transcribe all Preliminary Hearings for OPD clients.

- Require supervisors to ensure that the case file of every OPD client includes, at a minimum, attorney notes and the transcript of the Preliminary Hearing, so that the Trial Attorney has all relevant information regarding the case well in advance of the trial. (See *Recommendation 2* under *Section VI-Caseload Management and Supervision.*)

- Study the appropriateness and effectiveness of horizontal versus vertical representation in the OPD.

Caseload Management and Supervision

Findings

Caseload Management

- Questions arise as to the ability of the OPD for systematic management of caseloads. This may be particularly true when caseloads increase. Mechanisms for identifying conflicts and scheduling issues appear to be confused.

- Difficulties appear with respect to tracking cases or workload in the OPD. As a result, attorneys' time is underutilized and appears to be inconsistent. It has been reported that the County significantly invested in a case management system that has been reported to be almost unusable and not employable office-wide.

- The County heavily invested in database software for caseload management and other functions at the OPD, but the system is almost unusable and is not being employed office-wide. It has been further reported that some attorneys view the software as creating more administrative work and therefore they do not prioritize updating the system among their responsibilities.

- It has been reported that support staff do not utilize the case management system effectively through the entry of case data.

- As a result of the inadequate case assignment management system, many OPD clients are not informed of the name and contact information of the attorney assigned to their cases. This prevents these clients from being able to request information about their cases or to provide their attorneys with important information.

Supervision

- The current OPD supervisory system in use provides periodic monitoring of attorneys or other staff to ensure accountability and quality representation.

- There is a lack of effective and consistent use of performance standard evaluations and reviews.

- It has been reported that there is no consistent supervision of staff attorney case files or written pleadings, or observation of staff attorneys in court by OPD management.

- The procedure pertaining to the hiring of experts is not routine.

Recommendations

- Require OPD management to establish caseload and performance review standards and apply them to all OPD staff members.

- Create and fund four "Second Line" supervisory positions to, among other things, supervise, evaluate, discipline, train, assign, track the caseloads and advise attorneys under their supervision, in order to ensure that OPD attorneys meet and communicate regularly with their clients, from their initial assignment through the conclusion of their representation of the client.

- Explore funding for new supervisory positions. Investigate the appropriateness of hiring two new legal assistants to handle a variety of responsibilities in the pre-trial process, thereby reducing the workload of individual attorneys.

- Attempt to fill all vacant attorney positions in order to reduce caseloads of existing attorneys.

- Evaluate and replace the OPD's computer system to enable supervisors and support staff to track assignment of cases and the caseload of each attorney.

- Continue to phase out part-time attorney positions in the OPD through attrition.

Training

Findings

- Training in the OPD is not found to be consistent, qualitative or extensive.

- There does not appear to be a formal mentoring program to assist young lawyers in learning the nuances of criminal defense practice generally and within Allegheny County.

- Attorneys transfer between divisions without appropriate training as to on how to proceed in crucial matters that decide the ultimate fates of their clients.

Recommendations

- Hire a training coordinator/grant writer to organize training programs for new and current attorneys, supervisors, investigators and support staff. Responsibilities should also include locating and developing free and low cost continuing education programs, and applying for grants to cover the cost of training and other initiatives, and improvements.

- Require supervisors to ensure that staff attorneys receive training and assignments based upon their level of experience and competence. (See *Recommendation 2* under *Section VI-Caseload Management and Supervision*.)

- Explore funding of new supervisory positions at a higher level than staff attorney positions to provide an incentive to staff attorneys and supervisors to remain within the office.

- Seek to fill vacant attorney positions to provide sufficient numbers of attorneys to prevent inexperienced attorneys from being assigned to cases beyond their capabilities and areas of expertise.

- Provide all staff attorneys with regular and predictable salary raises to enable them to remain in their positions over time, thereby preventing the loss of experienced attorneys from the pool of attorneys within the office.

Funding, Independence of Office and Appointment of Private Counsel

Findings

- There is no direct state funding or a statewide structure for ensuring uniform, quality representation of indigent criminal defendants statewide.

- The OPD like other County Offices is confirmed by County Council in agreement with the County Executive. The President Judges and Administrative Judges establish policies via administrative court orders for payment of court-appointed counsel. However this is done without input from the OPD or the private bar, and without reference to national or local legal standards for compensation.[6]

- There is a significant disparity in compensation for court appointed lawyers handling adult and juvenile indigent defense legal services.

- Negative media coverage and adverse political ramifications occur as a result of the judiciary publicly faulting the OPD for case postponements /delays.

- The judiciary does not take an active role in addressing the underlying funding and resource problems of the OPD.

Recommendations

- Consider or conduct a study as to whether or not to convert the OPD to a non-profit organization [501(c) (3)] with an independent governing Board of Trustees, to enable it to achieve independence from the county government and the local judiciary, and to directly solicit funds from a wide range of sources, including the county and state governments.

- Advocate to the state government to provide adequate funding for public defender services.

- Seek to fund the OPD at increased levels consistent with the requirements of ethically fulfilling the requirements of the office. In conjunction with the potential creation of an OPD non-profit agency, seek funding from the Commonwealth and the County under contracts for services.

- Explore creating an Indigent Defense Advisory Board (IDAB) with outside advocates, including members of the private bar, to provide independent oversight and review of legal services by OPD and to limit political / judicial influence over the OPD, OCC, and assignment of court-appointed counsel.

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[6] See Court of Common Pleas Criminal Division Policies and Procedures Governing Appointed Counsel and Orders of Court, Administrative Orders 6-2007 (dated 8/30/07) and 2-2006 (dated 1/31/06); and Court of Common Pleas Family Division – Juvenile Section Policies and Procedures Governing Court Appointed Counsel for Delinquency Cases and Order of Court, Administrative Order A-8 (dated 11/9/2001).

- If created, authorize the IDAB to establish standardized policies and procedures for assignment of court-appointed counsel, compensation, and review of legal services.

- Establish a standardized conflicts of interest policy that provides written disclosure requirement for OPD supervisors, court-appointed counsel, and Court Administrators.

The Allegheny County Department of Court Records

Department Structure/ Personnel

Findings:

- The Department of Court Records was created in 2008 after the consolidation of three row offices (Prothonotary, Clerk of Courts and Register of Wills)[7]

- The different divisions of the department are located in the City-County Building and the Allegheny County Courthouse:

    - The Civil Division Court Records (Civil and Family) are located in the City-County Building
    - The Clerk of Courts (Criminal) Records are located in the Allegheny County Courthouse
    - The Register of Wills records are located in the City-County Building.

- There are other off-site locations for record storage that were not visited by the Vision Team.

- The Department of Court Records has 151 employees, four of whom specifically work in the IT Department. The number of employees decreased after the consolidation of the three offices.[8]

- The advanced degree employees in the Department of Court Records are part of the same union as the attorneys within the Office Public Defender and District Attorney Office.

Recommendation:

- There is a need for increased racial diversity in this department.

Technology / Computer Systems

Findings:

Technology utilized in Department of Court Records varies based upon the function of the division.

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[7] Prothonotary – Civil Division Court Records (Civil and Family), Clerk of Courts- Criminal Division and Register of Wills – Orphans Courts

[8] Please see the document "2012 Budget Preparation Questions" provided by the Director of Court Records.

- The Criminal Division (former Clerk of Courts) utilizes the PA AOPC system, which employs the CPCMS Case Management System.

- The Civil Division (former Prothonotary) and Wills/Estates Division (former Register of Wills) utilizes a Case Management System developed by a 3rd Party Vendor.

- Case files are a mixture of hard copy (for older) and electronic (last 10+ years) files.

- Security of the computer systems is handled by Allegheny County DCS. The present security system does not permit searches of records within the court records databases unless the person seeking access to such records is logged into the system.

- This is the most advanced/modernized of those offices reviewed.

- Current law requires that Juvenile records must be maintained on microfiche.

Recommendations:

- Continue to consider and discuss the better sharing of information (when available and necessary).

- The County should advocate to officials in Harrisburg to allow for electronic storage to save space.

- Create an electronic filing system for the Register of Wills Division.

- Create a "dashboard" function on the computers within the Department of Court Records to allow staff to switch from one case management system to another with greater ease and accessibility.

- Increase signage for access / location of public computer terminals.

Public Accessibility

Findings:

- Public terminals are available in the Department of Court Records in the City-County Building. The computers are located on the mezzanine level. There are problems with accessibility for people with disabilities.

- Public terminals are also available in the Criminal Division on the second floor.

- Employee assistance is also available for members of the public who are not able to access the online search / filing system.

Recommendations:

- Install an internal elevator for staff and members of the public to access the mezzanine level.

- Relocate some of the public access computers to the main level for increased accessibility.

File Handling

Findings:

Criminal Division

- All documents are immediately scanned upon receipt.
- A bar code is assigned to all files to provide for physical location access. Files are checked in and checked out by court staff and attorneys.
- Files are stored throughout the small office space.
- There is a plan to move all criminal summary appeal records to the Civil Division of Court Records because the Judge who handles those cases is located in the City-County Building.
- There is no e-filing available in this division.
- There is a recurrent failure to properly transfer records between facilities for persons on parole. Crucial information is not being transferred to organizations (such as Renewal, Inc., Goodwill Industries, of The Program for Offenders, Inc., Western Psychiatric Hospital and Juvenile Facilities) in a timely fashion.

Civil / Family Division

- This is the largest division in terms of volume.
- The Department of Court Records is planning to transition this division to a paperless department. This division does not use the bar code system with individual files.
- At the present time 60% of all pleadings within this division are e-filed.
- The juvenile files are located on the second floor in a secured room. State rules provide that old juvenile files must be converted to microfiche. This requires the county to maintain outdated microfilm equipment.

Register of Wills Division

- There are large volumes of older records that are stored in this division. A number of records maintained in this department are of a unique large size requiring special file cabinets that take up a large amount of usable work space.

Recommendations:

- Establish the same physical tracking system used in the Criminal Division in the Civil / Family and Register of Wills Divisions.

- Review the current storage system to determine if the integrity of the documents is being maintained.

- Review the possibility of scanning older documents for easy accessibility and retrieval from storage.

- Improve the transfer of files between the various users to ensure that the location of the file is known at all times.

Facilities

Findings:

Criminal Division – County Courthouse

- The office is too small for the volume of files stored within the space. The office is extremely cramped with every available space being utilized and insufficient room for new files.

- There appears to be adequate security in the office. There is a vault for money handled by the office and a number of cameras for added security. Bonds are kept on site and daily money pickups occur.

Civil / Family Division

- There are several large metal file cases used for storage of old deed / title documents. There is a plan to have these documents moved to the mezzanine level of the department to allow for more space on the first floor. (There is some concern about the structural integrity of the mezzanine level and the ability to sustain the weight of the records and the cabinets.)

- There are climate control issues throughout this division and especially in the basement "staging area" where court records are prepared for shipment to off-site storage. There is a great deal of moisture in the basement and signs of leaking ceilings and crumbling plaster. This presents concerns regarding the damage to and destruction of files located in the "staging area."

- There are locked rooms in the basement for the secure storage of sealed court records.

- The condition of the second floor in the division is atrocious and creates a liability issue. The men's bathroom presents an electrocution hazard with exposed wires in the ceiling that are relatively close to an existing water leak.

Register of Wills Division

- There are large numbers of older documents in oversized / specialty file cabinets that are located throughout the office space. Relocation of these cabinets could create more and better overall office space for staff.

Recommendations:

- General repairs and maintenance of the offices and departments in the City-County Building are greatly needed.

- Address the moisture issues associated with the high humidity levels and leaks in the basement "staging area" where files are prepared for off-site storage transfer.

- Consult with the Carnegie Mellon School of Architecture to discuss the problems associated with the structural integrity and location of the file cabinets on the Mezzanine Level of the Civil Court Records Division. This can be accomplished through the creation of a graduate level project to provide guidance with respect to restructuring / reorganizing the division.

- Consult with the University of Pittsburgh, School of Library Sciences, to create a graduate level project to consolidate and computerize the document management issues in the Civil / Family Division and the Register of Wills.

The Allegheny County Sheriff's Office

The vision team was charged with reviewing the Allegheny County Sheriff's Office based upon past concerns relating to the delay in the transfer of inmates from the Allegheny County Jail (ACJ) to the courthouse for scheduled court appearances. In the 2009 "Kalmanoff Report" for Allegheny County, recommendation 30 specifically noted, "The County should require the Sheriff to review ACJ procedures for the production of inmates in a timely manner in court and for tracking conflicting court dates and / orders." This recommendation was made to suggest a solution for the high number of court continuances requested by the Office of Public Defender due to the unavailability of defendants, witnesses, conflicting court dates and inadequate staff for transport of inmates.

Allegheny County Sheriff William Mullen informed the Vision Team that his office completed a study and report to determine the reasons for the delay in transport of inmates from the ACJ to their scheduled court appearances. According to Sheriff Mullen the study revealed that the primary reason for the delay in inmate transport was related to ACJ procedures, described above. As additional background it must be noted that the Vision Team has limited access to the Allegheny County Sheriff's Office since this in an independent office with an elected official not responsible for reporting directly to the County Executive; thus the Vision Team had access only to limited information in conducting its review. (The Vision Team was not able to independently able to access this rational and it is believed that the Vision Team responsible for ACJ oversight is examining this question further.)

Prisoner Transport

Findings:

- The Sheriff's Office typically receives a list from the Allegheny County District Attorney's Office several days before the scheduled transport of inmates.

- The Sheriff's Office picks up an average of 80 prisoners per day from the Allegheny County Jail and transports them to the basement of The Family Court facility where they are detained in cell blocks until they are called for court.

- The Sheriff's Office previously had issues when the Allegheny County Jail staff failed to inform them when the accused were in gangs and they would be put in the same cell blocks with rival gang members.

- The Sheriff's Office received complaints in the past about delays in delivery of prisoners.

- Sheriff Mullen indicated that the only complaints received were about getting prisoners to hospitals in a timely fashion.

- The Sheriff's department conducted a study and determined that the principal problem occurred at the Allegheny County Jail; to wit, prisoners were not being brought down from their cells in a timely manner. (The Vision Team did not review this study.)

Recommendations:

- An independent study might be conducted to determine if the timely transport of prisoners from the Allegheny County Jail to court or rehabilitation facilities by the Allegheny County Sheriff's Office is an ongoing concern that must be addressed.

- All inmate paperwork must be provided at the time of transport.

Subcommittee Reports

Vision Team Diversity Statement

The *Court Administration Vision Team* believes that a successful workplace recognizes the vital importance of creating and maintaining an inclusive and diverse working environment. In order for county services to be of the highest quality the county must take pride in its diversity, and respect all of its residents and employees, regardless of race, color, sex, marital status, religion, national origin, ancestry, age, disability, gender identification, or sexual orientation. The county must demonstrate its commitment to developing, managing and promoting a diverse workforce, while clearly communicating the same to both employees and the general public. The Administration must make every attempt to ensure that the county workforce is reflective of the ethnic, cultural and social diversity that comprises Allegheny County. In order to accomplish this goal the county must create a sound diversity statement and plan. An individual should be hired to support and implement the county's diversity plan and objectives, which should include providing effective diversity training for county employees. In this fashion, the county can recognize the significant contribution diversity and inclusion can make culturally, socially and economically.

Findings:

Hiring Process

- The hiring process for the OPD through the Allegheny County office of Human Resources, is as follows:

    - A Job Announcement is placed on the County's Website for a Defender Attorney. Interested applicants must submit a completed application, resume, a legal writing sample that demonstrates the applicant's legal research and writing skills, and an official academic law school transcript.

    - Applications are reviewed by the Human Resources Department to determine if the applicant meets the position requirements. If the applicant meets the requirements, the applicant will be placed on the Allegheny County approved Merit Hiring Eligibility List.

- If the OPD desires to make a request to fill the position, the department initiates an electronic requisition to hire for the position. The requisition must be approved by Human Resources, the Budget Office, the County Manager and the Controller's Office.

- Once a requisition is approved, the department may interview any of the applicants on the Allegheny County Approved Merit Hiring List.

- Once the department receives a recommendation for hire it submits an electronic PAA form requesting to hire the applicant. The department scans other relevant information in a scan file that includes the application, resume, copy of the Merit Hiring Eligibility List that includes the applicant's name on the list, and a copy of the approved requisition. The hiring request must be approved by Human Resources, the Budget Office, and the County Manager.

Concerns with the Hiring Process

- Because hiring at the PDs office is conducted through the County, there is no one in OPD who screens applicants. Often there are candidates who individual PDs know have applied, yet these never get to the office.

- Vacated attorney positions must be filled as soon as possible to prevent a crippling effect on the office's ability to meet its constitutional mandate of providing effective representation.

- It has taken from three months to more than a year for the county to approve filling vacant attorney, investigative, support staff and even part-time law clerk positions (most of which are mandated by the Consent Decree with the ACLU) and several more months to process the necessary paperwork.

- Four slots exist for part-time law student clerks, but during the school year but these are underutilized.

Diversity

- There is no diversity initiative in place at the OPD. Hiring takes place without regard to diversity needs.

- While there is gender diversity in the office with 38 of the 75 attorneys in the office being women and 37 being men, there is very little racial and ethnic diversity.

- Approximately 75% of the clients served by the office are people of color (65% to 70% African American and 5% to 10% Hispanic), yet only eight of the attorneys in the office are African American (six women and two men) and two are Hispanic.

- Of the nine investigators in the office, eight are men and there is only one African American and one Native American.

- Of the 31 support staff, 27 are women, nine are African American, two are biracial and one is Hispanic.

- There is no diversity training for staff or attorneys. As a result of the difference between the racial and ethnic composition of the clientele served by the office and the racial and ethnic composition of those working in the office and the lack of diversity training, there may be significant issues with cultural competency in the representation of clients.

Recommendations

- Develop a diversity plan and conduct diversity training for all attorneys and staff on a yearly basis.
- Implement the county's version of the Rooney Rule in all hiring for the office.
- Develop a pipeline of candidates for the office through:
    - The creation of a formal certified legal intern/law clerk program with the local law schools;
    - The creation of a formal/structured summer internship program (Neighborhood Legal Services Association may provide a good model).
- Hire candidates for the summer internship/clerkship program with an eye to increasing diversity.
- Work with the Director of Diversity at the Allegheny County Bar Association to identify potential candidates
- Hire an office manager who is charged, among other things, with:
    - interfacing with the County HR Department with respect to all hiring for the OPD;
    - interfacing with the Director of Diversity at the ACBA to increase diverse attorney hiring (this will require coordination with the County HR department);
    - creating and running the law clerk program and summer internship program for the office to develop a pipeline of candidates for the office;
    - creating and implementing the office's diversity plan and conducting diversity training;
    - conducting/coordinating new attorney and support staff training;
    - coordinating CLE training programs; and developing an office policy manual.

Infrastructure / Morale Issue Analysis

The Vision Team's review consisted of physical examination of Allegheny County Courthouse, County Office Building, City-County Building Clerk of Courts / Register of Will, and City-County Building Basement Tunnel Storage areas. Interviews were conducted with Court and County personnel in the Department of Court Records and Office of Public Defender. Findings include input from practitioners and citizens who use these County facilities.

The Vision Team's review further incorporates the impact that physical environment and work space may have upon productivity and morale in providing quality government services to the public.

Findings:

- Workspaces are physically run-down, especially in the City-County building and Courthouse. There are potential safety concerns for employees and visitors. Workspaces are subject to environmental concerns of mold, mildew, deteriorating plaster, peeling paint, antiquated lighting, electric and plumbing, and inadequate ventilation and temperature control.

- Many departments, such as the Office of the Public Defender and Clerk of Courts, have very limited office and storage space.

- Records are placed in unsecure common areas and are subject to mold, humidity, temperature fluctuation, water, and/or potential security breaches.

- Some public workspaces and counters display unprofessional and negative signs that present inappropriate visual decor for a professional workplace.

- Workplace culture does not appear to support customer friendliness or innovation to improve services. Culture appears stagnant, which results in employees maintaining old workplace culture and not striving to improve customer service.

- Management and supervisors appear to lack support to innovate positive cultural change.

- Employee interaction with the public is inconsistent in providing customer-based focus of services. Some employees display a lack of professionalism and/or accountability to the public.

- There is no employee incentive program that would provide rewards, professional growth, or incentive for professional public service.

Recommendations:

- Create a culture of respect and accountability. Establish core values for employees to pursue and encourage them to provide quality service to the public in a professional manner.

- Support a constituent-friendly culture through training, reinforcement, and incentive programs.

- Develop and reinforce standards for professional conduct and constituent-based service, including guidelines for workspace and public counter decorum.

- Provide incentives and rewards for employees based upon merit, accountability, constituent-service, and innovation.

- Position the right person with the proper job to bolster employee skill sets.

- Implement supervisory accountability through review and achievement of goals.

- Provide opportunity for constituent input through the use of quantitative and qualitative approaches including online surveys, questionnaires, comment boxes, etc.

- Provide a confidential hotline for employees to report concerns without fear of adverse repercussions.

- Develop a capital expenditures plan that includes a first phase of renovations for the Records Department in the City-County building.

- Develop a capital expenditure for physical improvement of employee workspaces and physical building infrastructure.

- Involve local university programs to review facility infrastructure and to develop an action plan for best use of workspace, records storage, and common public areas.

- Consider short-term solutions to improve workspace environment including new paint, better lighting, and more efficient use of space.

Next Steps

As part of the charge from the County Executive, the Courts Administration Vision Team was also asked to outline next steps, and to categorize those as changes that needed to be made immediately, followed by short term and long term goals. Those steps follow:

Immediate Changes:

- Explore funding for new supervisory positions. Investigate the appropriateness of hiring two new legal assistants to handle a variety of responsibilities in the pre-trial process, thereby reducing the workload of individual attorneys.
- Create and fund four "Second Line" supervisory positions in the OPD.
- Improvements to the physical workplace environment through new paint, better lighting, basic office necessities and expansion of workspace (OPD and Court Records).
- Creation of available spaces for confidential client and witness meetings (OPD).
- Develop a diversity plan and conduct diversity training for all attorneys and staff on a yearly basis (OPD).
- Implement the County's version of the "Rooney Rule" in all hiring conducted by the OPD.
- Consult with the Carnegie Mellon School of Architecture to discuss the problems associated with the structural integrity and location of the file cabinets on the Mezzanine Level of the Civil Court Records Division.
- Consult with the University of Pittsburgh, School of Library Sciences, to create a graduate level project to consolidate and computerize the document management issues in the Civil / Family Division and the Register of Wills.
- Develop a pipeline of candidates for the OPD through:
    - The creation of a formal certified legal externship/law clerk program with the local law schools;
    - The creation of a formal/structured summer internship program (Neighborhood Legal Services Association could be used as a model).
    - Hire candidates within the summer internship/clerkship program with an eye to increasing diversity.
    - Work with the Director of Diversity at the Allegheny County Bar Association (ACBA) to identify potential attorney candidates
- Evaluate the cost benefits associated with replacing the OPD's computer system with a system that will be readily used by OPD staff.
- Increase signage for access / location of public computer terminals (Department of Court Records).

- Relocate some of the public access computers to the main level for increased accessibility (Department of Court Records).

Short Term Goals

- Hire two legal assistants, preferably with law degrees, to assist with the defenders' responsibilities during the initial stages of client representation.

- Attempt to fill all vacant attorney positions in order to reduce caseloads of existing attorneys.

- Hire a training coordinator/grant writer to organize training programs for new and current attorneys, supervisors, investigators and support staff. Responsibilities should also include locating and developing free and low cost continuing education programs, and applying for grants to cover the cost of training and other initiatives, and improvements.

Long Term Goals

- Establishment of different and increased funding streams to operate the OPD (staffing/office resources).

- Increases staffing in the OPD; change the compensation levels, promotions and benefits policies; provide new equipment; and major improvements in the facilities.

- Make major structural improvements in the facilities utilized by the Department of Court Records and the OPD.

- Hire an office manager who would be with charged, among other things, with:

    - interfacing with the County HR Department with respect to all hiring for the OPD;

    - interfacing with the Director of Diversity at the ACBA to try to increase diverse attorney hiring (this will require coordination with the County HR department);

    - creating and running the law clerk program and summer internship program for the office to develop a pipeline of candidates for the office;

    - creating and implementing the office's diversity plan and conducting diversity training; conducting/coordinating new attorney and support staff training;

    - coordinating Continuing Legal Education (CLE) training programs;

    - and developing an office policy manual.

- Create an electronic filing system for the Register of Wills Division.

- Create a "dashboard" function on the computers within the Department of Court Records to allow staff to switch from one case management system to another with greater ease and accessibility.

- Install an internal elevator for staff and members of the public to access the mezzanine level (Department of Court Records).

Members

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Allegheny County Department of Court Records Functional Review Report

DEPARTMENT FUNCTIONAL REVIEW

DEPARTMENT OF COURT RECORDS

REPORT TO ALLEGHENY COUNTY COUNCIL

APRIL 14, 2009

OVERVIEW OF OPERATIONS AND ADMINISTRATION

The Department of Court Records ("DCR") was established on January 7, 2008, to perform the functions formerly performed by the row offices of Prothonotary, Clerk of Courts and Register of Wills/Clerk of the Orphans' Court which were eliminated as a result of a ballot question approved by the electorate of Allegheny County. The DCR handles all documents filed by every party in all cases filed in the Court of Common Pleas of Allegheny County. The DCR creates a file for every case. This file holds all official documents filed for the case and all Orders of Court for the case. Most of the functions of the DCR are set forth in state statutes and rules of procedure regarding the operations of the courts of Pennsylvania.

The DCR has three (3) operational Divisions and an Administrative Division. The DCR, Civil/Family Division has administrative control and responsibility for receiving and maintaining official court documents and records for the Civil and Family Divisions of the Court of Common Pleas. The Civil Division of the DCR includes the General Docket, Arbitration Docket and Statutory Appeals Sections, while the Family Division of the DCR includes the Adult and Juvenile Sections.

The DCR, Civil/Family Division accepts documents for filing, issues writs, initiates execution proceedings, takes bonds in civil cases and processes appeals from the minor judiciary, Board of Viewers and administrative agencies to the Court of Common Pleas and from the Court of Common Pleas to the appellate courts of the Commonwealth of Pennsylvania. In addition, the DCR, Civil/Family Division has miscellaneous record keeping duties such as recording municipal claims and tax liens.

The Civil/Family Division allows filing of court documents in person, by mail or electronically. This Division has a computer system which allows for electronic filing of court documents by any person with internet access. This system was created and implemented by the former Prothonotaries, Michael F. Coyne and Michael E. Lamb. It is a state-of-the-art system which is admired and copied by many other counties. The DCR, Civil/Family Division website is http://dcr.alleghenycounty.us/. This website allows any person with internet access to see the docket, the official list of documents filed in the case, and scanned images of the documents filed for all cases, unless the case is sealed by Order of Court.

The DCR, Criminal Division is responsible for Criminal Court documents and records. In this Division, motions are filed, dockets are maintained, expungements are processed, summary appeals are filed, bail bonds are

processed, case records are maintained and archived, court-ordered fines and costs are collected and court-ordered restitution is paid to victims. Other services provided by this Division include case intake, constable services, DUI procedures, driver's license reinstatement and responding to prisoners' correspondence. In addition, the DCR, Criminal Division, processes private detective licenses.

The Criminal Division uses a state-mandated computer system, Common Pleas Case Management System (CPCMS) as the official docket and record-keeping system. A list of legal filings in each case are entered into CPCMS this list of the filings constitute the docket. An electronic scanned image of each document is stored and retained in a separate computer data base. DCR has worked with an outside contractor, IMR, to provide a link between the docket list on CPCMS and an electronic image of the document filed. Any person with web access can access a public version of CPCMS which contains the criminal records for all counties in Pennsylvania at http://ujsportal.pacourts.us/docketsheets/cp.aspx.

The DCR, Wills/Orphans' Court Division probates wills and receives and maintains Orphans' Court documents and records. This Division probates wills and grants letters to representatives of estates. In some cases, this Division has a duty to take testimony and enter decrees, or findings, when facts are disputed regarding a will. Those decrees are appealable to the Orphans' Court. The cases that are heard in the Orphans' Court Division of the Court of Common Pleas include all matters involving decedent's estates, trusts, wills, guardians of the persons and estates of minors, guardians of the persons and estates of incapacitated persons, powers of attorney, termination of parental rights and adoptions, civil commitments, marriage licenses, nonprofit associations and corporations, and inheritance and estate tax matters. The Wills/Orphans' Court Division also issues marriage licenses and maintains marriage records as well as certain birth and death records. Additionally, the DCR, Wills/Orphans' Court Division is the agent for collection of Pennsylvania Inheritance Tax and accepts U.S. Passport applications.

The DCR is in the process of implementing electronic filing for the Wills/Orphans' Court Division. Because the computer system used by the Civil/Family Division is so effective and user-friendly, it will be expanded to include filings in the Wills/Orphans' Court Division. The scheduled implementation date is January 2010.

Fees are charged for some court filings. The fees collected by the DCR are set and approved by the President Judge of the Court of Common Pleas of Allegheny County. The fees collected are distributed based on state statutes, rules and orders of court, depending on the filing, to the Commonwealth of Pennsylvania, other government entities and the County's General Fund. Fees that are collected on all filings that cause a new case number to be created are used for computer costs and records storage and management in the DCR.

Additionally these fees finance the childcare facilities operated by the courts, the County law library, and a Court Technology and Education fund.

ADMINISTRATION

The Administrative Division of the DCR was created in 2008 in order to help the Department centralize administrative functions for the Department such as budgeting, purchasing, and records management. There have been substantial cost savings as a result of Department-wide purchasing rather than purchasing by the three (3) individual row offices. The centralization of ordering and storing office supplies has resulted in greater inventory control and lower usage. In addition, there now are Department policies with respect to work hours, dress code, and use of sick and vacation time.

Organizational charts for the DCR are attached.

CHANGES IMPLEMENTED IN 2008

In 2008, the Department worked to consolidate row office functions where possible and to create efficiency, cost savings, and greater public access. Some of the efficiencies achieved are:

- Implemented one combined Information Technology staff.

- Established a hearing room in the Wills/Orphans' Court Division in the City-County Building so that courtrooms do not have to be used for Register's hearings.

- Relocated the Passport Office to the Marriage License Office on the first floor of the City-County Building and extended the hours of both offices to include evening hours every Wednesday.

- Centralized the notary registration process. The notary registration process which required notaries to go to three (3) separate offices in three (3) buildings has been centralized in the Department of Real Estate. Notary certification by the DCR has been centralized in the Marriage License Office which offers evening hours and easy public access.

- Utilization of County resources. The Department is utilizing the County's offsite location and computer systems for computer backup and disaster recovery. Additionally, the DCR uses the County Law Department as legal counsel. This has saved the salaries of three (3) separate solicitors.

- Instituted a single fee bill. The Department submitted a petition for a single fee bill to President Judge James which was approved in December 2008. The DCR hoped to achieve two (2) main objectives: 1) consistency in fees for like services performed in each of the three Divisions of the Department, such as: photocopying, microfilm copying, subpoenas and

certified copies; and 2) the Department sought an increase to help offset the costs of doing business.

The Department will continue its efforts to increase efficiencies and provide quality customer service in 2009.

FACILITIES

The DCR has three (3) offices.

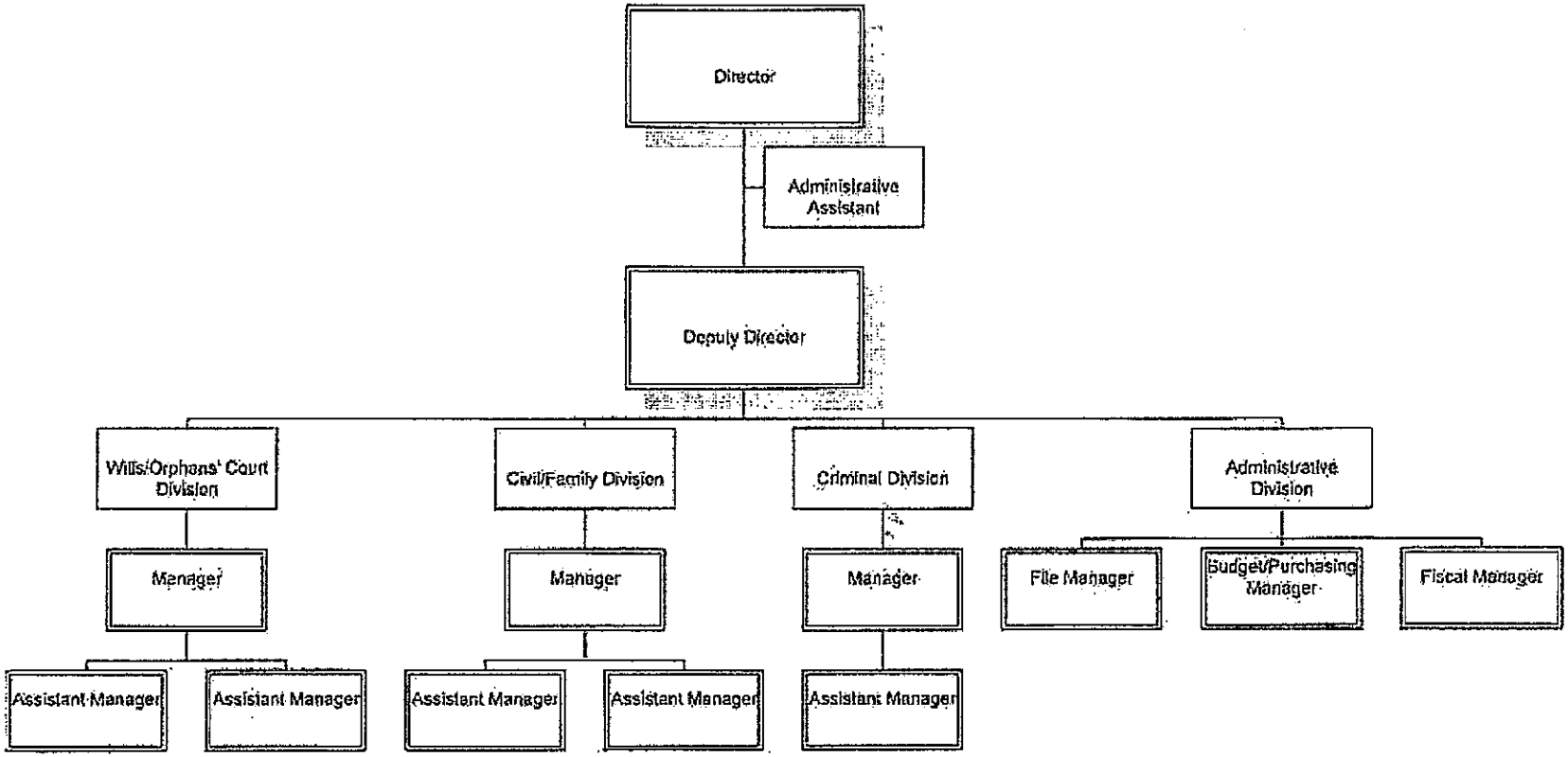
The Criminal Division is located on the first and second floors of the Allegheny County Courthouse.

The Civil/Family Division and Wills/Orphans' Court Division including the Marriage License and Passport Office are in the City-County Building. The Divisions include the basement, first floor, mezzanine and second floor of the City-County Building on the Forbes Avenue side of the building. Court files are stored in the three (3) offices as well as at the County's storage facility on the North Side and off-site in facilities owned by the commercial storage company Iron Mountain.

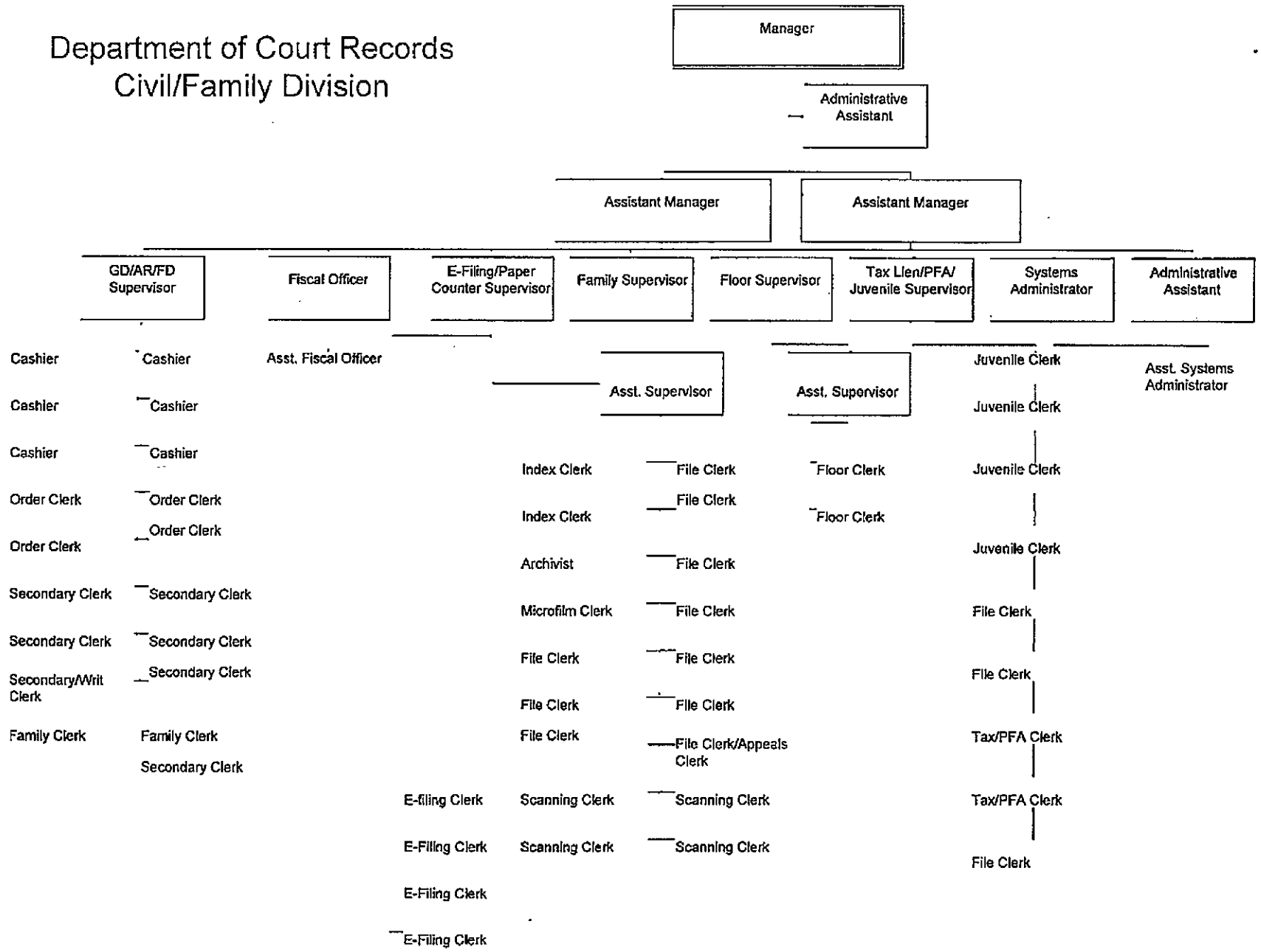
INTERACTION WITH OTHER DEPARTMENTS AND ENTITIES

The DCR, as the official record keeper for the Court of Common Pleas, interacts extensively with the Judges and Court Administration of the Court of Common Pleas of Allegheny County. The DCR also interacts with: the District Attorney's office, the Public Defender's Office, the Probation Department, the Sheriff's Office, the Allegheny County Jail, the Department of Real Estate, State and local police Departments, local governments and school districts, Magisterial District Judges, the Internal Revenue Service, and the Federal Office of Personnel Management.

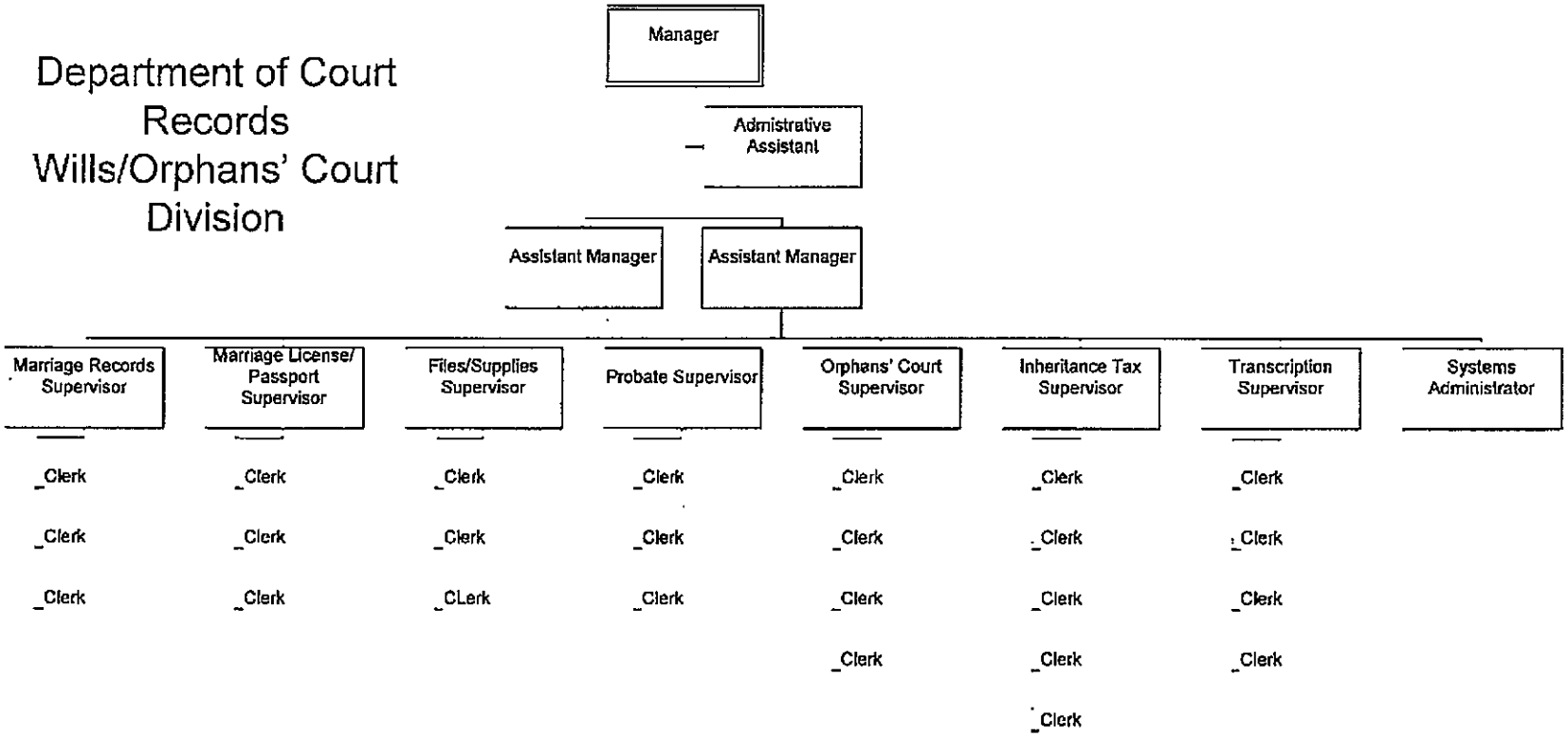
Department of Court Records



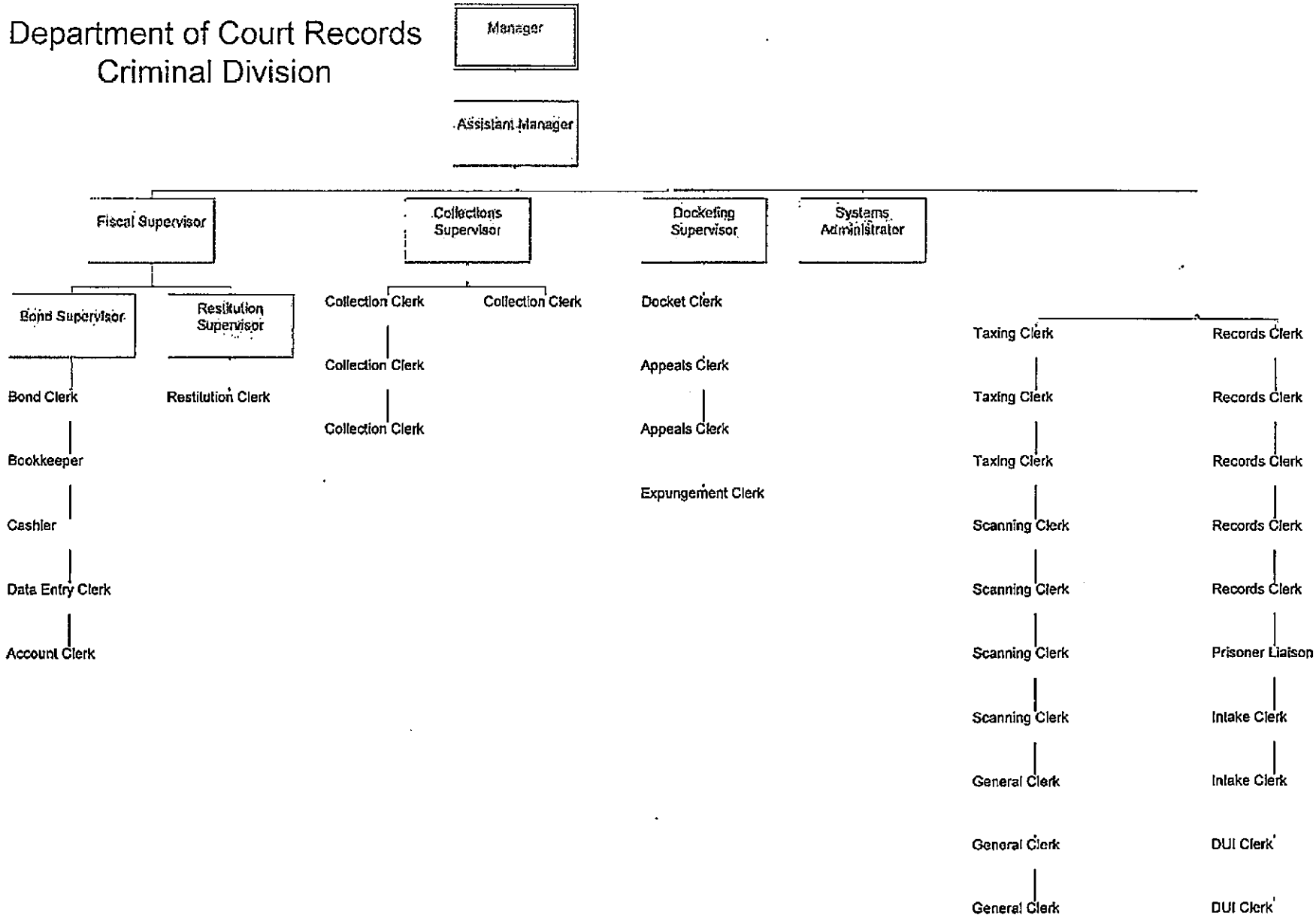
Department of Court Records
Civil/Family Division



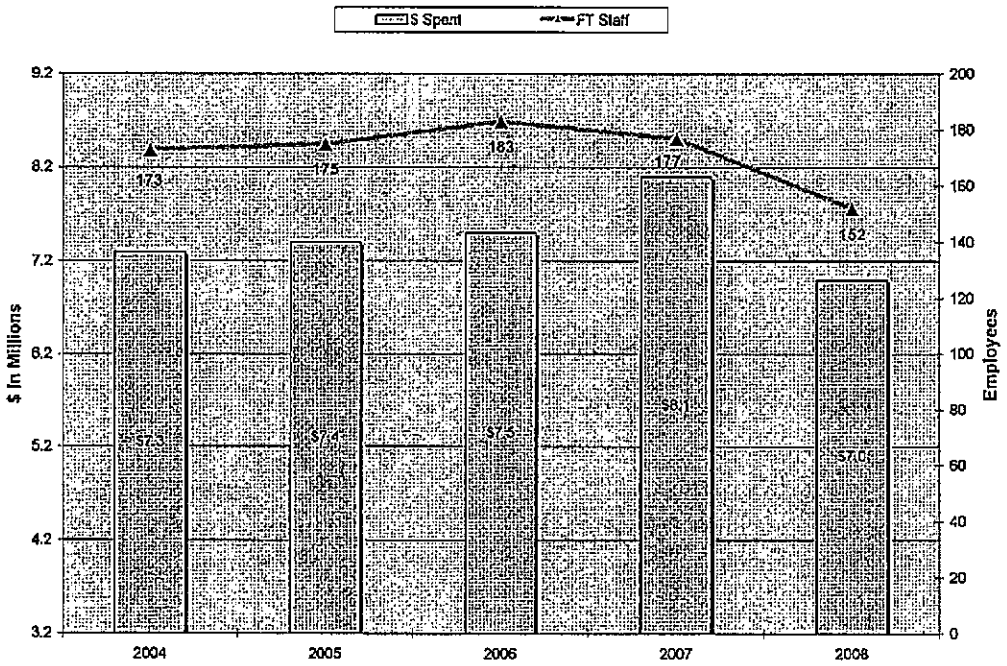
Department of Court Records Wills/Orphans' Court Division



Department of Court Records
Criminal Division



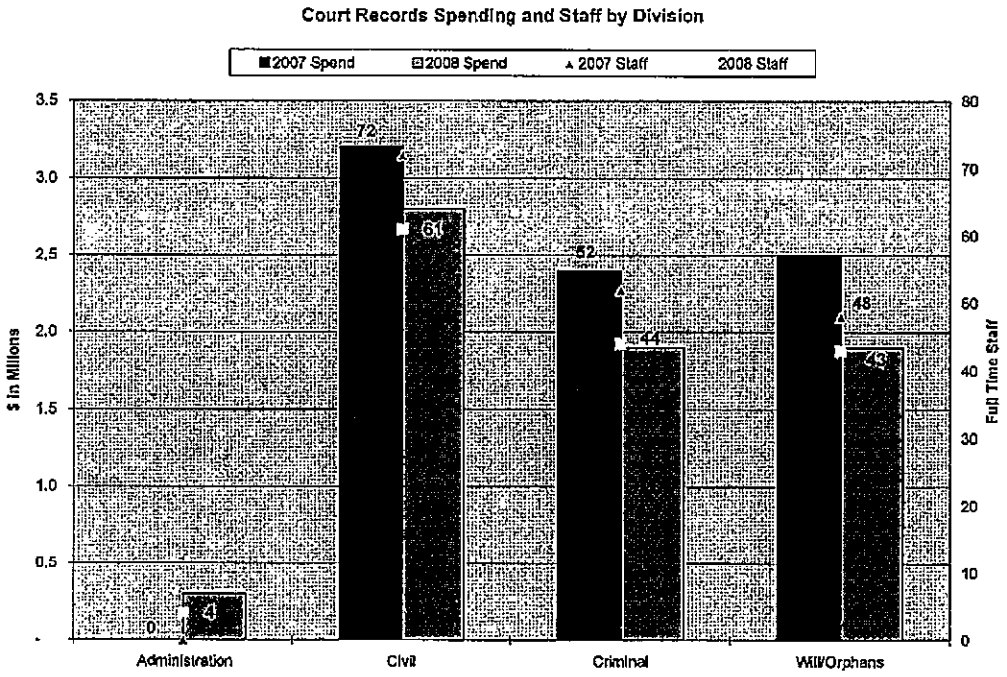
FISCAL INFORMATION



Year	Revenue	Expenditure	FT Staffing
2007	$ 9,680,785	$ 8,122,293	177
2008	$ 10,675,646	$ 6,950,298	152
▲ 2007 vs 2008	9%	-17%	-16%

From 2007 to 2008 Revenues increased by 9%, Spending decreased by 17% and staffing levels are down 16%

The following chart shows a comparison of 2007 to 2008 spending and staffing by divisions in the Court Records Office.



Division	2007 Expenditures	2008 Expenditures	▲	2007 FT Staff	2008 FT Staff	▲
Administration	0	301,787	100%	0	4	100%
Civil	3,198,649	2,783,627	-15%	72	61	-18%
Criminal	2,381,547	1,898,029	-25%	57	44	-30%
Will/Orphans	2,542,097	1,966,785	-29%	48	43	-12%
	8,122,293	6,950,228	-17%	177	152	-16%

WORKFORCE AND CONTRACT DIVERSITY

No full time personnel have been hired since the creation of the Department in January 2008. When hiring union personnel, the DCR will follow the terms of the applicable collective bargaining agreement regarding seniority and bidding. When hiring non-union personnel, the DCR will use the merit-based hiring system that is in place for Allegheny County and that is managed by the County's Department of Human Resources.

Allegheny County is an equal opportunity employer and does not discriminate because of age, race, color, religion, gender, national origin, or disability.

Department of Court Records Employees: 155

Active employees: 152

	Administrative Division	Criminal	Civil/Family	Wills/Orphans' Court
	4	46 (1)*	65 (1)	40 (1)
Male	2	23	36	20
Female	2	23	29	20

* indicates number of employees on military leave or workers compensation

DCR personnel who self identify as race other than white: 16 (10%)

Male	0	3	2	1
Female	0	4	3	3

CONTRACT DIVERSITY

The DCR has not entered into any new contracts since January 2008. The former Row Offices had contracts for technology services, scanning and imaging documents, records storage, and equipment which remain in place. Those contractors include: CGI Federal, IMR, UBICS, Iron Mountain, Dolphin Capital, Ford Business Systems, and Schneider Downs. In addition, the Criminal Division uses three (3) outside collections companies to collect delinquent payments for costs, fees and restitution on criminal cases: Penn Credit, Credit Management and Keystone Collections. This structure was implemented by the last Clerk of Courts. The DCR is in the process of reviewing the collections process and hopes to issue a Request for Proposals for a single outside

collection company. CPCMS is limited to tracking collections cases sent to one outside company so the use of a single outside collection company will allow for greater use of CPCMS for tracking collections.

The DCR uses the County's Purchasing Department for all other contracts including but not limited to: legal advertising, drinking water, printing, supplies, and photocopy and phone equipment and maintenance.

Allegheny County expects all firms to demonstrate a good faith effort to include Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) when bidding on County contracts. Allegheny County has established specific goals for the utilization of MBEs and WBEs, which are 13% and 2% respectively.

2012 Budget Preparation Questions Report: Allegheny County Department of Court Records

2012 Budget Preparation Questions

Excerpts

What processes and/or policies are in place to create diversity in the workforce and the processes and/or policies in place to create opportunities for diversity when soliciting and selecting entities for contracts (including professional services) pursuant to the Allegheny County Administrative Code and the Allegheny County Code of Ordinances? Please include gender and race statistics of your staff as of August 30, 2011.

When hiring non-union and union personnel, the DCR has used the merit-based hiring system that is in place for Allegheny County and that is managed by the County's Department of Human Resources. One full time position not in a union collective bargaining unit has been filled since the creation of the Department in January 2008. When hiring union personnel, the DCR has also used merit hiring. When filing union positions that become vacant, the DCR has followed the terms of the applicable collective bargaining agreement regarding seniority and bidding. All bidding on union jobs is handled through the County Human Resources Department.

The DCR uses the County's Purchasing Department for all contracts including but not limited to: legal advertising, drinking water, printing, supplies, and photocopy and phone equipment and maintenance.

The DCR has not entered into any new contracts since January 2008. The former Row Offices had contracts for technology services, scanning and imaging documents, records storage, and equipment which remain in place. Those contractors include: CGI Federal, IMR, UBICS, Iron Mountain, Dolphin Capital, Ford Business Systems, and Schneider Downs. In addition, the Criminal Division uses three (3) outside collections companies to collect delinquent payments for costs, fees and restitution on criminal cases: Penn Credit, Credit Management and Keystone Collections. This structure was implemented by the last Clerk of Courts. The DCR is in the process of reviewing the collections process and plans to contract with a single collection company in Fall, 2011.

Department of Court Records Employees: 151

Active employees: 143

Inactive employees: 3

Seasonal employees: 5 (not included in statistics below)

	Administrative Division	Criminal	Civil/Family	Wills/Orphans' Court
	4	44 (1)*	65	30(2)
M	2	20(1)	34	16(1)
F	2	24	31	14(1)

* indicates number of employees on military leave or workers compensation

DCR active personnel who self identify as race other than white: 17 (12%)

M	0	3	3	1
F	0	3	3	4

What efficiency measures did you initiate in 2011? If possible, estimate cost savings or cost avoidance resulting from these measures.

Initiated e-filing and online docket access in DCR, Wills/Orphans' Court Division including marriage license applications.

What efficiency measures do you plan to initiate in 2012? If possible, estimate cost savings or cost avoidance you feel could result from implementation of these measures.

Initiate project to create automated system for filing civil commitment cases.

Obtain and implement software to redact Social Security numbers from scanned images of filed documents available online.

Initiate project with Family Court for design and implementation of e-filing for Adult Family Court.

The Spangenberg Report: A Review of the Allegheny County Public Defender's Office

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A Review of the Allegheny County (Pennsylvania) Public Defender Office

November 1995

Prepared on behalf of:

American Bar Association
Bar Information Program

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This publication has been prepared by the Spangenberg Group on behalf of the Bar Information Program of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. The views expressed herein, unless otherwise noted, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

INTRODUCTION

In February 1995, Ira C. Houck, Jr., then the newly appointed Director of the Office of the Public Defender of Allegheny County, Pennsylvania, contacted The Spangenberg Group of West Newton, Massachusetts with a request for "an evaluation establishing a vision" for the Allegheny Public Defender's office. The Spangenberg Group in turn forwarded this request for technical assistance to the American Bar Association Bar Information Program (BIP).

The Bar Information Program was created by the ABA twelve years ago in part to provide expert technical assistance to state and local jurisdictions concerned about improving their indigent defense system. Over the past ten years, BIP has responded to over 150 requests nationwide in nearly all 50 states. On-site technical assistance has been provided to over 35 states.

Following receipt of the request from the Allegheny Public Defender's Office, the Bar Information Program approved the assignment and requested that on-site technical assistance be provided by The Spangenberg Group. The Spangenberg Group is the primary provider of technical assistance to BIP. The Group is a private consulting organization and its members have devoted much of their professional time over the past ten years to improved delivery of indigent defense services nationwide.

The specific request from the Director of the Office of the Public Defender of Allegheny County stated in part:

> The occasion for this letter is my conviction that although the office functions well, there has never been a vision beyond that of just meeting the essential requirements. A recent article in our local

> paper...has outlined some of the major deficiencies. It is my proposal that not only these be addressed but that a vision that trans[c]ends these issues is attainable.

THE SITE VISIT

The site visit, which took place on August 10-11, 1995, was conducted by Robert Spangenberg and Catherine Schaefer. During the course of the site visit, we conducted interviews with the County Criminal Court Administrative judge, a Superior Court judge, the Allegheny County budget director, the Executive Director of the Allegheny County Bar Association, a local law school professor, the Director of the Allegheny Public Defender office and many staff members.

We also spent time observing the operation of the criminal court system in several courts.

Finally, we obtained available caseload, budget and other written data and documents pertaining to the operation of the system.

Throughout our visit, we were treated in a cooperative manner by everyone we met with; without this our task would have been much more difficult to achieve.

BACKGROUND

Allegheny County, Pennsylvania, is the twentieth largest county in the nation. In 1990, the year of the most recent U.S. census, Allegheny County's population was 1,336,449. Pittsburgh,

the county's largest city and fortieth largest city in the country, had a 1990 population of 369,879.

Allegheny County, which is 727 square miles in size, has 55 district justice courts, which have jurisdiction over limited felony cases, misdemeanors, DWI/DUI cases and other traffic violations. There are no jury trials in district justice court cases. While most public defenders' work is conducted in Pittsburgh, none of the 55 district justice courts is located in the city of Pittsburgh (which has 6 magistrates who handle all cases within the district justice courts' jurisdiction). As a result, some public defenders must spend considerable time travelling from court to court. Allegheny County also houses 41 Courts of Common Pleas; these courts permit jury trials in most cases and have exclusive jurisdiction in juvenile cases, triable felony cases and criminal appeals. Court of Common Pleas' jurisdiction also includes misdemeanors, DWI/DUI and miscellaneous criminal cases.

Pennsylvania has two intermediate courts of appeals: the Superior Court, which employs 15 judges who are authorized to sit in panels and en banc and the Commonwealth Court, which has 9 judges who are authorized to sit in panels and en banc and has exclusive jurisdiction over cases involving the Commonwealth of Pennsylvania. Finally, Pennsylvania's court of last resort is the Supreme Court on which seven justices sit en banc.

THE ALLEGHENY COUNTY INDIGENT DEFENSE SYSTEM

The state of Pennsylvania is one of only six states which provides no funding for indigent defense. The other five states which provide no state funds for indigent defense services are Idaho, Mississippi, South Dakota, Texas and Utah. Thus, the duty of funding indigent defense programs is left to Pennsylvania's 67 counties.

In Allegheny County, the primary indigent defense system is a part-time public defender system. The enabling legislation provides:

> In each county except the County of Philadelphia, there shall be a public defender, appointed as herein provided. (16P.S.§9960.3)
>
> The public defender, with the approval of the appointive body, may provide for as many full or part-time assistant public defenders, clerks, investigators, stenographers and other employees as he may deem necessary to enable him to carry out the duties of his office. (16P.S.§9960.5(a))

In fiscal year 1995, the public defender budget was $3,949,925. The three-member Board of County Commissioners appoints the Director of the program. As with the other attorneys who work for the Public Defender office, the Director position is part-time. There is no Deputy Director position. The Board of County Commissioners must approve any hiring, firing or promotion decision made by the Director.

The Allegheny Public Defender employs approximately 55 part-time attorneys. Including supervisors, many of whom handle a full caseload, there are 23 attorneys in the trial division,

which handles felony and misdemeanor cases; there are eight appellate attorneys, two of whom handle post-conviction review cases and appeals. The preliminary hearings division has six attorneys; there are five juvenile attorneys; four homicide attorneys; six mental health attorneys; and six probation attorneys. Detailed information regarding support staff was not provided, but budget information indicates that the office has 35 full-time support staff positions, including twelve investigator positions. From our site visit, however, it appears that just nine investigators were employed in August 1995. Further, budget information also reflects funding for two part-time law clerk positions. Again, we learned during our site visits that these positions were vacant.

With the exception of the trial division, which has totally inadequate offices in the County Courthouse building, and the juvenile division, which has similarly insufficient office space in the juvenile court facility, most of the other attorneys, support and administrative staff work in an office that is over a mile from the Common Pleas Courthouse.

For conflicts in state court, the county maintains lists of private appointed counsel. There are no written standards regarding qualifications, performance standards or removal.

Unfortunately, the Public Defender's caseload statistics are not maintained in a manner which can best illustrate the excessive caseloads of which all attorneys, particularly appellate and juvenile attorneys, complained. For example, they

do not indicate the number of new cases assigned to a unit or the number of cases disposed of. Some attorneys questioned the accuracy of the statistics that do exist.

With this caveat in mind, statistics for the first six months of 1995 indicate a total of 6,319 preliminary hearings were conducted (an annualized rate of 2,106 per attorney); 26 homicide trials were conducted (an annualized rate of 13 per attorney); 2,964 juvenile hearings were conducted (an annualized rate of 1,186 hearings per attorney); 3,498 felony or misdemeanor hearings were conducted; and 192 appellate briefs, petitions and other documents were filed (an annualized rate of 64 per attorney). These caseload figures do not accurately define the work because they do not track all cases processed by the Allegheny County Public Defender Office. Rather, they track only significant events. By this method, it is possible that some, if not many, cases are not accounted for. Despite this problem, the numbers would be extremely high for a full-time office, but they are overwhelming for a part-time office.

FINDINGS AND RECOMMENDATIONS

It is our judgment, based upon this visit and two prior visits to the Allegheny County Public Defender's Office dating back to the mid-80's that the overall conditions of the office create a major impediment to providing quality representation to indigent defendants. In a word, the office has suffered from years of neglect. In terms of necessary resources, it ranks at

or near the bottom of comparable public defender offices in other states.

The principle that having part-time experienced criminal practitioners available to represent indigent defendants in a large metropolitan area is a relic of the 50's and 60's. The size and complexity of the caseload overwhelms even the most dedicated and experienced part-time attorney. A conflict or potential conflict of interest is created between public defender clients and private clients because neither time nor personal income permit a part-time public defender to handle both types of clients' cases competently.

This leaves public defender attorney only two options: to favor one set of clients over the other or to work full-time on public defender cases for part-time pay. We met with several public defenders who opt the latter approach and are therefore grossly under paid after being in the office for several years.

In fact, the office has a number of dedicated public defenders who are working against serious odds of full-time prosecutors, low pay and overwhelming caseloads.

It would serve no purpose for us to begin to assess the blame for years of neglect because the responsibility must be shared by the county, the criminal justice system, the bar and the Allegheny Public Defender Program itself.

The issue then is not to assess blame, but rather to begin to address and solve the problems with Allegheny County's indigent defense system. This will take substantial energy from

each of the institutions responsible for its present condition. A blueprint for overall change can be found in the American Bar Association's Criminal Justice Standards, Chapter 5, Provision of Defense Services (August 1990). The Allegheny County Public Defender's Office currently meets very few of these standards and we think that working to comply with all or most of the ABA Criminal Justice Standards would be a good starting point.

In reviewing the present situation in Allegheny County in light of the ABA Criminal Justice Standards, one of the most difficulty questions to answer is where to start. We believe that the Public Defender must utilize a respected member of the Allegheny County legal community who is both dedicated to the Sixth Amendment's guarantee of effective assistance of counsel and willing to act as spokesperson for the public defender office. This spokesperson should spearhead the effort to gain the attention and support of the judges, the bar, the county, the prosecutor's office and others concerned about the Sixth Amendment. After gaining this support, the next step is to develop both a short-term and a long-term plan. We are willing to help with these crucial steps if asked.

We have highlighted below some of our major concerns and a few recommendations. Without question, the conditions of the office must be stated honestly and openly. The office can no longer take a defensive position when issues are raised. The statement "We are doing the best we can with existing resources" can no longer suffice; instead, the Office of the Public

Defender, its Director, attorneys and staff must address the problems the office faces and work together to improve the delivery of legal services in Allegheny County. With hard work and dedication, we believe this goal is attainable.

Below are our major findings and recommendations.

1. The Allegheny County Public Defender program is suffering seriously from years of neglect. This manifests itself in the following ways:

a) Attorney salaries, which range from $24,888 to $32,243 per year, are miserably low and, in many cases, do not reflect what is truly a full-time job, despite the misnomer of "part-time";

b) Office space is inadequate. The main office, which houses administrative, appellate, preliminary hearing, investigator and division head offices, is one mile from the courthouse. The suite of two offices in the courthouse, for 24 felony attorneys, is so small that it would be impossible for all 24 felony attorneys to meet in the office, let alone work in the office. Further, the courthouse offices offer no privacy.

c) The budget of the Allegheny County Public Defender program is significantly less than that of other counties of comparable size. Philadelphia County, which had a 1990 population of 1,585,577, had a budget of $19.6 million for its public defender program in fiscal year 1994; Middlesex County Massachusetts, with a 1990 population of 1,398,468, budgeted $14,152,496 for its indigent defense budget in FY 1994. In both of these comparably-sized jurisdictions, the county's indigent defense budget was approximately four times that of Allegheny County. Allegheny County's public defender program is further disadvantaged as Pennsylvania is one of only six states which receives no state funds for its indigent defense program.

2. The Allegheny County Public Defender program has no leading spokesperson, either inside or outside of county government or the county criminal justice system, to act as advocate for the program.

3. The County Commissioners' appointment of the director of the Public Defender's office, for at-will employment, creates a clear conflict of interest for the Director and seriously undermines the Director's ability to make important budget, operation and personnel decisions. The Director is placed in a position of making decisions based in part upon how county government will react to those decisions. Even if the Director is able to rise above this pressure to appease the County Council, the appearance of conflict remains.

4. Staffing decisions must be made with the approval of the County Commissioners, and, in many cases, these decisions are tainted by patronage concerns. In other cases, the Director has difficulty obtaining permission from the County Commissioners to fill vacancies. The Director does not have the ability to independently make personnel decisions based on merit.

5. In our judgment, neither the County Council, the county criminal judges nor the Allegheny County Bar Association has any real understanding of the crisis that exists in the Public Defender's office. There has been little effort to educate any

of these important players in the Allegheny County criminal justice system.

6. The Allegheny County Public Defender program must begin immediately to build a coalition of support among the bar, judiciary and criminal justice community.

7. Given the magnitude of the caseloads and types of cases Allegheny County's public defenders handle, the system must become full-time as soon as possible. Pittsburgh is the only large metropolitan area in the country to have part-time public defender attorneys. The present arrangement means that attorneys' private cases and business conflict with their obligations to their indigent clients. The large percentage of attorney positions must be full-time, with realistic full-time salaries.

8. Because of the part-time nature of their jobs, supervisors and attorneys come and go with no fixed schedule for work hours.

9. Similarly, the Director's part-time status creates scheduling and continuity problems within the Allegheny County Public Defender Office. We strongly recommend that this position be made full-time.

10. Either the investigative unit must be renamed to accurately reflect the investigators' job as interviewers (not investigators) or the current investigators' jobs must be changed drastically. The program cannot afford to have 8 or 9 of the investigator positions filled by interviewers, but no criminal investigators.

11. The expert budget of $20,000 does not permit adequate representation of clients and violates ABA standards regarding use of expert witnesses.

12. The July 1995 departure of the former head of the Appellate Division leaves a significant gap in the appellate unit's ability to handle death penalty appeals. During her tenure in the appeals division, she was the only attorney who worked on death penalty appeals. The Public Defender must prepare the appellate unit to handle these complicated cases by assuring that appellate attorneys attend appropriate training seminars and work on briefs of death penalty cases in teams.

12. The Allegheny County Public Defender office should computerize; this will make the office more efficient and productive. Each attorney should have her own PC. Discovery should be accessible on-line from the DA's office. This will greatly improve operations.

13. The Allegheny County Public Defender office should host a continuing legal education seminar, with the support and approval of the county bar association, to address topics of particular concern to public defenders, appointed counsel and other criminal attorneys.

14. The entire Allegheny County Public Defender office should be housed in one office. Having offices peppered throughout the county only exacerbates the problems caused by part-time attorneys' lack of a set schedule. The new office should be accessible to the courts.

15. The Allegheny County Public Defender office must address rather than ignore interpersonal conflicts that exist among certain staff members. Improved communication between administration, legal staff and support staff will be crucial to improving the office's operation. The tension that exists between the trial and appellate attorneys must also be addressed.

16. Policies and procedures must be put in writing, as there exists substantial confusion among the staff about scheduling and other matters. We believe that the office must have three sets of written standards: performance standards, personnel policy and procedure, and a trial/appeal manual.

17. The problems regarding access to the jail and lack of

privacy for meeting with clients at the jail must be addressed.

18. The District Attorney's staffing, salaries and resources far outweigh those of the Public Defender. Our understanding is that part of the reason for the District Attorney's comparative good fortune is that they are a politically better organized and supported organization. Only with balanced and adequate funding can the Allegheny County criminal justice system operate properly.

19. The attitude that permeates the Allegheny County Public Defender office must be overcome. It is only through the enthusiastic efforts of those within the office that champions from outside the office can be found.

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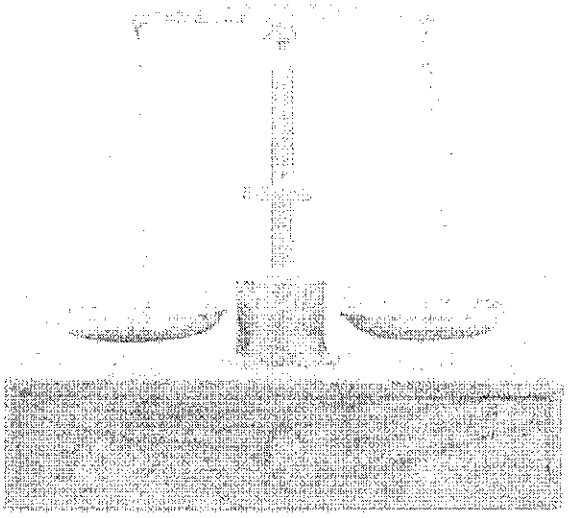

TEN PRINCIPLES

OF A PUBLIC DEFENSE DELIVERY SYSTEM

February 2002

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Kalmanoff Report

ALLEGHENY COUNTY

Office of the Public Defender Assessment

FINAL REPORT

Presented to
Michael Wojcik
Allegheny County Solicitor

OCTOBER 20, 2008

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October 20, 2008

Michael Wojcik, County Solicitor
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300 Fort Pitt Commons
Pittsburgh, PA 15219

Dear Mr. Wojcik:

The attached report is ILPP's assessment of the Allegheny County Office of the Public Defender (OPD). It is addressed to you at your request as a means of ensuring that the important defense function is properly accomplished, and to provide suggestions for improvements in both service and cost-effectiveness.

It is a privileged and confidential study, but of course it belongs to your office and you are free to release it in parts or as a whole. It is preliminary inasmuch as there is very little good data with which to make certain findings and there are many related agencies that are instrumental, but that were not studied.

Although the study provides warnings and makes findings and recommendations which can be put into effect immediately, it must be stressed that the defense function is also impacted heavily by other agencies, including the courts, prosecution, and related offices that serve subpoenas, provide lab results, handle conflicts, and participate in the broader arena of the administration of justice.

In particular, the courts are extraordinarily important to the public defender function. For example, complaints of delays aimed at the defense may well be influenced as well by other agencies, but could not occur without the involvement and allowance of the courts.

In many ways, beyond the findings and recommendations of this study which focus on the defense of indigents, there is an underlying finding that the court system (which includes prosecution and all the related offices noted above) seems in need of a strengthened court case

management system and calendaring mechanism. Also, the magistrate element, which is far flung and in many ways not efficient in moving cases, may need re-engineering and case management. These twin areas of court administration bear heavily on the defense function.

Lastly, although there is a diverse mix of individuals with varying career histories, the defense function in the county is basically conducted by lawyers who are committed to assisting their indigent clients and in many ways feel unappreciated by the larger county government community. Their sentiments should be seen in light of the larger system issues, which, in some ways, make the defense function the system's stepchild, and in other ways, provide a handy catchall for the faults of the other agencies.

System reform requires a holistic perspective. And, there is much work to be done now.

Sincerely,

Alan Kalmanoff
Executive Director

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Executive Summary

This assessment of the Allegheny Office of the Public Defender demonstrates that the agency's current program is dysfunctional.

The OPD lacks administrative direction and especially lacks efficiency. This inefficiency is partially caused by delay and to the OPD's role in system-wide court case management problems. Poor administration furthers the problems caused by shortfalls in space, equipment and technology, a long-standing culture of private practice and lawyer autonomy, inadequate management supervision and incentives, and an absence of adequate policies and procedures.

This assessment shows that conditions within the OPD hamper its ability to provide client representation. A lack of leadership and efficiency also drives excessive client jail time, costing millions, and wastes staffing resources. Immediate actions must be taken to break the cycle of delay, end gaps in coverage, reduce inefficiency, lower jail crowding, and avoid liability.

Introduction

In late 2007, the Institute for Law and Policy Planning (ILPP) was asked to review the operations the Allegheny County Office of the Public Defender (OPD) in response to concerns expressed by judges and others about high rates of continuances and operational inefficiencies in the County's criminal defense function. The County's defense system was itself in litigation until the end of 2004, concerning the adequacy of constitutionally required representation of indigent defendants in the county's criminal courts, including claims of lax administration, gaps in representation, inadequate staffing, hours and attendance of attorneys, coordination with other agencies, and some claims of high caseloads and/or inadequate staffing reflected in surges in the use of conflict counsel.

The work plan for the assessment involved a series of interviews during April 2008 with key members of the OPD, collection of available data (rather than development of new data), and interviews with the County Bench and other officials. These efforts were followed by a day-long workshop including the OPD's management team and representatives of various staffing levels, which was aimed at "organizational diagnosis". This was to be accomplished by the agency's own leadership, followed by a brief report to the Chief Public Defender, who serves as Director of the OPD.

Because the chief concern expressed by the judges has been the very high rate of continuances in criminal cases, some data from various and generally inconsistent sources were gathered on the number, rate, and causes of continuances, as well as attorney assignment and workload (in addition to caseload and number of appearances, all of which are inconsistent measures). Other concerns included the lack of management and supervisor accountability, a backlog of cases, and a lack of meaningful performance objectives for assistant public defenders, coupled with little or no real use of existing practice and performance standards. Additionally, there is a long list of less important but noted office management issues including the unavailability of complete files, problematic scheduling of lawyers, phone system accountability issues, etc.

After the April interviews and a day-long workshop, the follow-up interviews were conducted over the next six weeks with additional attorneys, judges, court officials, etc., paralleling the collection of additional readily accessible data on staffing, caseloads and assignments, delays, staff turnover, budget, etc.

This review looks briefly at the evolution of the OPD and current operations, and examines some of the criticism, focusing in part on the incidence, causes, and consequences of case delay.

Background

In an earlier phase of the County's history, the representation of accused indigents in Allegheny County was provided by private attorneys who individually contracted with the County while maintaining their private practices. This arrangement influenced the OPD's development, as evidenced by part time deputy public defender attorneys who still maintain a private practice. Even after attorneys began working out of a common facility for their public defense work, they continued to maintain private practices.

Once the OPD was established more formally, full time attorneys were hired to supplement the contract attorneys who had declined to convert to full-time employment. Along the way, the attorneys were unionized and the agency was sued and then administered under a consent decree for some years. As a backdrop to the most recent history, a criminal justice policy group of all agencies, including the OPD director, began meeting in 2002 to consider system-wide concerns.

In 1996, the ACLU's suit against Allegheny County in the U.S. District Court alleged severe understaffing, excessive caseloads, faulty processes, incomplete records, ineffective procedures, and inferior physical facilities. It was claimed that all these factors contributed to systemic violations of the Sixth Amendment Constitutional right to counsel and principles of indigent defense by competent representation.

The case was eventually mediated and resulted in a 1998 settlement and consent decree. The resolution established a minimum ratio of two public defenders to every prosecutor and included other procedural stipulations that significantly increased the size of the agency's staff and improved the sophistication of its operations. (See Appendix D for a history and summary of this litigation.)

Monitoring for compliance continued until the end of 2004, when challenges to the OPD's handling of capital cases, staffing, and consistency, as well as preparedness, were heard again by the court in a motion for contempt. While staffing levels and capital case representation were deemed acceptable on review, various problems with inadequate client communication were highlighted and procedures were recommended to address these chronic problems. Revised procedures addressing these issues were adopted by the OPD.

Current Issues

Concerns have been raised about the OPD by judges, outsiders, and those within the court system, in complaints that usually seem anecdotal but which have recently raised the interest of the County Solicitor. These concerns target the following general areas:

- the significant number of cases which have been transferred to outside counsel (often cases involving conflicting co-defendants) because of either alleged excessive caseloads or administrative problems in managing the workload and personnel within OPD;
- the apparently excessive number of continuances or postponements granted by the Judges of the Court of Common Pleas, leading to a "culture of delay" and a virtual co-dependency throughout the court house culture on this seemingly normative delay pattern, which is often blamed on the OPD;
- the alleged absence of accountability in the management structure and supervision of the OPD office; and
- a lack of procedures and policies within the OPD to assure adequate case preparation, complete and available files, timely performance and sufficient and timely consultation with clients.

Because all of these concerns have arisen within the historical context of a major lawsuit against the OPD and Allegheny County, and because the overall justice system has been making good progress at re-engineering, and mostly because of a concern about possible efforts to re-litigate some of the same issues that were raised in earlier lawsuits, the County Solicitor engaged ILPP to conduct this privileged and confidential review and to provide legal advice to the County.

Findings

a. Organizational Diagnosis

The "Seven-Box Model", originally developed by Dr. Melvin Weisbord of the Wharton School and expanded upon by Joan Liberman of the National Academy of Corrections, is an effective method of understanding the organizational health of an agency such as the OPD (see Appendix A).

This method involves seven steps that analyze organizational processes and help spot problematic areas in an organization, test the strengths of the organization, and prepare for change within the organization. Once an organizational diagnosis is developed, an assessment can provide the opportunity for an organization to be more proactive rather than reactive to key issues.

The seven interrelated processes that this model covers include an analysis of the organization's purpose, strategies, structure, rewards, helpful mechanisms, relationships, and leadership. The outline below summarizes the input of the OPD management team and representative staff from the organizational diagnosis workshop held as part of this study.

1. Purpose
    a. The purpose of the OPD is to effectively represent indigent defendants, but there is no clear indoctrination of attorneys or staff in the Office's objectives and mission statement.
    b. The Office's rules of professional ethics and documents that elaborate on the mission statement are not used or applied regularly.
    c. The practice standards that were put in place after the ACLU lawsuit are not regularly used in OPD Practice.
    d. The efficiency of employees' training in the OPD's work standards is questionable.
    e. Other than the two full time lawyers who do the training, the OPD has no official training coordinator.

Based on the workshop and further study, ILPP finds no clear outline of the OPD's purpose, nor any real leadership or direction with regard to defining that purpose.

2. Strategies
    a. Defenders do not meet their clients after they are booked into the jail.
    b. The OPD has not established a plan for managing or transferring caseloads when case numbers increase and exhaust the allocated funding.

c. Crucial mechanisms for identifying conflicts and scheduling issues are lacking.
d. There are no procedures for maximizing the usefulness of expensive attorney staffing.

Based on the workshop and further study, ILPP finds that the strategies of the OPD are flawed by unsystematic assignments of attorneys to courts and by the lack of norms concerning baseline practice management or expectations.

3. Structure
   a. Inefficient communication leads to obtaining varying directions from different agency sources rather than from a single source.
   b. There is no supervision for the support staff as a whole, and each group is treated differently, which limits efficiency and teamwork.
   c. There is no current and recognized OPD organizational chart.
   d. Though there is an attorney who manages the Juvenile division, this role is missing from the Adult flow of cases. There is no one officially managing and coordinating the Adult caseload.
   e. The rotating "pod lawyers" who work in the jail do not have meetings among themselves to coordinate the work and manage case or client flow.
   f. There are no organized public relations or communication strategies for the OPD, other than law school visits and publications.
   g. In regards to the process of client representation, from the initial interview with the attorney through trial and disposition, there is an unacceptable period of approximately four months, between the pretrial conference and the preliminary hearing of a case, when jailed offenders do not see their lawyer.
      i. During this dead time, there is no proactive problem solving in the OPD.
      ii. During this dead time, there is no attorney assigned. Jail mail is a problem that results from this gap in representation. Complaints to the disciplinary board and the client's long wait without an attorney are major problems labeled by some deputy public defenders as the "OPD's hidden shame".
   h. There is no audit or inspection of the OPD.
   i. There is no one responsible for managing OPD cases and files.
   j. Monitoring attorney hours is a problem because each division has different sources of delays, lunch hours, norms for accounting, and even work hours.

From the workshop and further study, ILPP concludes that the structure of the OPD is not well adapted to efficiency because it is not maximizing or even managing the use of scarce personnel resources. The lack of hierarchy, meetings,

team building, and managed and supervised teams further weakens the structure of the OPD.

4. Rewards
    a. There is no legitimate free time and there are no granted days off for attorneys in the various divisions, particularly in the Juvenile and Pretrial units.
    b. There is no rewards system for the work that the defenders do.
    c. Feedback and evaluations do not lead to any effective change in the OPD operation.

From the workshop and further study, ILPP finds that the OPD is missing a rewards system in terms of salary, grades, and support systems. Furthermore, the lack of management and supervision might actually provide disincentives to timely completion of required work.

5. Helpful mechanisms and technologies
    a. In general, information files in the OPD are not easily located and thus difficult to obtain. Furthermore, while there is verbal interaction between the attorneys and inmates in a jail pod, there is no paperwork from Intake about an offer to a client or an opportunity to see a lawyer. This information is consequently "lost to the file" and does not reach the attorney in a timely manner. Slippage in cases is also caused when questions relative to a case fail to come through, and even if they do, the required information is not on file.
    b. At one point, as a result of the ACLU lawsuit, attorneys handed brochures and forms to their clients, which facilitated some attorney-client interaction. These items are currently absent.
    c. The lack of file management procedures, adequate mechanized file cabinets, and other similar organizational technologies make it difficult to locate information and consequently easy for mistakes to be made and left unnoticed on Intake documentation.
    d. Jail mail from inmates is not connected to their files.
    e. There is no database that alerts anyone to problems that arise in coordinating and assigning cases to lawyers.
    f. There is inadequate or no space available for attorneys, records, witnesses, meetings, etc.
    g. No accounts manager or records person exists to deal with the problems of files, space, and related caseload management problems.
    h. Some but not all Defenders have been given cell phones, which affects morale and scheduling.

i. The office has no laptops and no wireless ability to build a file from any location, which contributes to the lost files problem and greatly limits efficiency.

From the workshop and further study, ILPP finds that the resources available for OPD's functions are highly limited. The problems range from inadequate space to deficient technologies and filing systems.

6. Relationships
   a. There is a lack of bilateral communication between supervisors, staff members, and lawyers, particularly around working out problem areas or addressing complaints.
   b. Evaluation techniques are ineffective in improving OPD morale.
   c. There is no team-building in the OPD.

From the workshop and further study, ILPP finds that relationships are cordial and supportive in the OPD Office, but the director and managers undermine discipline and productivity through conflict avoidance and a lack of training.

7. Leadership
   a. Although OPD has a Director, there is no person who attends to or keeps the various noted organizational functions running or in balance. Additionally, there is no Deputy Director.
   b. Leadership does not directly deal with conflicts, and there are no mechanisms other than the County's Human Resources department and the Employee Assistance Program to help facilitate resolution of staff/relationship problems.

From the workshop and further study, ILPP finds that there is no one in the OPD who provides the type of leadership needed to maintain the vigor and balance of the organization's mission, strategies, structure, incentives, helpful mechanisms, and relationships.

b. Overall Agency Issues

The Office of Public Defender lacks mechanisms to ensure accountability. The culture of independent contractors that originated in the formation of the OPD over twenty years ago continues to be a dominant theme in the office's culture, staffing patterns, procedures, and in its current problems.

It is common for OPD attorneys to "pick up their files" once a week and manage their own calendars with hardly any interaction with their colleagues or offers of real administration to support their accountability to an organizational structure for their

time or management of their cases. In short, many of the deputy public defenders tend to act as independent contractors, and their actions are not truly governed by management or supervision. (It is also alleged but unproven that many of these attorneys do not in fact keep regular hours, do not work as long as their conditions of employment require, and are often home, away, or working in their private practice.)

Some of the problems addressed in the ACLU lawsuit included an underfunded and understaffed office, antiquated policies and procedures, alleged overwhelming caseloads, and a consensus that physical facilities are inadequate. Many of these problems persist today, contributing to a dysfunctional office culture where normative or even minimal performance expectations do not exist.

The physical facilities were and still are undersized and overcrowded. The norm is two attorneys to a small room, which is certainly not suitable for client conferences or genuinely intense advocacy work. The space is old, poorly maintained, and too small for client or witness interviews, staff meetings, etc. Such quarters reinforce the tendency of the attorneys to spend work time away from the courts and OPD offices, or in the courtroom. The lack of space may, and most believe does, additionally reduce interaction with clients and witnesses.

Although the size of the staff has almost doubled since the inception of the ACLU lawsuit and criminal case filings have remained fairly constant over the last decade, caseloads are once again perceived as "excessive" by the OPD and some commentators within the larger system. This perception is chiefly results from the sheer number of appearances for each case. Attorneys can reasonably claim that there are larger and perhaps increasing calendar (and by some definitions, workload) demands on their time.

However, it may be that the actual work required by the caseload is not greater than it was in the past. ILPP believes that this is in fact the case. The problem is within the system, the participants' work and practice habits, and the dysfunctional management of the overall court system (which is improving) and OPD (which is getting worse).

When five assistants left the office last winter in fairly quick succession, the OPD responded by sending over 100 cases to "conflict counsel," where they were in turn sent on to outside contract counsel. The large numbers and high costs involved served to increase the negative perceptions and criticisms of the agency's work. It also raised questions that indirectly led to this study, and rightly so, as the objective basis for an overload requiring such extreme action has not yet been identified.

Good caseload data was not readily available, but as will be discussed later, workloads may in fact be high (and perhaps higher) because of the increased time necessary to process each case. This is due to multiple continuances for each case and terribly

inefficient case scheduling, case management, and case processing by a court system that remains static compared to national best practice in court case management.

OPD administration, policies and procedures, and supporting systems remain inadequate, including those affecting case preparation, continuances, consolidation of cases, salaries, and promotions.

c. Continuances

Although both standards (external and internal) and objective and accurate system data are lacking, there is little doubt that continuances in the Court of Common Pleas are seen by all as excessive. Even a cursory review of the available data on courtroom visits suggests that repeatedly postponed cases are the rule rather than the exception. Quantifying and attributing continuances to the various participants is more difficult. There is no single source of good, well-defined information about continuances.

Judges suggest that it is routine for seven or eight continuances to be sought (and granted by the courts) before a case finally gets resolved. In fact, Rule 300.12-13 of the Allegheny County Criminal Rules of Court, which is more often honored in the breach than followed, requires the assigned judge to allow a change in the trial schedule only upon a showing of "good cause". This problem of constant postponements of cases alone is a major factor in driving up the number of appearances and the perception of higher workloads for prosecutors, judges, and public defenders in the Court of Common Pleas, despite a striking long-term stability in the number of criminal cases filed. It should also be noted that the constant postponements drive up the perceived workload of bailiffs, court reporters, police witnesses, and many, many others at an overall expense beyond the imagination of most observers. While outside this study's scope, it must be observed that this set of problems contains the solution to many of the County's major budget problems.

A high continuance rate greatly debilitates the court and carries enormous hidden costs. Every person connected to the courtroom must expend some increment of time in preparing, handling, or, at the very least, waiting for and "touching" material for a case; this time and some effort is lost when the case is continued. This terrible waste occurs each time there is a delay in a case's movement towards disposition.

What is missing on a system-wide level is the norm that every time a case comes before the bar, something should happen in order to move the case forward toward disposition.

In a large majority of cases, in any system, a disposition can be readily achieved if adequate preparation and case management are in place. After all, more than 95% of all cases achieve disposition through a plea bargain. If the testifying officer is ready, other

witnesses have been subpoenaed, the prosecutor is ready, the defense has talked to the client and has received discovery and appropriate sentencing program options, and all relevant options for case disposition have been explored, then disposition is only a matter of coming before the bar.

There is a widespread perception, not entirely supported by the data and other facts, that the high continuance rate is primarily driven by the defense. Judges interviewed almost uniformly held that public defenders had not interviewed their clients before appearing in court, that continuances were almost never requested via formal legal motions as required by court rules, that unnecessary continuances were sought when routine matters could have been handled by a colleague or by someone regularly assigned to a particular calendar (as all cases are handled vertically), and that it was common for unprepared defense counsel to nevertheless go forward.

However, a review of several months' worth of continuances suggests that the delay is not entirely driven by the defense. Based on OPD's Trial Postponement data for the months spanning March to May 2008 (set out in full in Appendix B of this report), Figure 1(a) shows that:

- About 25% of continuances were sought by the prosecution: a witness was missing, forensic tests had not been completed, or a necessary police officer or victim did not or could not appear. It is unclear from the data whether witnesses were properly subpoenaed and failed to appear, or isubpoenas were not sent at all. Thus these failures to appear may indicate that something could be amiss in the agency issuing subpoenas (which ILPP confirmed is sometimes the case).
- Roughly another 25% were continued for programmatic reasons: the defendant was being considered for drug court or another specialized program. In 16% of the cases, the defense was not prepared: a witness had not been subpoenaed, discovery had just been received, a conflict in representation had been discovered, or the assistant public defender was not available.
- An additional 14% were defendant related: this is usually because the defendant was in some other county's jail facility, was late, or requested a postponement for other reasons.
- An additional 10% were due to the need to consolidate cases or work out a conflict in co-defendant representation, something that normally can be worked out ahead of time by an alertly administered public defender's office. The remaining 10% or so were continued by the judge, usually because the defendant had not been transported to court or due to a judge's schedule or absence from court.

Figure 1(b) shows that the largest single category of continuances is system-related. The defendant was being considered for a treatment program, was in some other facility (jail or court), or had not been transported to the courtroom where the case was due to

be heard. The second largest group, comprising about a third of all continuances, is related to inadequate preparation by the defense: cases had not been consolidated or conflicts had not been resolved, witnesses were not subpoenaed by the subpoena office, or the assigned public defender was not available.

To put this in perspective, this figure is only somewhat higher than that of prosecution-related delays, which represent about a quarter of the total. The difference is that the defense-related delays are primarily related to inadequate processes.

The OPD's Trial Postponement data were corroborated by an unscientific review of one day's continuances of cases before several judges by ILPP, suggesting that the data was reasonably accurate.

Figure 2 shows the reasons for continuances at the trial level in the Criminal Division in 2007 ranked according to frequency. According to the report created from the Common Pleas Case Management System (CPCMS) (also presented in Appendix B of this report), the leading three reasons were that the Defendant (48.22%), Defense Attorney (36.18%), or Prosecution (4.75%) were "not ready".

A continuance report created from CPCMS consistently shows 8-12% prosecution-driven continuances, 10% court-driven continuances, and 35-50% defense-driven continuances. However, these attributions of delay to the defense include cases in which the defendant is not able to proceed through no fault of his own, such as when he is locked up in another facility or when a program has not yet processed him.

Another set of data set out in Appendix B and also created from CPCMS breaks down the continuances in April 2008 for each judge (Figure 3). Out of 1,040 counts of continuances, approximately 50% were granted by judges "0113", "0102", "0103", and "0114." For judge 0113 and judge 0102, the continuances were mostly defense-driven (94.25% and 92.75% respectively); i.e., the defendant needed more time. For judge 0103, 68.60% of the continuances were attributed to the defense counsel not being ready, and 22.31% to the defendant not being ready. For judge 0114, 98.31% of the continuances were driven by the defense counsel not being ready.

These last two sets of data show that 32% of postponements are court-related, 5% attributed to the prosecutor and the remainder to defense. They also indicate inconsistencies among judges, which argue strongly for an improved court case management system, best implemented after some sort of overall system assessment.

In short, after looking at all the available data, it can be concluded that the quality of the data is not good, definitions are inconsistent, and use of the CPCMS data in particular is weighted against the defendant by including system delays in the defendant's column. We believe that a careful attribution of the data would demonstrate that delays are

endemic and approximately spread equally among court, system delays, the prosecution and the defense. The important point is that the *number* of delays is excessive, regardless of the reason.

While a better system to provide more comprehensive and consistent data is necessary to consistently and objectively demonstrate the primary reasons for continuances, these various sets of data all point to a conclusion that the Court of Common Pleas is heavily burdened by excessive grants of continuances, and that the defense is perceived to be, and may well be, the major generator of that delay.

The present system has inadequate procedures for early identification of cases for consolidation or conflict resolution, for handling routine matters on a calendar basis by a single assistant, for providing coverage of cases when an Assistant Public Defender is not available or could not be available, and for assuring that discovery and witness subpoenas are complete.

In assessing this problem, it is important to note two important dynamics:

1) only a judge can grant a continuance, and
2) defense attorneys sometimes come to believe that all continuances work to the advantage of their clients because the witnesses may not show up, memories may fade, and the prosecution or court may, over time, make an error.

A large number of defendants *appear* to be receiving sentences for "credit for time served," which suggests that they have served more time than they would have served had they simply been sentenced at an earlier point in time.

Delay does not serve the interest of a defendant who is in custody and simply needs to get sentenced. This situation applies to the overwhelming number of defendants, 98% of whom plead guilty.

Excessive delay means that the defendants end up serving more time, court calendars are clogged, public defender and prosecutor workloads are higher than necessary and/or become inflated, and the system overall lacks accountability in terms of the relationship between resources and workload.

A culture of co-dependency has evolved between the courts and OPD in which rules requiring good cause for continuances are not enforced, and judicial apprehension of appeals leads to disingenuous laxity in granting continuances.

Public defenders put off and do not examine the causes for continuance while courts feel compelled to grant continuances to "make the system work" (although homicide and sexual assault cases appear to be the exceptions.)

Courts make only individual and sporadic efforts to manage their calendars. As a consequence, in spite of much lip service given to the belief that individual judges must and do control their case calendars, most judges have in fact given up functional authority over continuances sought by the defense. With that, the judges have no control over their docket, despite the long-standing myth to the contrary, namely that they control the docket.

What is worse is that the defense tends to focus primarily on the priorities of the defense attorneys to the point where they have become more concerned in a great many instances with their own personal calendars than with the best interests of the defendant.

Allegheny County has, by tradition, no real court case management system (CMS) in place, whether manual or automated. This lack in the system overshadows all other problems of delay and feeds various dysfunctional patterns of case flow. The obsolete court docket system currently in place, along with the lack of rules and norms to move cases, creates congestion and delay, costing many millions in lost chances throughout the flow of most cases.

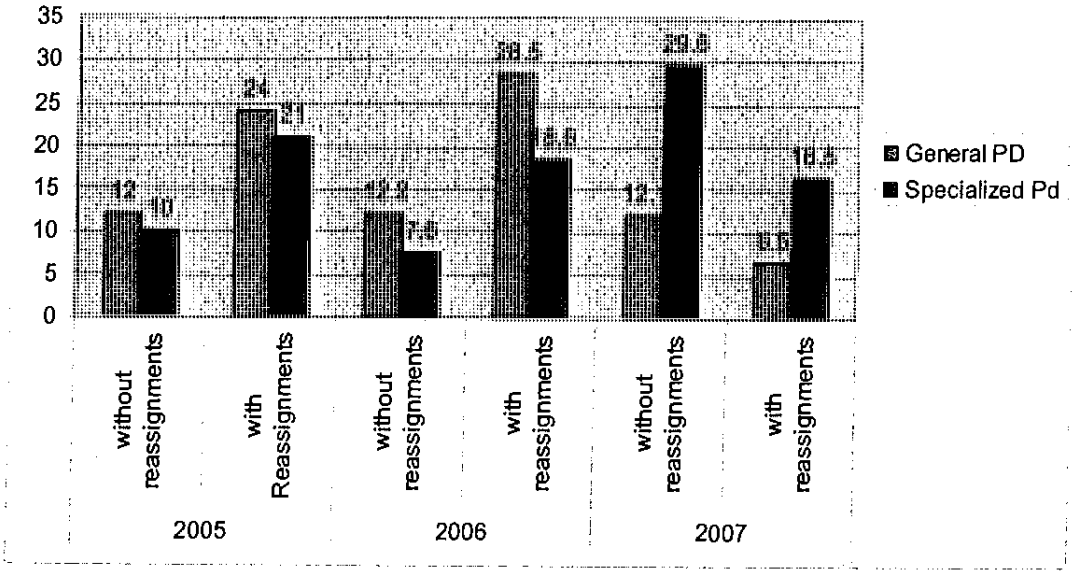
The lack of a court case management system means that courts have no standards, no goals for managing cases, no performance benchmarks, and only minimal information or feedback to individual judges about their performance in comparison with other judges handling similar cases.

The result is a system imbued with a culture of delay and lack of accountability that goes far beyond the problems of the OPD.

d. Reassignments

The following comparison chart was constructed from data supplied by the OPD, which shows the number of assignments and reassignments for all Public Defenders employed by the Office. Reassignments are cases that are added into a PD's docket of cases later than usual, typically after the pre-arraignment stage. There can be a variety of reasons, from the resignation of the PD to the transfer of a defendant from private to PD representation.

Comparison Chart: Active PD per Month



There are, however, some gaps in the data. Some specialized assignments, such as the drug, Act 33, and DUI cases, are not included in the numbers. While these represent a relatively small proportion of all actual cases, the specialized cases are approximately 5% higher than represented by the data.

The numbers of assigned cases are shown in the chart. The numbers of both general and specialized cases have increased from 2005. Also shown is the difference between specialty and general cases assignment numbers. This difference is due to the nature of the cases. The specialty cases are typically more involved, and take considerably more time than general cases. The numbers increase by at least 50% when reassignment cases are added. Moreover, the specialized cases increase by an average of 60% when the reassignments are added.

It is difficult to tell what these increases mean. It is not fair to automatically assume significant inefficiencies. The numbers of reassignments per PD have been relatively static; however, the overall numbers have increased from 464 (2005), to 509 in 2006, to 1325 in 2007. Because there is no reassignment data available yet for 2008, it is difficult to ascertain if the 2007 numbers are telling of a problem or just represent a fluke year with significant turnover in staff and cases.

From 2005 through 2007, the total number of cases handled by the PD office has fluctuated somewhat. In 2005, the PD had 9,103 new cases assigned. That number jumped to 10,050 in 2006. In 2007 the number of cases receded to 9,340. Over that period, however, there has been a consistent increase in the number of cases assigned per month to each public defender. The numbers for non-specialty PDs were 24.9 in 2005, 28.5 in 2006, and 29.6 in 2008.

Basic analysis is limited due to the lack of sufficient data points, and it leaves out the huge impact of postponements and appearances which differ from the traditional kind of workload of trial preparation. The specialized cases emphasized in the analysis are in an area of practice that is not measured, monitored, managed or much understood and requires strong management analysis and real oversight and control. The increases may not represent higher workload. In fact, a lighter workload may be masked by more paper, appearances that are pro forma reviews, check-ins, etc. The data is too rough and limited in scope, without standards or bases for comparison to generate a conclusion. However, it is included herein as a basis for urging further study and management analysis to understand their real workload impact.

e. Client Contact, Case Consolidation, and Conflicts

Judges in Allegheny County, including those interviewed directly and those whose informal opinions were eventually shared indirectly with the study team, have a general "consensus" or shared view that public defenders are not meeting with their clients prior to some key appearances in court. This observation is often based on what clients say in the courtroom (and the very small sample of clients interviewed for this study) as well as the coded reasons for typical requests for a continuance.

This perception is an oversimplification. In fact, the OPD has a system for interviews by paralegals and investigators that happen very soon after arrest. Most files indicate significant work done on the case before a public defender reviews it and appears in court. A small number of random interviews conducted for this study with in-custody defendants suggests that there is not widespread dissatisfaction with public defender representation, beyond what is typically found among most defendants. Most inmate interviews suggested that the public defenders were well-prepared and generally helpful, although one interviewee reported that the public defender did not have paperwork and was unaware of the charges. Some stated that the public defender at the preliminary hearing was different than the individual with whom they had initial contact, but these persons reported no discontent with the change once they found the "new" public defender capable of proceeding.

The system, and particularly the way that indigent persons are provided representation, however, is inadequate and poorly managed. In many routine cases, there is little or no contact with a person the defendant can regard as "my lawyer" until just before or at the first courtroom appearance.

There is nearly a total lack of representation for about four months between the first stages and the trial. During this time inmates are languishing with literally no attorney of record, no one to update their files, and no real advocacy.

This waste of opportunities to move cases and the loss in justice and monies are hard to justify. They are institutionalized and integrated into the courthouse culture, and the cost is enormous. Due to the culture of delay, defense attorneys come to accept that a case will be continued multiple times before "real" decisions are made. Thus the defense attorneys feel, and justify to themselves, that there is no urgent reason to be fully prepared early in a case.

The highly individualistic assignment and handling of cases contributes to OPD's systemic inadequacy at identifying and resolving situations where a defendant has multiple cases pending that should be consolidated for plea and sentencing purposes. In over 10% of the cases, actual courtroom appearances must be made, sometimes multiple times, to identify the various public defenders assigned and to get consolidated representation worked out. This is all work that should be taken care of by the OPD management, in advance, and not at the expense of appearances and court time.

In fairness to the OPD, however, it lacks the kind of manual or automated court case management system (CMS) that most modern jurisdictions now have, which results in greatly accelerated resolution of these issues.

A similar situation exists with regard to conflict of representation between co-defendants with a possible conflict of interest. The OPD lacks adequate policy and training on what constitutes a conflict, as well as an appropriate process for early identification and reassignment to conflict counsel. There is disagreement within the OPD about what constitutes a conflict in a variety of specific situations. Too many cases have to go to court first just to be continued to deal with the conflict issue—something that should be systematically identified much earlier.

Nearly all cases go before the criminal court, including cases that are appropriate for the Magistrate Court level. The Early or Accelerated Disposition court is not yet as effectively situated within the process as it could be, and developing eligibility requirements may be too restrictive. This set of constraints results in an unnecessary number of cases involving lesser offenses being sent to trial.

Establishing a pretrial calendar in a specific court each day, with a judge to oversee the process, would go a long way to easing this problem. Proper judicial oversight will mean that trial dates will not be set until the case is truly ready to go to trial, with all discovery produced, witnesses interviewed, and attorney-client meetings completed.

The OPD and the DA should assign calendar attorneys to manage case flow.

f. Quality of Representation

In light of all these systemic problems, it was expected that most would claim or perceive that there was a significant breakdown in the quality of the representation of individual defendants in the Court of Common Pleas.

Surprisingly, or perhaps because all are involved in the system of co-dependent delay, there was no such basic judgment of a breakdown in representation. The strongest criticisms tend to be that the OPD lawyers do not sufficiently use investigators, do not interview their clients, do not file motions in advance, etc. Nonetheless, the small sample of clients interviewed did not seem to be inordinately displeased with their attorneys and the judges seem generally pleased with the quality of the individual public defenders assigned to their courtrooms. Still, in the opinion of the ILPP Study Team, this sanguine perspective is a result of a lack of information on court performance and the cultural and contextual involvement of the entire "court house gang." In other words, dysfunctional family life is rarely observed by individual family members, who are so entrenched in the process that they cannot really see it for what it is.

While it is difficult to come to objective judgments or conclusions supported by data, probably as a result of the culture of co-dependency described above and the lack of objective consistent data, motion practice has clearly deteriorated to the point where written motions are almost never made in advance for continuances, discovery, or evidentiary issues.

g. Training

There is a widespread perception among judges that there is little or no training of assistant public defenders. Again, this general perception is oversimplified; in fact, a contingent goes to training at the Pennsylvania Association of Public Defenders each year.

Despite this effort, almost all agree that the amount of training is inadequate, and that the lack of training reinforces the extreme individualism practiced in the office. Training is needed in such basics as ethics, conflicts of interest, motion and trial practice, and certainly in performance standards.

A separate issue is training of supervisors and managers. No such training currently exists and observations unambiguously demonstrate that there is a great need. A public defender is appointed from the ranks. He has received no training and confronts the problem faced by all elevated from among peers, namely, establishing himself as the authority among those once his equals. His management skills are clearly lacking, which is evident from almost every aspect of the OPD operation reviewed for this study, including a lack of actual knowledge of what is going on in the office and

courtrooms, and a lack of effort to identify and remedy the most serious and obvious OPD and system problems.

His managers and supervisors likewise seem to have had no specific management or supervisory training. Their work in supervising and managing the office's workload clearly demonstrates their inadequacies as managers and supervisors. These deficiencies further reinforce the individualistic, unaccountable culture of the OPD office.

h. Information Technology

The OPD has received short shrift from the County in the development of information management systems, technologies, and programs. For years after the introduction of computers, the OPD received only leftover desktop computers discarded by other county offices, resulting in a hodgepodge of machines with no common IT architecture. That they have sufficed and lasted as long as they have is a testament to the "shade tree" technical skills of the office's IT support staff. Recently, 25 new desktop machines were delivered, which is an improvement over the prior situation but hardly meaningful in the face of the great need for management data. Additionally, the general availability of good programs and inexpensive hardware is also missing from the OPD budget.

The lack of adequate hardware and software to manage the work is in part a direct result of the fact that there has been no focused effort to identify the appropriate IT structure for the OPD. Accommodations have not been made that address the need for public defenders to work from the courtroom, the jail, the office, witness premises, and their private-practice office and/or home.

In light of this context, an improved IT architecture would involve small laptop computers with wireless connections in most of those locations, backed by data servers in the office and a suitably secure IP tunnel to access them.

Providing all public defenders with cell phones would also greatly help modernize the currently primitive communications process, again at a very favorable cost-benefit ratio compared to adding staff. There is a distinct need to elevate the "stepsister" status of OPD IT functions and to recognize that case management and scheduling data alone can solve many more problems well, and inexpensively compared to simply adding staff and to the cost of talent that is currently wasted by inefficient administration, management, and supervision unsupported by technology.

A good time for this to occur would be in connection with the acquisition of a public defender's case or records management system (CMS/RMS), which is now being effectuated in Allegheny County. A good system would improve the tools available to

finally bring some management to the office, and therefore careful thought and planning should be given to which system is appropriate. The choice needs to be compatible with the vaunted Pennsylvania JNET justice information systems and work with the yet-to-be-adopted court CMS. It should recognize that the needs of Pittsburgh and Philadelphia are qualitatively different from the other Pennsylvania counties with much smaller urban jurisdictions. Pittsburgh and Philadelphia have more in common with large cities in other states than with their more rural Pennsylvania cousins.

One area of improvement has been the delivery of discovery materials from the prosecution on CDs. Because this "innovation" has been recently implemented, there is a sense of relief at its arrival. But the CDs (which are vulnerable to loss, can only be in one place at a time, and still need to be hand carried) should be replaced with electronic transfer of the discovery files via secure FTP or email. Then a system should be developed for integration of discovery documents into an appropriate CMS for the OPD office.

The OPD needs a decent brief bank that would promote collaboration among assistants rather than the individualistic culture that now dominates. This development would greatly help improve the OPD's motion practice.

Finally, the OPD needs to be reconnected to the Allegheny County justice information system. Because of expressed concerns about security and misuse of law enforcement information by part-time attorneys and those who also have private practices, the office has been deprived of non-privileged information readily available to the prosecution and courts. That deprivation should be immediately corrected, as should the perception that system misuse has resulted from external forces. It results from maintaining private practices, which, while complicated and not a major focus of this study, also should end.

i. Office Administration

Office salaries are too low, but given the availability of a steady supply of young attorneys, recruitment has apparently not suffered. However, the OPD personnel structure has insufficient gradation to retain attorneys as they become more senior, leading to a high turnover rate among more experienced attorneys—another truly major but largely hidden expense because these experienced lawyers are replaced by less expensive juniors.

The 2008 Attorney Records (see Appendix B Figure 6) has a Case Assignment Tracking Log for the Trial Unit attorneys in the OPD. Six out of 43 attorneys have already resigned and the data only goes up to May 2008, while four more attorneys have been hired. Based on the 2007 Attorney Records (see Appendix B Figure 7), the six were considered experienced attorneys as they had 2.5% to 3.5% of the 9,411 cases split

amongst all the attorneys. Other attorneys had caseloads ranging from 0.03% to 4.2%, so they were in the upper half of the spectrum.

Attorneys who resigned in 2008	Percent of caseloads in 2007
Public Defender 1	2.66%
Public Defender 2	3.36%
Public Defender 3	2.75%
Public Defender 4	3.52%
Public Defender 5	3.55%
Public Defender 6	2.92%

There will always be the tendency in government offices to have young attorneys come in, get trial experience, and move on to more lucrative private practices. But the OPD needs to have multiple levels of assistant public defenders (Assistant PD levels 1, 2, 3 and 4, for example) with increasing salaries and defined benefits at each level, and a way of examining for promotion from one level to the next. This approach, which is the norm as well as best practice elsewhere, will reduce turnover and improve the value obtained from personnel salaries currently expended.

Some serious thought should be given to how the OPD's physical facilities could be improved or relocated, particularly with regard to offering space for client and witness interviews. The space issue needs a holistic plan for immediate improvement as well as a long-term solution to productive housing for the agency's work. Again, the space solution is inexpensive compared to hiring staff to compensate for the inefficiencies.

Leadership of the office needs to be improved. The OPD Director has not been trained in how to manage a large public defense office, and is not a natural manager. More importantly, he appears virtually disinterested in administration and management, and as a result, holds infrequent meetings, does not assign or oversee supervisors to help manage, and fails almost completely to even try to identify and to address the major system problems that plague his office. These terribly serious problems are in contrast to his very personable ways and his wide range of contacts, which in fact do help the office in many ways.

The First Assistant Public Defender does not have the level of respect needed with the bench and others to take up any of the slack that results from weak leadership at the top. Significantly, this is due to a role that requires producing what judges request, promised to the judges by the OPD Director, but not always possible or available for to produce.

Many of the misperceptions or exaggerated perceptions that the OPD suffers from in the court community are due to a lack of effective communication by the top two managers in the OPD, the Director and the First Assistant.

While communication alone will not solve the incumbents' lack of managerial skill or inability to lead effectively, it would represent a starting point in focusing on the many related problems, and the beginning of solutions. Without aware and committed managers and leaders at the top, the OPD problems are too long-standing and too deeply embedded in the court culture for any infusion of new resources to make a significant difference.

Deficiencies in administration and management are greatly responsible for the lack of attention to the most serious and obvious problems.

j. Budget

OPD budgeting should be focused on resolving the serious system and representation problems identified in this report. Without resolving those problems, no amount of funds for new attorneys will make much difference. These reforms are not necessarily dependent on increased staff, but do require information technology training and greatly enhanced administration and management.

Figure 4 (see Appendix B) shows the OPD's case management and capital budget requests. The top section summarizes the budget request submitted by the OPD office and the budget actually adopted. The difference between salaries requested and salaries adopted was $249,725.

The bottom section provides the detail of the salary line difference of the $249,725 by comparing base salaries, union increases, non-union increases, and new positions requested. The difference in base salaries is roughly due to two individuals on family or military leave. The remaining difference is due to positions requested versus positions approved. There were no requests for new attorney or management positions. Most of the new position requests were clerical in nature, contradicting Figure 5, the budget narrative (see Appendix B) that was prepared by OPD, which includes a proposed increase of 6-8 additional lawyers, and an increase in the number of managers to improve the quality of lawyers and support staff.

The current director of OPD was unable to assemble a budget request or strategy that matched the many system and management problems the organization faced. Figure 5, presented on request to the study team, was vague, unsupported by any data other than a dubious reference to non-existent "hard data," and without any focus on the major well known problems of the OPD's work environment. It also stated that there was no formal process to make budget requests; this statement is wrong. There is in fact a

formal process, as reported by the County Manager and observed by ILPP. (The County Manager detailed the process from the initial submission of departmental requests to the final step of sending it to the County Council for approval.)

For some parties to be able to describe in detail the budget request process and others to be unaware of it shows a lack of communication. Measures should be taken so that all individuals above the line level in the OPD are aware of the budget request process.

k. Practice Standards

The OPD's practice standards provide guidelines to ensure effective legal services. While their concept is ideal, the standards are neither updated nor consulted beyond initial training, which renders them useless since they should be employed by managers and supervisors along with file checks and other means, to ensure that jobs are being done correctly. In normal professional practice, these standards are not to be read once by new attorneys during orientation and then put aside thereafter, as in fact they are in OPD's approach. The OPD Director and other interviews show that the practice standards are not employed beyond initial orientation, nor are they enforced by supervisors and managers over time, thereby demonstrating a lack of the most basic management oversight.

The employment of the practice standards written as part of the ACLU settlement agreement referred to earlier and summarized in Appendix D was a measure taken by the OPD to minimize concerns which would diminish the quality of legal representation received by clients (i.e. lack of communication, preparation, conflict of interest, and case overload per attorney), and would greatly reduce the number of continuances if actually adhered to. The practice standards outline the requirements and responsibilities for criminal defense practice so an OPD attorney can use them as a resource to effectively and appropriately handle each case. They would be greatly beneficial if attorneys were held to use them beyond their initial training.

The practice standards begin with guidelines for general practice. Each of the following chapters outlines the stages of various types of representation: representation of the adult client, adults in death penalty cases, juvenile clients, probation and parole matters, and in civil commitment proceedings. Each type of representation has guidelines that walk the reader through the stages of the process: initial procedures, investigation and discovery, pretrial motions, negotiation and plea agreements, trial, sentencing (or disposition) and post sentence procedures. Before going into pretrial proceedings for representation of adults in death penalty cases, the practice standards take into account the roles of the D.A. in death penalty cases; the number of attorneys per case and their separate duties; the education and experience of the D.A.; and issues in the selection, monitoring and removal of a D.A. from cases. Essentially, more information is given here than in any other type of representation.

These guidelines do not tell the attorneys specifically what to do. They are more of an outline of what they should do—their duties and obligations—such as acting professionally, maintaining good communications, being prepared, and so on. They represent common sense written in legal jargon. They concisely summarize what the attorney should do if such and such event should occur, and briefly review what rules and practices the attorney should be familiar with to be ready to tackle various issues.

There is mention of a trial notebook on the side of the practice standards received. It appears to be a good practice, but it also appears to be the only physical action taken in terms of using the guideline as a primary resource. The OPD practice standards should be updated continually with new information, and there should be a monitor or monitoring procedure in place to make sure attorneys are adhering and referring to these guidelines beyond initial training. In addition to the benefit of complying with the previous lawsuit, these standards should be regarded by attorneys as a usable resource to assure quality and effective legal services.

The Pro Bono Panel appointed to review the OPD's compliance with the previous ACLU lawsuit (see Appendix D) put forth three key recommendations: (1) to create an intake questionnaire, (2) to adopt a letter to clients regarding the purpose of the preliminary hearing, and (3) to have all PDs to sign these documents to ensure accountability. However, according to OPD Director, the use of signed letters and the practice of signing all documents have largely been ignored. As part of the previous lawsuit, the Panel's recommendations should not only be seen as useful, but required.

Necessary recordkeeping designed to track public defender contacts with in-custody clients has also been largely ignored. The jail itself shares some culpability here in the system-wide breakdown, as employees at the County Jail have not required public defenders to adhere to this standard procedure. Interviews with correctional officers, along with further inquiries and observations of attorney visits by ILPP, revealed that the procedure for attorneys visiting clients is for the attorneys to sign in the visiting log book with their name, employer, inmate's name, and the purpose of the visit. The attorney should then give his or her bar card to the correctional officer and state whom they are visiting; in turn, they would receive a pass to go into the jail.

However, in practice, this procedure is loosely followed since the correctional officers do not verify whether the attorney has signed the book located on a counter next to the window. Some attorneys were observed to have signed only their names, while others simply did not sign at all. As long as they had their bar card, they were admitted inside. No differentiation is made in this process, as is required, between public defenders and private attorneys. This makes data on inmate interviews much more difficult to acquire since there is no list indicating which inmates have public defender representation, resulting in very limited and underrepresented sample of clients interviewed for this

study. The County Jail is implementing its visitation module during the fourth quarter of 2008 that will address the issue of tracking visits by the OPD staff.

Strategic Plan: Initial Steps

Any strategic plan for improving the efficiency and effectiveness of the Office of the Public Defender requires changes within the office itself and cooperation with the greater criminal justice system at large. The culture of delay has been identified as the single most curable problem in the criminal justice system as a whole. This culture is system-wide, but there are changes that can be made within the office and in coordination with the courts which can alleviate many of these problems. The following is a summary of recommendations.

a. Strengthen Leadership

Top Management

A leader needs to regularly remind those whom he leads of their ethical standards and role, and to establish a structure that encourages performance in these areas. The Chief Public Defender was appointed four years ago and has not received any management training. Apparently, there was an assumption that since he had been in the office for many years, he would know everything necessary to be the Director. However supervising peers and friends is challenging under the best of circumstances. In the stressful environment of OPD, it is critical that he develop true management skills, including setting standards and goals, being visible among the attorneys, setting high expectations, and demonstrating a leadership state of mind. In interviews and follow-up questions, it became apparent that the Director was not aware of or interested in management or leadership.

In the alternative, other personnel changes should be investigated, including recruitment of a strong manager, perhaps a non-attorney, who preferably would have experience in a large law office or even a public defender's office in another large city.

Personnel Practices

The practice of attorneys working part-time for OPD and maintaining private practices should be discontinued as soon as legally possible. This practice fosters a mentality that is counterproductive to the goals of the OPD. Attorneys who make more money representing private clients will undoubtedly prioritize the needs of those private clients above the needs of OPD clients. The culture that currently exists, wherein attorneys put their own schedules above the needs of OPD clients can only end by eliminating OPD attorneys' private practices.

OPD supervisors also need training in how to supervise their teams and how to respond to the office's serious management needs.

The majority of all employees in the OPD are union employees and are subject to the terms of a collective bargaining agreement. Nonetheless, OPD's personnel structure should be reconfigured to provide for multiple grades of Public Defenders (PD 1-2-3-4) with corresponding step increases based on performance criteriaThe ultimate structure should resemble the District Attorney's Office, which is divided into specialized units that provide attorneys with the opportunity to increase their income, improve their overall legal skills, and receive good supervision (see Appendix E, item 8). To accomplish this goal the County will likely have to renegotiate the collective bargaining agreement.

Turnover is costly to the defendants and the County. The consensus is that junior attorneys are lost because they are unable to provide for themselves (and repay their law school debts) on the current County PD salary, in spite of a 3% increase, annually (also subject to collective bargaining). Low morale and low salaries, reinforced by an external and internal perception of the OPD as a training ground for private practice, encourage turnover in two to three years. Attorneys are not leaving the practice of law, but rather are leaving the OPD. One manager commented, "We expect lawyers to leave in three to four years."

It should also be noted that among the very experienced attorneys, there was definite dissatisfaction with salary both at their end of the scale and at the other end of the spectrum. The problem of paying student loans will likely result in some resignations among younger attorneys. "A $15,000 annual increase would make all the difference in the world," was a typical comment from several of the disheartened veterans.

As part of this restructure, level 4 attorneys should be the most experienced and most highly paid trial attorneys in the office. Part of their duties should be supervisory. Many of the problems of reassignments, consolidation of clients' cases, and late conflict declarations which cause many of the delays in processing cases through the courts could be remedied by having level 4 attorneys who help with these supervisory assignment and case processing duties. Also, the most experienced trial attorneys in the office are also usually the most respected role models for younger inexperienced attorneys. Offering them the highest paid positions and supervisory and mentoring duties is good for morale for both supervisors and young attorneys who can look up to them and go to them for advice when needed. These attorneys will need training in supervision and administrative functions. They will also need to be involved in the culture of change in philosophy from the excessive continuance practices which have existed in the Allegheny County Courts for years. Training these supervising attorneys in the new culture will allow them to lead by example.

Training

Comprehensive training for *all* staff is needed, in addition to attorneys (see Appendix E item 9). One major need for training is in the area of Legal Ethics. The casual practice and the attitude of "going along to get along" result in inattention to ethical rules, specifically in regards to conflicts of interest and violation of ethical canons.

It is unclear whether the OPD has a current written policy defining conflict of interest or a policy on when and how new hires are to be trained. If no such conflict policy exists, an experienced attorney should develop one, in writing, which includes all current legal authority, for distribution to all staff attorneys. It also appears that the Office has no regular refresher classes on ethics. Both are badly needed.

The position of "Training Coordinator" should be created so that one experienced attorney could coordinate and develop on-going training programs for all attorneys.

b. Facilities

Additional office space adjacent to the OPD offices or on other floors in the COB building needs to be occupied, so that the attorneys can have decent offices that allow private interview spaces for client and witness interviews near the main lobby. (See Appendix E item 4.)

The filing system needs to be cleaned up and organized with some new centralizing and indexing equipment, so that it is cohesive and accessible. Planning should begin for the steps needed to move to a digital file system that would only create hardcopies of those files immediately needed by an individual attorney. As stated on page 13, a position for an accounts manager/records person needs to be established for these important functions.

c. Information Technology

Necessary linkages need to be provided in order to use the K drive as a research resource for new cases, opinions, trial strategy analyses, and discussion and sharing of motions. Brief bank software should be purchased to facilitate storage and retrieval of commonly used briefs, and templates should be developed for the most commonly used briefs and motions. The potential use of small laptops versus desktop machines should be evaluated. The electronic delivery of discovery materials, instead of burning them to CDs, must be accelerated. A CMS that will be both compatible with Pennsylvania JNET and Allegheny County requirements, but which will also serve the needs of a large urban public defense office, needs to be evaluated and acquired. Finally, the office should be immediately given appropriate and carefully controlled access to the Allegheny criminal justice information system (CPCMS).

d. Interdisciplinary Model

Adopt an interdisciplinary model of representation including hiring social workers, law clerks, and paraprofessionals to relieve attorneys from the responsibility of working with community programs and service providers to develop alternative sentencing options for their clients.

e. Pretrial

Reinstitute pretrial as *the* meaningful stage at which cases are assessed and settled, if possible. This would also solve the consolidation problem. In the "Action Plan" a detailed proposal for a mandatory settlement conference for all in-custody defendants is included which will require cooperation with the courts and the Office of the District Attorney. Implementing such a program at the earliest possible time would help to alleviate the problem of long delays between the time of pretrial and preliminary hearing described on page 12 of this assessment. It would also serve to reinforce the need for internal improvements in case assignments and initial in-custody attorney/client interviews.

The County needs to make sure there is a sufficiently qualified clerical staff for pretrial events, which are both staff and paperwork intensive.

Conclusion

The above chart summarizes the key findings and recommendations. It is intended to be a summary and reference for implementing critical changes that are expected to have a positive impact on the culture and processes of the OPD. However these issues must also be analyzed in the context of the criminal justice system as a whole. The system, which impacts the work of the OPD, must be carefully reviewed as well to establish root causes and possible solutions to inefficiencies and delays.

ILPP Findings	Recommendations
No clear outline of OPD's purpose exists, nor is any aspect of this key organizational feature imbued with real leadership or direction.	The County should require a reorganization of the OPD, to include a policy and procedure manual, annual performance reviews, regular attorney meetings, and standard-setting for each division.
The strategies of the OPD are flawed by unsystematic assignments of attorneys to courts and by the lack of norms concerning minimal practice management or expectations.	Simple and clearly written policies need to be developed in a form that will be actively used by attorneys in the office to create a culture of accountability.
The structure of the OPD is not well adapted to efficiency because it is not maximizing or even properly managing the use of scarce personnel resources.	The OPD personnel structure should be reconfigured to provide for multiple grades of public defenders with corresponding step increases based on performance criteria.
ILPP finds that the OPD is missing a rewards system in terms of salary, grades, and support systems. Furthermore, the lack of management and supervision may actually provide disincentives to timely completion of required work.	Policies on office coverage and attorney time in the office need to be established, explained, and enforced. Supervisors should be able to trade time at work, where extra hours have been required, for time off.
ILPP finds that the means for doing OPD's work are highly limited. Deficiencies in space, technology, and filing procedures are evident.	Additional office space must be located and the file managing system needs to be cleaned up and organized. The IT architecture of the office must be improved.
ILPP finds that the director and managers, through conflict avoidance and lack of training, undermine discipline and productivity.	OPD supervisors need training in how to supervise their teams and how to respond to the office's serious management needs.
ILPP finds that there is no one in the OPD who is providing leadership for the organization in order to maintain the vigor and balance of its mission, strategies, structure, incentives, helpful mechanisms, and relationships.	Leadership must be strengthened and other personnel changes should be investigated.

The Action Plan

The County is expected to lead the implementation of these recommendations. The vast majority of the recommendations are within the authority of the County and the ethical duties of the Public Defender (OPD) to their clients. Sustainable improvement of the quality of representation afforded indigent defendants in Allegheny County requires complementary changes in the culture of the Criminal Division of the Court of Common Pleas.

If most of the following recommendations are implemented in a rational, careful, and strategic manner, with attention to transparency and the active engagement of the attorneys and staff in the OPD, the County can expect the results which it anticipated from previous investments in the OPD, i.e., a well managed system of indigent representation that meets Constitutional mandates and is cost efficient. Support from the Court of Common Pleas Criminal Division and in some cases the District Attorney will be required to fully implement the recommended changes in policy and procedure. It can reasonably be anticipated that due to the process of reorganizing the OPD, which could take 12-18 months, there may be some reassignment of cases and personnel which may impact the courts.

Report recommendations have been compiled into tables to facilitate systemic planning. The most critical are analyzed for implementation issues.

Generally, the action plan treatment of the most important recommendations below provides all or most of the following information:

Recommendation:	A brief statement of the recommendation.
Objective:	Supporting principle, e.g. improved representation, reduction in delays, cost savings, etc.
Lead Agency:	Agency or agencies with statutory and or administrative/operational responsibility.
Logistics:	Implementation details and issues.
Costs:	Estimated costs and other resource considerations, in general terms.
Pros/Cons:	Policy benefits and disadvantages of the proposal.
Savings:	Estimated savings or approximate impact, formulated conceptually.

Time Frame: Recommended timing (Stage 1, 2, 3, or 4).

- *Stage 1:* Implement immediately. These policy-oriented or fundamental changes are critical and should happen now, or as soon as possible.
- *Stage 2:* Implement shortly, within this next coming fiscal year. These recommendations require planning and/or regular funding.
- *Stage 3:* Implement after review and/or when funding is available. These are mid- to longer-range options.
- *Stage 4:* Implement after further review, over time.

Priority Recommended level of importance:

- *A:* Directly instrumental to achieving overall goals, eliminating acknowledged deficiencies, and achieving measurable efficiencies.
- *B:* Important.
- *C:* Very helpful and needed

Costs and Savings

In the discussion of very rough costs and savings, the following general terms are used:

1. **"Minimal" cost:** No new staff or buildings are needed. The cost might involve some reassignment of staff time to new or alternate duties.
2. **"Indirect" or "Contingent" savings:** These savings result from the actions of the group, coordinator, etc., not from the mere establishment of the position or function. Also, most savings are dependent on the outcome of future findings, so they cannot be quantified more specifically than "major," meaning millions; "substantial," meaning hundreds of thousands, or "moderate," meaning $10K to $100K.

"Minor" costs: **Usually under $25K.**

The Administrative Judge of the Court of Common Pleas Criminal Division should convene a committee to review internal court procedures to insure the timely and orderly management of cases.

RECOMMENDATIONS

Recommendations to be Implemented by the County							
Recommendation	Priority			Implementation Time Frame			
	A	B	C	Stage 1	Stage 2	Stage 3	Stage 4
1. Require the reorganization of the Office of the Public Defender (OPD).	•			•			
2. Authorize and fund a new position of Assistant Public Defender	•			•			
3. Detail an experienced attorney with management and policy experience to assist the Director in the implementation of the Action Plan.	•			•			
4. Ensure that there is adequate access, space, and furnishings for OPD attorneys to conduct client interviews and for trial preparation in ACJ.	•			•			
5. Contract for LEXIS/NEXIS services for use by the OPD.	•				•		
6. Assign a team of qualified space designers in conjunction with OPD to assess the needs for more office space and obtain additional office space, preferably on the same floor as OPD, but at minimum in the same building.	•				•		
7. Conduct a salary study to adjust salaries of attorneys to be in parity with the Allegheny County District Attorney attorneys and comply with the ACLU consent decree.	•				•		
8. Conduct a workload study for all attorneys and support staff to determine equitable caseloads.		•			•		
9. With OPD, the County should review computer and internet access and usage to provide attorney's and support staff access as needed to a computer and internet access.		•			•		
10. With OPD representatives, the County HR should explore revising the personnel structure to create a structure with multiple grades for attorneys, with corresponding step increases and increases for specialized skills, based on performance criteria.	•				•		

Recommendations to be implemented by the OPD							
Recommendation	Priority			Implementation Time Frame			
	A	B	C	Stage 1	Stage 2	Stage 3	Stage 4
11. The OPD "target team" should review the paper flow within OPD from jail lists, to jail interview, to conflict checks; opening new files; and tracking case information into the file including client correspondence, investigation, discovery, checklists on file contents, automatic prompts to complete file, e.g., client reminder letters, witness follow-up, etc.	•				•		
12. Within six months, the OPD should conduct performance reviews for all employees and annually thereafter, or more often as appropriate.		•			•		
13. The OPD should have a comprehensive Office Manual that includes job descriptions and performance standards, organizational structure, internal communication, a trial practice manual, and performance standards for each unit and support staff.	•			•			
14. The OPD director should require that each supervisor/deputy director prepare a written job description that includes job duties and describes at least his/her qualifications to supervise, accomplishments, training needs for the unit and priorities for improving unit management and performance.	•			•			
15. The County should assign IT personnel with the involvement of the OPD to fully install the necessary K drive linkages throughout OPD.	•			•			
16. With the County, personnel from OPD should establish a Q/A protocol consisting of weekly random reviews of case files and conferences with attorneys individually on case preparation	•			•			
17. With the help of Human Resources, OPD should study personnel contracts and union rules. Develop a way to eliminate part-time attorneys who practice law on the side immediately if possible.	•			•			
18. The OPD should establish an internal committee to review conflict policy and implement mandatory training for all attorneys specifically on communication with clients and conflicts of interest.		•			•		
19. The leadership and management of OPD including unit supervisors should be provided with management and supervision training based on best human relations practices,		•			•		

specifically for law offices.							
20. The OPD should create an internal problem solving "target team" with a representative from each unit and support staff that meets at least monthly and is in communication with the Director to solve problems and set priorities.		•			•		
21. Schedule monthly *All OPD Meetings* with agendas distributed in advance and open to all staff. Monthly meetings could give way to quarterly meetings as the reorganization becomes complete.		•			•		
22. For six months, assign one attorney to supervise jail interviews, provide training on interviewing clients, and monitor conflict checks, the opening of files, and checking for multiple cases. Weekly reports should be made to the Director and the target team.		•				•	

Recommendations to be Implemented by the Court of Common Pleas							
Recommendation	**Priority**			**Implementation Time Frame**			
	A	B	C	Stage 1	Stage 2	Stage 3	Stage 4
23. The Administrative Judge of the Court of Common Pleas Criminal Division should convene a committee to review internal court procedures to insure the timely and orderly management of cases.	•			•			
24. The Court of Common Pleas Criminal Division should revise and enforce discovery rules to expedite the timely and continuing production of discovery, hopefully by electronic means.	•			•			
25. Enforce the requirement of written motions for continuances establishing *good cause* by either OPD or ODA and if necessary adopt appropriate rules.	•			•			
Adopt rules requiring meaningful and timely pretrial hearings in all cases.	•			•			
26. The County should work with the Court of Common Pleas to arrange access for the OPD to CPCMS.	•				•		
27. The Court of Common Pleas Criminal Division should adopt Trial Court Performance Measures to guide the assignment and management of the criminal calendar.		•			•		

28. Adopt a calendar management system that emphasizes flexibility, accountability, and timely use of judicial resources.		•			•		
29. The expedited early disposition court should be assessed to determine its effectiveness in comparison to individual calendaring and any necessary modifications to policy or procedure made.		•				•	

Recommendations to be Implemented by the Sherriff's Department							
Recommendation	**Priority**			**Implementation Time Frame**			
	A	B	C	Stage 1	Stage 2	Stage 3	Stage 4
30. The County should require the Sheriff to review ACJ procedures for the production of inmates for court in a timely manner and tracking conflicting court dates/orders.		•			•		

ACTION PLAN FOR SELECTED AND MOST IMPORTANT PRIMARY AND SECONDARY RECOMMENDATIONS

The County

1.

Recommendation: The County should require the comprehensive reorganization of the Office of the Public Defender.

Objective: To establish the organizational structure of the OPD, which will support and sustain the provision of constitutionally competent legal representation to indigent clients with accountability for the public. To facilitate an atmosphere of team-building among management.

Lead Agency: County

Logistics: OPD will have to be involved and take ownership of the process and the process requires facilitation. This process could be accomplished by means of a facilitated retreat involving professional management consultants or volunteer managers from large public defender offices throughout the country. The use of managers from successful public defender offices would be ideal and would provide the kind of leadership and mentoring needed in this office. Public Defender managers are collegial and long-term relationships could be established with successful leaders.

Cost: Minimal if use of local human resources professionals is adequate. If outside professionals are involved, costs may be higher, sometimes as much as $200 per hour plus travel and lodging. If volunteer managers from other public defender offices are utilized, travel and lodging costs would be incurred.

Pros: Reorganization is overdue and offers a structural means of inserting accountability mechanisms into every unit of OPD.

Cons: Requires dedicated time from OPD management, some research, various related work, and facilitation to maintain momentum and monitor the process.

Savings: Actual savings in dollar amounts are difficult to quantify but accountability is essential to ensuring that the public funds appropriated to OPD are well used.

Time Frame: Start immediately, Stage 1

Priority: A

2.

Recommendation: The County should authorize and fund a new position of Assistant to the Director of OPD.

Objective: Respond to an acknowledged core deficiency in management expertise and capability, and compensate for the excessive span of control between the Director and the Deputy Directors. This position should require a JD and management experience, and should be filled as soon as the appropriate person can be hired; an interim or acting capacity should be considered if there are delays in the hiring process.

Lead Agency: County

Cost: Recruitment, screening and hiring a new employee plus the annual cost of the position plus benefits ($75,000- 80,000)

Pros: Much improved communication, strengthened infrastructure, and day-to-day management

Cons: Adds another position to OPD budget

Savings: None in short term, but significant over time through improved accountability for staff and resources.

Time Frame: Stage 1

Priority: A

3.

Recommendation: The County should assign an experienced lawyer with management and policy experience to assist the Director in the implementation of the Action Plan and seek the advice of outside public defender managers willing to assist.

Objective: To accelerate the OPD reorganization through providing immediate support to the Director

Lead Agency: County

Logistics: *While the plan is being implemented, the assistant would give up other duties and work full time with the Director. Outside public defender managers could be utilized when advice and assistance is needed.*

Costs: Transfer of duties to another employee in the interim

Pros:	The Action Plan is multifaceted and requires a clear "hands-on" approach that cannot be accomplished by a single individual.
Cons:	May cause some disruption in originally assigned duties of the staff member detailed to OPD
Savings:	Substantial in terms of saved time and efficiency
Time Frame:	Stage 1
Priority:	A

4.

Recommendation:	The County should provide adequate access, space, and furnishings for OPD attorneys, paralegal and investigators to conduct confidential client interviews and for trial preparation both inside ACJ.
Objective:	Protect Constitutional rights of defendants, improve communication between OPD attorneys and clients, and expedite case preparation
Lead Agency:	County
Logistics:	May require modifications of procedure and space allocation. Coordination with OPD as to needs is critical.
Costs/Savings:	Enhances early case preparation through thorough investigation and improved attorney-client communication.
Pros:	Better use of attorney time and improved communication with clients
Cons:	May require access to telephones, copiers
Time Frame:	Stage 1
Priority:	A

5.

Recommendation: The County should contract for LEXIS/NEXIS services for use by the OPD.

Objective: Essential to competent representation is ready access to legal authority and commentary. LEXIS/NEXIS is the recognized national provider of law office legal research technology. Access to this system would be the minimal standard for any law office.

Lead Agency: County

Logistics: Revise existing contracts to ensure that each attorney and paralegal has an individual password with unlimited usage.

Cost: Minor. Some increase in annual contract cost can be anticipated but may be adjusted for off-site coverage.

Savings: Should result in significant and indirect savings by improving quality of representation by providing attorneys and paralegals with direct access to research capability for trial preparation, pre-trial motions, and argument. This may also reduce demand on secretarial time.

Pros: This would significantly raise the professional quality of the office and improve retention.

Cons: Costs

Time Frame: Stage 2

Priority: A

6.

Recommendation: The County should assign a qualified space planner in conjunction with OPD to assess the need for more office space and obtain additional office space, preferably on the same floor as OPD, but at a minimum in the same building.

Objective: Provide adequate client interview and work space for staff, including private offices for attorneys.

Lead Agency: County

Logistics: Assess space needs, available county space, and relocation

Costs/Savings: Additional office space and costs of relocation of other county functions, if necessary

Pros: Improve morale, ensure confidentiality of client and witness interviews and more efficient use of time, and improve trial preparation and retention of attorneys and staff. Keep attorneys in office to encourage adequate preparation for court.

Cons: None

Time Frame: Stage 2

Priority: A

7.

Recommendation: The County should conduct a salary study to make sure that the salaries offered are in parity with the salaries for attorneys with comparable experience in the Allegheny County District Attorney's Office and comply with the ACLU consent decree.

Objective: Establish an OPD that meets or exceeds Constitutional minimum standards of representation. Maintain a professional office of well-trained and experienced career public defenders, capable of handling the most serious cases and to eliminate the perception that the OPD is a "training ground" for future private attorneys. Improve morale and reduce attrition.

Lead Agency: County

Logistics: May require some outside assistance in working with the County HR; will require the elimination of the practice of attorneys in OPD working part time and maintaining a private practice.

Costs/Savings: This study might produce findings that the salaries are not at parity.

Pros: Better use of resources, quality of representation, and retention

Cons: Will require additional appropriations

Time Frame: Stage 2

Priority: A

8.

Recommendation: The County should conduct a workload study for all attorneys and support staff to determine equitable caseloads.

Objective:	Obtain an objective review of OPD management and internal operations, reduce staff turnover, and improve representation
Lead Agency:	County
Cost:	Minimal, may require contracting with outside professionals who have conducted similar studies in offices providing indigent representation or may utilize the assistance of professional indigent defense groups like NLADA or NCDA, perhaps at a lower cost.
Pros:	Provide objective guidance to the County Council in making budgetary appropriations
Cons:	Time consuming and will require identifying and contracting with an appropriate consultant to conduct the study
Savings:	Contingent
Time Frame:	Stage 2
Priority:	B

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9. Recommendation:	The County with OPD staff should review computer and internet access and usage to provide attorney's and support staff access, when needed, with a computer.
Objective:	Improve the efficiency of the OPD and reduce secretarial costs
Lead Agency:	County
Logistics:	Assessment by staff, review of current budget appropriations, and expedite purchasing, if necessary.
Costs/Savings:	If current appropriation is inadequate, additional funds will be required. Training costs should be included or time off to attend training offered in other county departments. Computers save time and therefore, overall, savings can be expected.
Pros:	Computer and internet access is a minimum requirement of any law office.
Cons:	May require additional funds
Time Frame:	Stage 2
Priority:	B

10.

Recommendation: The County HR with OPD representation should explore revising the OPD personnel structure to create a structure with multiple grades for attorneys, with corresponding step increases, based on performance criteria. The process should include the elimination of part-time OPD attorneys and prohibit staff attorneys from engaging in private practice on the side.

Objective: Create a personnel structure that matches the service being provided, reward good performance with salary increases and advancement opportunities, and create a work environment that will attract and retain the most qualified attorneys. Pay equity with attorneys from the Office of the District Attorney should be a goal.

Lead Agency: County and OPD

Logistics: Review personnel structures within the County, specifically the District Attorney Office and offices in comparable jurisdictions for alternative models

Costs/Savings: This will likely require salary increases, but would limit the cost of constant turnover requiring the replacement of experienced attorneys with inexperienced attorneys and the resultant cost of training.

Pros: Improved accountability, recruitment and retention

Cons: Will have to renegotiate collective bargaining agreement

Time Frame: Stage 2

Priority: A

11.

Recommendation: The OPD "target team" should review the "paper flow" within OPD, including the creation of jail interview lists, jail interviews, conflict checks, requirements for opening a new client case file, the existence of multiple cases for individual clients, client correspondence, investigation, discovery, automatic prompts to complete the file, checklists on file contents, and forms, e.g., client reminder letters, witness follow-up.

Objective: To establish a file system that strongly supports case preparation and disposition

Lead Agency: OPD and County

Logistics: Time consuming process that should involve a trained IT person for data processing efficiency.

Costs/Savings: This will require a diversion of staff time from other duties, which will have to be planned.

Pros: Having case files organized, accessible and complete will make case preparation easier and facilitate the early and accurate assessment/disposition of cases.

Cons: None

Time Frame: Stage 2

Priority: A

12.

Recommendation: Within six months, the OPD should conduct performance reviews for all employees and annually thereafter, or more often as appropriate. (Reviews should begin during the first quarter of 2009.)

Objective: A comprehensive review of personnel strengths and weaknesses subject to collective bargaining agreement, with salary advancements commensurate with performance.

Lead Agency: OPD and County

Logistics: Notice and training of evaluators will be required. This is a supervisory function to be developed with experienced human resources specialists and in accordance with county procedures. Advice from outside public defender agencies should be obtained to adapt performance standards to attorney professional conduct requirements.

Costs/Savings: Staff time, specifically from supervisors

Pros: Better use of resources, identification of training needs. Motivation for a higher level of representation for the offices' clients.

Cons: Good evaluations require training for evaluators, which is time consuming.

Time Frame: Stage 2

Priority: B

The OPD

13.

Recommendation: The OPD should have a comprehensive Office Manual that includes an explicit mission statement, organizational structure, job descriptions and qualifications, internal communication, trial practice standards, and performance standards for each organizational unit, including support staff.

Objective: Establish a reference for staffing patterns, standards of performance, with explicit expectations, definitions of the responsibility of each internal unit, and guidance regarding trial practice, including interviewing, case analysis, research, witness preparation, examination of witnesses, etc.

Lead Agency: OPD

Logistics: Use reference manuals from comparable jurisdictions to expedite the drafting of the Manual. This could be included as part of a management retreat concept or allocated to the responsibilities of an experienced attorney in the office.

Costs: Minimal

Pros: Sets basic organizational standards, rules and methods of communication; reinforces shared expectations and strengthens accountability

Cons: None

Savings: Major over time; substantial immediately

Time Frame: Start immediately, Stage 1

Priority: A, Critical

14.

Recommendation: The OPD director should require that each current supervisor and deputy director, prepare a written job description that includes job duties and describes his/her qualifications to supervise, accomplishments as a supervisor, use of performance measures for personnel supervised, supervisory training needs, and an analysis of OPD with recommendations for improvement.

Objective: Identify attorneys and staff who are willing and able to supervise, identify their training needs, appoint those attorneys as supervisors, and engage supervisors in the reorganization process.

Lead Agency: OPD

Logistics: This review should be completed within a brief (two week) period by the Director in conjunction with a consultant and a representative from County HR.

Cost: Minimal

Pros: This recommendation responds to one of the regularly identified weaknesses in OPD and is essential to a successful reorganization. The active involvement of supervisors is essential to encouraging staff ownership of the process and identifying obstacles to reorganization. Good supervision is an important tool to reduce turnover while improving the quality of representation.

Cons: Takes time away from other duties and reorganization may result in short term disruptions due to replacement of supervisors. This probably requires notice to the bargaining unit.

Savings: Supervisors are the key to case management within the OPD, making the best use of attorney and staff time, and reducing turnover.

Time Frame: Stage 1

Priority: A, Critical

15.

Recommendation: The County should assign IT personnel to fully install the necessary K drive linkages throughout OPD.

Objective: To set up a reliable mechanism for intra-Department communication and coordination and sharing information.

Lead Agency: Executive, OPD

Cost: Minor

Pros: Improves sharing of information, including pleadings, research and information on witnesses/jurors, and makes valuable resources universally available, e.g., a brief bank.

Cons: May require some training

Savings: Major, over time

Time Frame: Stage 1

Priority: A

16.

Recommendation: OPD should establish a Quality Assistance Protocol (Q/A) that includes weekly random review of case files by a Supervisor and conferences as needed by the office's second in command, with attorneys individually on case preparation.

Objective: Insure that case files are complete and updated; improve trial preparation and communication with clients.

Lead Agency: OPD

Cost: None

Pros: Q/A protocol will provide an *on the spot* remedy for potential problems as well as prompt feedback to management regarding needs for changes in procedure, resources, and training.

Cons: Takes time away from other duties

Savings: Significant in short and long term

Time Frame: Stage 1

Priority: A

17.

Recommendation: With the help of Human Resources, study personnel contracts and union rules, Develop a way to eliminate part-time attorneys who practice law on the side immediately if possible. If contracts are already in place, either buy them out or let them expire.

Objective: To end a practice that is antithetical to the mission of any public defender's office. The competent representation of public defender clients requires loyal and zealous representation of each individual client. To establish a team of attorneys who put the interests of public defender clients before any other.

Lead Agency: OPD and Human Resources

Logistics: Identifying union issues, contract issues or county charter issues that may make eliminating this practice difficult.

Costs: If part-time attorneys are under contract or have union affiliation with collective bargaining rights, there may be costs associated with eliminating their private practices. One solution may be to full-time employment or offer buy-outs.

Savings: The savings of running smooth calendars, early disposition of cases, early sentencing and release of in-custody clients is immeasurable.

Pros: Ending the culture of delay which is so costly to the county.

Cons: Resistance from attorneys who capitalize on the practice.

Time Frame: Stage 1

Priority: A

18.

Recommendation: The OPD should establish an internal committee to review the conflict policy and to implement mandatory ethics training for all attorneys, specifically on communication with clients and conflicts of interest.

Objective: Improve case disposition and insure that the OPD provides representation in full compliance with Canons of Ethics at all times.

Lead Agency: OPD

Logistics: This can be accomplished with assistance from other public defender groups. Legal ethics are largely national and organizations such as The National Legal Aid and Defender Association and the National Criminal Defense Association can be of invaluable assistance.

Cost: None

Pros: Ethical law practice

Cons: None

Savings: Significant savings in terms of litigation costs for challenges to representation and the considerable cost of unnecessary conflict defense representation.

Time Frame: Stage 2

Priority: A

19.

Recommendation: The leadership of OPD, including unit supervisors, should be provided with management and supervision training based on best human resources practices and specifically for law offices.

Objective: Improve overall management, accountability and retention

Lead Agency: OPD

Logistics: Identify appropriate local trainers or training programs.

Costs/Savings: Cost of attending programs, ranging from $500-1,000 each. Or cost of bringing outside experts and managers from other public defender offices to provide training programs (which may be most cost efficient).

Pros: Better use of resources; will produce more skilled supervisors who can solve personnel problems as they arise, make recommendations to improve management, and strengthen lines of communication within the department.

Cons: To be meaningful the training must be repeated and ongoing.

Time Frame: Stage 2

Priority: A

20.

Recommendation: The OPD should create an internal "target team" with a representative from each unit and support staff that meets at least monthly and is in regular communication with the Director to solve problems and set priorities.

Objective: Improve lines of communication within the Department and solve problems quickly when possible

Lead Agency: OPD

Logistics: Assign appropriate people from each unit

Costs/Savings: Time away from other duties but invaluable savings in identifying duplicate efforts at problem solving.

Pros: Improved response time to concerns and sharing of information at all levels

Cons: Time away from other duties

Time Frame: Stage 2

Priority: B

21.

Recommendation: The OPD should schedule monthly *All OPD Meetings* with agendas distributed in advance and open to all staff. Monthly meetings could give way to quarterly meetings as the reorganization becomes complete.

Objective: Encourage ownership in OPD reorganization and improve communication within the Department. Also, identify training needs and assess problem areas.

Lead Agency: OPD

Logistics: Backup and/or alternative scheduling needs to be arranged for participants to guarantee full court and office coverage.

Costs/Savings: Improved sharing of information

Pros: Improved morale and transparency of decision making

Cons: Time consuming; arranging coverage may be difficult for all staff who might want to participate.

Time Frame: Stage 2

Priority: B

22.

Recommendation: For the next six months, the OPD should assign one **senior** attorney to supervise jail interviews, provide individual training on interviewing clients, supervise conflict checks, and monitor the opening of case files. Weekly reports should be made to the OPD Director and the target team.

Objective: Determine where there are deficiencies in the early stages of representation and provide on the spot training, recommendations or information, as well as keep the Director and target team informed

Lead Agency: OPD

Logistics: Identifying the appropriate attorney and arranging coverage for his/her cases

Costs/Savings:	No additional costs; significant savings in time, reduced continuances, and better use of resources
Pros:	Better use of resources
Cons:	None
Time Frame:	Stage 2
Priority:	B

The Courts

23.

Recommendation:	The Administrative Judge of the Court of Common Pleas Criminal Division should convene a committee to review internal court procedures to insure the timely and orderly management of cases.
Objective:	Objective examination of how the court culture, formal and informal, impacts case management
Lead Agency:	Administrative Judge of the Court of Common Pleas Criminal Division
Logistics:	Such a committee should include experienced attorneys who regularly handle cases from the OPD and ODA.
Cost:	None
Pros:	Offers an opportunity for the Court to identify issues that negatively impact case processing and obtain input about solutions from those affected on and off the bench. Also offers the opportunity for communication and discussion of problem areas for the OPD, ODA, and the courts.
Cons:	Although committees and procedural change are time consuming and often encounter resistance, improved case management will later result in strong support.
Savings:	Significant
Time Frame:	Stage 1
Priority:	A

24.

Recommendation: The Court of Common Pleas Criminal Division should revise and enforce discovery rules to expedite the timely and continuing production of discovery, hopefully by electronic means.

Objective: To ensure that Constitutional standards are met and reduce the number of continuances based on incomplete or untimely discovery

Lead Agency: Administrative Judge of the Court of Common Pleas Criminal Division

Cost: None

Pros: Improves case management by supporting early disposition of cases, meaningful pretrial hearings, and relieves pressure on trial calendars

Cons: None

Savings: Significant immediately and over time for the courts, court staff, law enforcement by reducing continuances and in improved relations with the general public who can be assured that cases will proceed in a timely fashion to a determination of guilt or innocence.

Time Frame: Stage 1

Priority: A

25.

Recommendation: The Court of Common Pleas Criminal Division should enforce the requirement of written motions for continuances establishing *good cause* by either OPD or ODA and if necessary adopt appropriate rules.

Objective: End the culture of automatic continuances and restore calendar control to the judges.

Lead Agency: Administrative Judge of the Court of Common Pleas Criminal Division

Cost: None

Pros: Restore control of court calendars to judges. Encourage better preparation and organization on the part of the District Attorneys and defense counsel.

Cons: Some resistance to change and could possibly lead to unprepared counsel going forward.

Savings: Significant

Time Frame: Stage 1

Priority: A

26.

Recommendation: The County should work with the Court of Common Pleas to authorize secure access for OPD to CPCMS.

Objective: To enforce timely processing of cases to alleviate and eventually eliminate excessive continuances attributable to delayed or incomplete discovery, conflicting court dates, failure to consolidate cases, and the tardy discovery of conflicts.

Lead Agency: Courts

Cost: Minimal; possible time to add computer capability and training

Pros: The OPD represents the vast majority of criminal defendants and in order to manage appearances and case readiness, needs direct access to the courts' calendars and the capability to obtain, send, and file documents electronically.

Cons: Concerns about secure access. These concerns can be alleviated through technology with password protection, firewalls and confidentiality provisions and with the ultimate prohibition of OPD attorneys conducting private practice on the side.

Savings: Substantial; fewer continuances based on calendar conflicts, expedited filing of motions, and improved exchange of discovery.

Time Frame: Stage 2

Priority: A

27.

Recommendation: The Court of Common Pleas Criminal Division should adopt Trial Court Performance Measures to guide the assignment and management of the criminal caseload.

Objective: Improved monitoring of case management

Lead Agency: Administrative Judge of the Court of Common Pleas Criminal Division

Logistics: May require outside consultant

Costs/Savings: Contracting, possibly through the NCSC ($15-25,000)

Pros: Better use of time and judicial and staff resources

Cons: May encounter some resistance to change from the bench

Time Frame: Stage 2

Priority: B

28.

Recommendation: The Court of Common Pleas Criminal Division should adopt a calendar management system that emphasizes flexibility, accountability and timely use of judicial resources.

Objective: Improved case management and allocation of judicial resources

Lead Agency: Administrative Judge of the Court of Common Pleas Criminal Division

Logistics: May require outside consultant

Costs/Savings: Contracting, (for example, through the National Center for State Courts) at perhaps $15-25,000

Pros: Better use of resources and service to the public

Cons: None

Time Frame: Stage 2

Priority: B

29.

Recommendation: The expedited disposition court should be assessed to determine its effectiveness in comparison to individual calendaring. Necessary adjustments should be made in light of this assessment.

Objective: Identify any obstacles to expedited disposition

Lead Agency: Court of Common Pleas Criminal Division, DA, OPD

Cost: None

Pros:	Will lead to better allocation of limited court resources. All parties should participate in this assessment to determine future effectiveness.
Cons:	Will require some data collection, interviews, and analysis.
Savings:	Significant
Time Frame:	Stage 3
Priority:	B

The Sheriff's Department

30.

Recommendation:	The County should require the Sheriff to review ACJ procedures for the production of inmates in a timely manner in court and for tracking conflicting court dates and/orders.
Objective:	Reduce continuances based on unavailability of defendants or witnesses, conflicting court dates, and inadequate custodial personnel
Lead Agency:	Sheriff's Office
Logistics:	Review policy and procedure and internal record keeping
Costs/Savings:	Reduce number of continuances and court appearances.
Pros:	Ensures that cases are fully ready to proceed to trial, disposition, or sentencing on the date and time calendared
Cons:	None
Time Frame:	Stage 2
Priority:	B

APPENDICES

A. Seven Box Model Chart

B. PD Appendix Data

Figure 1: March-May 2008 Trial Postponement Reasons

Figure 2: Reasons for the Postponement at Trial Level in Criminal Division in 2007

Figure 3: Breakdown of Judges for All Postponements for April 2008

Figure 4: Case Management Capital Budget Request

Figure 5: Budget Narrative

Figure 6: Attorney Records 2008

Figure 7: Attorney Records 2007

C. Model Defender Act Summary

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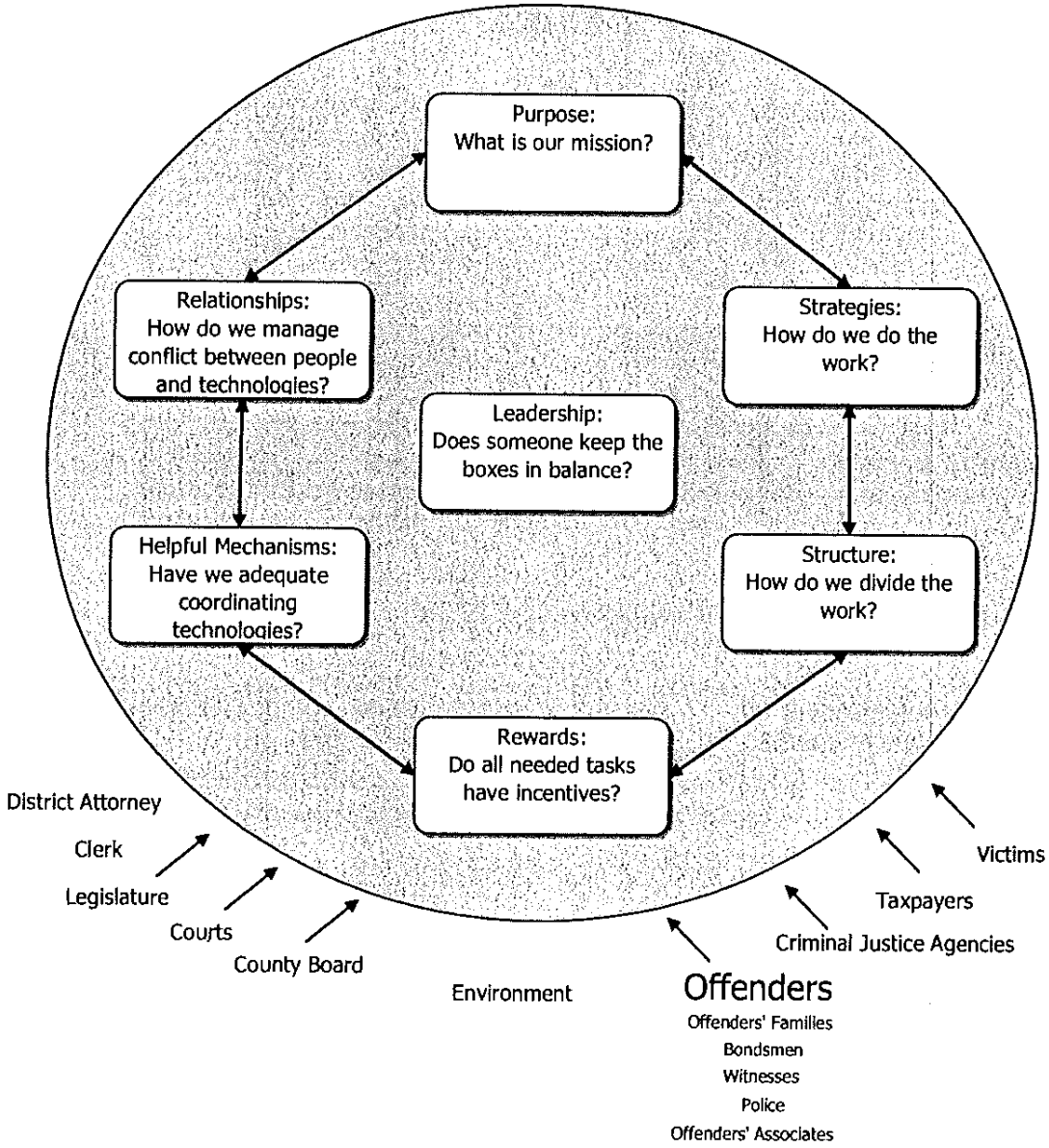
Appendix A

Illustration of the Seven-Box Model

There are seven organizational processes which should be examined in order to understand the needs of a correctional institution. The model shown below is an attempt to illustrate these seven interrelated processes which can be observed in all correctional organizations.



Reproduced and adapted with permission of M. Weisbord and Organization Research Development, a division of Block, Petralia Associates.
Source: M. Weisbord, "Organizational Diagnosis: Six Places to Look for Trouble With or Without a Theory." *Group and Organization Studies* (1976) 1:430.

Appendix B

FIGURE 1: March-May 2008 Trial Postponement Reasons

FIGURE 1(A): Reason for Postponements

Reason for Postponements	Counts	Percentage
DACC	2	0.62
Conflict	5	1.56
Drug Court	10	3.12
Private Counsel	10	3.12
586	15	4.67
Mental Health	22	6.85
ARD	25	7.79
Consolidation	32	9.79
Judge	40	12.46
P.D.	44	13.71
Deft.	46	14.33
D.A.	76	23.68
Total	**321**	

FIGURE 1(B): Breakdown of Postponements by Reasons for Defendants

Reason for Deft. (defendant waiting for entry into program)	Counts	Percentage out of Deft. (46 counts)	Percentage out of reasoning (321 counts)
D.A.	1	1.54%	0.31%
Judge	1	1.54%	0.31%
Private Counsel	1	1.54%	0.31%
DACC	2	3.08%	0.62%
Drug Court	9	13.85%	2.80%
586	10	15.38%	3.12%
ARD	20	30.77%	6.23%
Mental Health	21	32.31%	6.54%
Total	**65**		

SOURCE: Allegheny Court of Common Pleas
* Created from postponement data sent from Allegheny Court of Common Pleas

FIGURE 2: Reasons for the Postponements at Trial Level in Criminal Division in 2007

Reason	Case Count
Defendant Not Ready - Defendant	6690
Defendant Not Ready - Defense Attorney	5020
Prosecution Not Ready - DA	659
Other	643
Prosecution Witness Unavailable - DA	376
ARD Interview	106
Prosecution Not Ready - Police	96
Pending ARD	76
Prosecution Witness Unavailable - Police	63
Pending Mental Health Court	33
Pending Drug Court	31
Defendant to Obtain Private Attorney or Public Defender	30
Snow Day	15
Pending DUI Court	9
Courthouse Closed	7
Judge is Ill	6
Defense Witness Unavailable - Defendant	4
PSI Not Complete	4
Attorney Unavailable	3
No Information filed by D.A.	2
Hold for Dr. Letter	1
PDQ Interview	1
	13875

SOURCE: Common Pleas Case Management System (CPCMS)

FIGURE 3: Breakdown by Judges of All Postponements for April 2008

*NOTE: ALL JUDGES' NAMES HAVE BEEN REPLACED BY NUMBERS

Primary Person	Continuance Reason	Count of Continuance Reason	Percentage of Count out of Judge's Total
	Defendant Not Ready - Defendant	1	
0113	Defendant Not Ready - Defendant	131	94.24%
0113	Pending ARD	1	0.72%
0113	Prosecution Not Ready - DA	3	2.16%
0113	Prosecution Witness Unavailable - DA	4	2.88%
		139 (12.99%)	
0102	Defendant Not Ready - Defendant	128	92.75%
0102	Prosecution Not Ready - DA	10	7.25%
		138 (12.90%)	
0103	Defendant Not Ready - Defendant	27	22.31%
0103	Defendant Not Ready - Defense	83	68.60%
0103	Other	2	1.65%
0103	Prosecution Not Ready - DA	5	4.13%
0103	Prosecution Not Ready - Police	1	0.83%
0103	Prosecution Witness Unavailable - DA	2	1.65%
0103	Prosecution Witness Unavailable -	1	0.83%
		121 (11.31%)	
0114	Defendant Not Ready - Defense	116	98.31%
0114	Prosecution Not Ready - Police	1	0.85%
0114	Prosecution Witness Unavailable - DA	1	0.85%
		118 (11.03%)	
0106	Defendant Not Ready - Defendant	1	0.87%
0106	Defendant Not Ready - Defense	106	92.17%
0106	Pending DUI Court	1	0.87%
0106	Prosecution Not Ready - DA	7	6.09%
		115 (10.75%)	
0110	ARD Interview	2	2.04%
0110	Defendant Not Ready - Defendant	61	62.24%
0110	Defendant Not Ready - Defense	23	23.47%
0110	Prosecution Not Ready - DA	6	6.12%
0110	Prosecution Not Ready - Police	3	3.06%
0110	Prosecution Witness Unavailable - DA	1	1.02%
0110	Prosecution Witness Unavailable -	2	2.04%
		98 (9.16%)	
0100	Defendant Not Ready - Defendant	15	17.65%
0100	Defendant Not Ready - Defense	35	41.18%
0100	Other	2	2.35%
0100	Pending ARD	8	9.41%
0100	Pending Drug Court	2	2.35%
0100	Prosecution Not Ready - DA	4	4.71%

0100	Prosecution Not Ready - Police	2	2.35%
0100	Prosecution Witness Unavailable - DA	13	15.29%
0100	Prosecution Witness Unavailable -	4	4.71%
		85 (7.94%)	
0109	Defendant Not Ready - Defendant	75	90.36%
0109	Prosecution Not Ready - DA	8	9.64%
		83 (7.76%)	
0107	Defendant Not Ready - Defendant	69	86.25%
0107	Prosecution Not Ready - DA	8	10.00%
0107	Prosecution Not Ready - Police	1	1.25%
0107	Prosecution Witness Unavailable - DA	2	2.50%
		80 (7.48%)	
0111	Defendant Not Ready - Defendant	31	79.49%
0111	Prosecution Not Ready - DA	3	7.69%
0111	Prosecution Witness Unavailable - DA	3	7.69%
0111	Prosecution Witness Unavailable -	2	5.13%
		39 (3.64%)	
0108	ARD Interview	2	9.52%
0108	Defendant Not Ready - Defendant	8	38.10%
0108	Defendant Not Ready - Defense	9	42.86%
0108	Prosecution Witness Unavailable - DA	2	9.52%
		21 (1.96%)	
0105	Defendant Not Ready - Defendant	3	25.00%
0105	Defendant Not Ready - Defense	2	16.67%
0105	Other	5	41.67%
0105	Prosecution Witness Unavailable - DA	2	16.67%
		12 (1.12%)	
0104	Defendant Not Ready - Defense	5	71.43%
0104	Other	2	28.57%
		7 (0.65%)	
0101	Defendant Not Ready - Defendant	4	57.14%
0101	Other	1	14.29%
0101	Prosecution Witness Unavailable - DA	2	28.57%
		7 (0.65%)	
0112	Defendant Not Ready - Defendant	6	100.00%
		6 (0.56%)	
	TOTAL COUNTS OF CONTINUANCE REASONS	**1040**	

SOURCE: Common Pleas Case Management System (CPCMS)

FIGURE 4: Case Management Capital Budget Request

SOURCE: Allegheny Office of the Public Defender

Character Totals:	Requested	Adopted Operating	Adopted DHS	Adopted Total Adopted	Difference
Personnel	5,692,264	4,863,733	578,806	5,442,539	-249,725
Fringe Benefits	2,007,600	1,695,319	198,541	1,893,860	-113,740
Services	411,400	366,400	0	366,400	-45,000
Supplies	51,000	51,000	0	51,000	0
Materials	0	0	0	0	0
Repairs & Maintenance	1,600	1,300	0	1,300	-300
Capital Outlay	7,350	7,194	0	7,194	-156
Recovery / Cont Svcs	0	0	0	0	0
Totals	**8,171,214**	**6,984,946**	777,347	**7,762,293**	**-408,921**

Personnel Detail

		Requested	Adopted	Difference	
Base Salaries		5,103,432	5,103,432	0	
Adam Hill (FMLA		41,725	0	-41,725	not on payroll as of 5/24
Dan Miller (Military Leave)		41,725	0	-41,725	on payroll 5/24
Union Increases		101,976	126,766	24,790	
Mgmt Increases		25,029	0	-25,029	
USW Settlement		102,000	100,000	-2,000	
Total Base Salaries		5,415,887	5,330,198	-85,689	
New Positions					
6 PT Law Clerks	50000	50,000	0	-50,000	
3 Seasonal File Clerks	15600	15,600	0	-15,600	
Clerk Typist	24378	24,378	0	-24,378	
Office Manager	31200	31,200	31,200	0	
Legal Secretary	25106	25,106	0	-25,106	
Legal Secretary	25106	25,106	0	-25,106	
Clerk Typist	23846	23,846	0	-23,846	
Legal Assistant	25008	25,008	25,008	0	
Sr. Investigator	38382.96	38,383	38,383	0	
		258,627	94,591	-164,036	
		5,674,514	**5,424,789**	**-249,725**	
		5,674,514	5,424,789	-249,725	

FIGURE 5: Budget Narrative

The budget increase which would take into account increases in staff, attorneys, management, and systems was made in discussion with the administration. There is no system to request x and then be told no. The discussion centered around 6-8 additional lawyers (3 in trial; 1 in Appeals; 1 in Juvenile; 3 in Prelim). This was based on the caseload data that stated the % increases through our hard data. Also, there was discussion to increase managers in Trial: 1 in Homicide and 2 in trial. This would achieve the highest quality in respect to file review which is the true barometer of what happened in case preparation. Look at a file through the new data management system (infra) and immediately know what was done on the file. The addition of a supervisor in Juvenile and appeals would reduce supervision to a supervisor per 6 lawyers. This would achieve the same result as the increase in Trial. The new structures to encourage stability would be senior lawyers and senior support staff. This would keep the quality lawyers and support staff. Also, per my request as part of the capital budget, $100,000 has been set aside for a data management system. This would revolutionize the case flow and the ability to review all cases. Also, $25,000 was set aside for space changes. This ties into the push and success with the Allegheny County Bar association Bd of govs passing a resolution to support our state wide funding initiative (the first Bar Assoc in the state); the letter to the Deputy speaker of the house requesting an audience in Harrisburg; the successful letter to a state senator to be put on the state wide task force studying indigent defense and the funding of PD offices; the future non profit which will fund training and future salaries.

SOURCE: Allegheny Office of the Public Defender

Appendix C

Summary of Model Public Defender Act

Through decades of Supreme Court decisions, it is established that a needy person is entitled to the same protections and rights of representation as a person of adequate means. Not only is the right to counsel absolute, but that right is extended to all aspects of an "adequate defense," including those necessary for investigation and trial. The National Legal Aid and Defender Association created the Model Public Defender Act (MDA) not to define the exact limits of the right to an adequate defense, but to outline some of the protections that a needy person should receive if paid for by the state, and through provisions affecting. The MDA serves herein as a de facto review standard.

Rights include provisions with the necessary pre-sentence investigation and preparation, and the right to be counseled and defended at every stage, including revocation of probation or parole, appeal, and other post-conviction proceedings. These rights are not affected by a needy person having previously provided the benefit at his own expense, or by having waived the right at an earlier stage.

The proper authorities must inform a needy person of their right to an attorney, and if they cannot afford one, must subsequently notify the appropriate public defender. Notification should be given upon detention, formal change, or post conviction proceeding, and may include co-counsel or associate counsel. Attorneys representing needy persons should be given reasonable compensation based on the complexity, time, and other factors of the case. To ensure public defenders meet the same standards as someone otherwise represented, the public defender is entitled to use any state, county, or municipal technical services and facilities available to the prosecutor.

The Defender General's office is responsible for the oversight of the Public Defender system, and has several key responsibilities he or she must carry out to ensure popper functioning of the public defender apparatus. To ensure these responsibilities are paramount, neither the Defender General nor his deputies may practice law outside of their official duties. In order to better provide needy persons with legal services, then Defender General may contact outside organizations that are equipped to provide services and consultation in such areas including the training of public defender, administration of criminal justice, and the administration of the Office of the Public Defender. The Defender General may employ deputies, public defenders, investigators, clerks, stenographers, and other persons necessary to carry out his or her responsibilities. Finally, the Defender General should submit an annual report to the governor and legislature on the number of persons represented, the crimes involved,

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creation of an intake questionnaire to be completed with respect to every client during the initial interview. This document would then be updated with information such as jury trial demand, alibi witnesses, and the facts of any defense no later than the preliminary hearing. In effect, the questionnaire would become a living document that would be revised to include pertinent information by every attorney that would handle the file.

In addition, the Panel also recommended that the OPD adopt a form letter regarding the purpose of the preliminary hearing. This letter would explain the purpose of the preliminary hearing, the duty of the prosecution, and the burden of proof. Due the lack of literacy of many OPD clients, the Panel recommended that employees of the OPD read and explain the letter so that clients understand and acknowledge the purpose of the proceedings. Finally, the Panel recommended that trial counsel review the information in the intake questionnaire prior to the pre-trial conference in order to ensure continuity of representation. In all the instances, employees of the OPD should sign the document to ensure accountability.

On January 14, 2005 the Court determined the Allegheny Office of the Public Defender had sufficiently complied with the disputed terms of the Settlement and Consent Decree. Based on the changes made to the operation and administration of the OPD, the Settlement Agreement and the Consent Decree were terminated.

Appendix E

10 Basic Principles of a Public Defense Delivery System

February 2002-- adopted by the House of Delegates ABA

(1) The public defense function, including the selection, funding and payment of defense counsel, is independent.

(2) Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office, and the active participation of the private bar.

(3) Clients are screened for eligibility and the defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

(4) Defense counsel is provided sufficient time and a confidential space with which to meet with the client.

(5) Defense counsel's workload is controlled to permit the rendering of quality representation.

(6) Defense counsel's ability, training, and experience match the complexity of the case.

(7) The same attorney continuously represents the client until completion of the case.

(8) There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

(9) Defense counsel is provided with and required to attend continuing legal education

(10) Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

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ABA Ten Principles of a Public Defense Delivery System

TEN PRINCIPLES

Of a Public Defense Delivery System

February 2002

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TEN PRINCIPLES

Of a Public Defense Delivery System

February 2002

Approved by American Bar Association House of Delegates, February 2002. The American Bar Association recommends that jurisdictions use these Principles to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.

INTRODUCTION

The *ABA Ten Principles of a Public Defense Delivery System* were sponsored by the ABA Standing Committee on Legal and Indigent Defendants and approved by the ABA House of Delegates in February 2002. The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney. The more extensive ABA policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, *Providing Defense Services* (3d ed. 1992), which can be viewed on-line (black letter only) and purchased (black letter with commentary) by accessing the ABA Criminal Justice Section homepage at http://www.abanet.org/crimjust/home.html.

ACKNOWLEDGMENTS

The Standing Committee on Legal Aid and Indigent Defendants is grateful to everyone assisting in the development of the *ABA Ten Principles of a Public Defense Delivery System*. Foremost, the Standing Committee acknowledges former member James R. Neuhard, Director of the Michigan State Appellate Defender Office, who was the first to recognize the need for clear and concise guidance on how to design an effective system for providing public defense services. In 2000, Mr. Neuhard and Scott Wallace, Director of Defender Legal Services for the National Legal Aid and Defender Association, jointly produced a paper entitled "The Ten Commandments of Public Defense Delivery Systems," which was later included in the Introduction to Volume I of the U.S. Department of Justice's Compendium of Standards for Indigent Defense Systems. The *ABA Ten Principles of a Public Defense Delivery System* are based on this work of Mr. Neuhard and Mr. Wallace.

Special thanks go to the members of the Standing Committee and its Indigent Defense Advisory Group who reviewed drafts and provided comment. Further, the Standing Committee is grateful to the ABA entities that provided invaluable support for these Principles by co-sponsoring them in the House of Delegates, including: Criminal Justice Section, Government and Public Sector Lawyers Division, Steering Committee on the Unmet Legal Needs of Children, Commission on Racial and Ethnic Diversity in the Profession, Standing Committee on Pro Bono and Public Services. We would also like to thank the ABA Commission on Homelessness and Poverty and the ABA Juvenile Justice Center for their support.

L. Jonathan Ross
Chair, Standing Committee on
Legal Aid and Indigent Defendants

ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Black Letter

1 The public defense function, including the selection, funding, and payment of defense counsel, is independent.

2 Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

5 Defense counsel's workload is controlled to permit the rendering of quality representation.

6 Defense counsel's ability, training, and experience match the complexity of the case.

7 The same attorney continuously represents the client until completion of the case.

8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

9 Defense counsel is provided with and required to attend continuing legal education.

10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

With Commentary

1 **The public defense function, including the selection, funding, and payment of defense counsel,[1] is independent.** The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.[2] To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.[3] Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.[4] The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.[5]

2 **Where the caseload is sufficiently high,[6] the public defense delivery system consists of both a defender office[7] and the active participation of the private bar.** The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.[8] The appointment process should never be *ad hoc*,[9] but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.[10] Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.[11]

3 **Clients are screened for eligibility,[12] and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.** Counsel should be furnished upon arrest, detention, or request,[13] and usually within 24 hours thereafter.[14]

4 **Defense counsel is provided sufficient time and a confidential space within which to meet with the client.** Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.[15] Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client.[16] To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.[17]

5 **Defense counsel's workload is controlled to permit the rendering of quality representation.** Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.[18] National caseload standards should in no event be exceeded,[19] but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.[20]

6 Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.[21]

7 The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.[22] The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.[23] Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.[24] Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases,[25] and separately fund expert, investigative, and other litigation support services.[26] No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.[27] This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

9 Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.[28]

10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel,or contract defenders should be supervised and periodically evaluated for competence and efficiency.[29]

NOTES

[1] "Counsel" as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. "Defense" as used herein relates to both the juvenile and adult public defense systems.

[2] National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1(D).

[3] NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter "ABA Monitoring"], Standard 3.2.

[2] Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

[5] ABA, *supra* note 2, Standard 5-4.1

[6] "Sufficiently high" is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

[7] NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. "Defender office" means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

[8] ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

[9] NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

[10] ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

[11] NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

[12] For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

[13] NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(A).

[14] NSC, *supra* note 2, Guideline 1.3.

[15] American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

[16] NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

[17] ABA Defense Function, *supra* note 15, Standard 4-3.1.

[18] NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

[19] Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). *See also* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter "Death Penalty"].

[20] ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

[21] Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

[22] NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(B)(i).

[23] NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). *See* NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

[24] ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

[25] NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

[26] ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

[27] ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

[28] NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(A).

[29] NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

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Defending Liberty
Pursuing Justice

ACLU Report
A Job Left Undone: Allegheny County's Fork in the Road

A Job Left **Undone:**

Allegheny County's Fork in the Road

An Analysis of Problems at the Allegheny County Office of the Public Defender that Cause Systemic Violations of Clients' Constitutional Right to Adequate Representation

ACLU

AMERICAN CIVIL LIBERTIES UNION of PENNSYLVANIA

Acknowledgements

The ACLU of Pennsylvania's effort to correct severe systemic deficiencies at the Allegheny County Office of Public Defender (OPD) began fifteen years ago, but the task of bringing the OPD's practices up to constitutional standards remains a job left undone. This report follows the admonition of former U.S. Supreme Court Justice Louis Brandeis, who once said that, "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." This report is designed to shine the light on the operations of an important government agency, one that serves approximately 25,000 people a year and which is responsible for whether people go to jail and if so for how long. The problems plaguing the agency cry for sunlight. We trust this report will begin illuminating the problems and thus lead to completion of the reforms started by the ACLU fifteen years ago.

This report would not have been possible without the help of many people. I want to thank my co-authors, attorneys Claudia Davidson and Thomas J. Farrell, who were also co-counsel in the ACLU's lawsuit against the OPD. Thanks also go to ACLU-PA Legal Fellow and chief scrivener, Alexandra Morgan-Kurtz. Lastly and most importantly, we wish to thank the countless people who cooperated in our investigation, from both inside and outside the County's criminal justice system and from within the OPD itself, who gave us insight into current operations and largely validated the findings of the Kalmanoff report, but who cannot be identified for fear of retaliation. You know who you are. We are lucky to have so many responsible people with an abiding commitment to justice and civil liberties.

Witold J. Walczak,

Legal Director, ACLU-PA

October 17, 2011

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Appendix 1 ("Kalmanoff Report")

Introduction

Fifteen years ago, the American Civil Liberties Union ("ACLU") sued Allegheny County in *Doyle v. Allegheny County Salary Board* ("*Doyle*"), alleging that the Office of the Public Defender ("OPD") failed to provide constitutionally adequate representation to indigent criminal defendants, juveniles charged with delinquency and people subject to involuntary mental health commitments, and that County officials were ignoring these serious deficiencies. The lawsuit was triggered by two events. First, a 1995 American Bar Association study concluded that the OPD had suffered from years of neglect and was one of the most underfunded urban public defenders in the country. Then in 1996, new County commissioners not only refused to adopt reforms suggested in the ABA report, but they further cut the OPD's budget, exacerbating an already dire situation.

After two years of contentious litigation, the lawsuit resulted in an agreement designed to improve the OPD, which called for increased funding, staffing, training and management, as well as written policies promoting best practices. The litigation was expensive, costing the county a million dollars just in attorneys' fees to the ACLU. While the County met the funding and staffing requirements, the OPD has never adopted the necessary standards, maintained high-level training or implemented the practices that are an indispensible part of a constitutionally adequate indigent defense system.

Fifteen years later, Allegheny County stands at a similar fork in the road, confronted by a need to save money and a choice to continue to ignore the OPD's acute systemic dysfunction or to take concrete action to finish the reforms contemplated by the 1996 ACLU lawsuit. The parallel with 1996 is strong, except now the requisite changes would not be nearly so costly and even arguably would save the County money.

This time there is again a report documenting the OPD's failings, except that the County has buried it. Using Pennsylvania's public records law, the ACLU uncovered a secret 2009 report, commissioned by Allegheny County itself, which concluded that "[m]any of [the problems addressed in the ACLU lawsuit] persist today, contributing to a dysfunctional office culture where normative or even minimal performance expectations do not exist."1 The report, known by the lead investigator's name, Alan Kalmanoff, also stated that:

Leadership in the office needs to be improved. The OPD Director has not been trained in how to manage a large defense office, and is not a natural manager. More importantly, he appears virtually disinterested in administration and management, and as a result, holds infrequent meetings, does not assign or oversee supervisors to help manage, and fails almost completely to even try to identify and to address the major system problems that plague his office.[2]

•A lack of leadership and efficiency also drives excessive client jail time, *costing millions*, and wastes staffing resources. Immediate actions must be taken to break the cycle of delay, end gaps in coverage, reduce inefficiency, lower jail crowding, and avoid liability.[3]

The single biggest problem the ACLU attempted to correct through the *Doyle* litigation was the OPD's failure to have attorneys meet with clients early in the process - within days of arrest – at which time they would assess the case, initiate essential investigation and legal research, draft necessary motions and begin thinking strategically about how best to defend the client. This early case evaluation and preparation is the hallmark of a constitutionally adequate defense. Sadly, the Kalmanoff report found the problem had not been fixed, and indeed had worsened:

•The [OPD] system, and particularly the way that indigent persons are provided representation …is inadequate and poorly managed. In many routine cases, there is little or no contact with a person the defendant can regard as "my lawyer" until just before or at the first courtroom appearance. … There is a nearly total lack of representation for about four months between the first stages and the trial. During this time inmates are languishing with literally no attorney of record, no one to update their files, and no real advocacy.[4]

Even judges were reported to hold "a general 'consensus' or shared view that public defenders are not meeting with their clients prior to some key appearances in court."[5]

The ACLU's independent investigation over the past year has revealed that conditions at the OPD have deteriorated since Kalmanoff's report. Despite Kalmanoff's stark warnings, Allegheny County has not implemented any of Kalmanoff's thirty specific recommendations for fixing the serious systemic problems. The County's failure to act becomes even more perplexing in light of Kalmanoff's projection that the changes and improved efficiencies could save the County millions of dollars. Seemingly repeating the mistakes of 1996, the County is beginning to reduce the agency's budget by, for instance, delaying or refusing to fill staff vacancies, cutting supplies and

"Because the right to counsel is fundamental to a fair trial, the Constitution cannot tolerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on the merits."
Evits v. Lucey, 469 U.S. 387, 395 (1985).

discouraging attorneys' purchase of important preliminary hearing transcripts and the use of experts, practices that will further undermine the quality of representation provided by the OPD. Those who forget the history of fifteen years ago are doomed to repeat it.

The three arms of the Allegheny County criminal justice system must work together with the County Executive and County Council to implement the changes recommended by the Kalmanoff report. Only with cooperation of County elected officials, the Office of the Public Defender, the District Attorney's Office and the Court of Common Pleas can the County change the systemic deficiencies that deny the people of Allegheny County their constitutional rights. The ACLU calls on County and Court leaders, including the County Executive candidates, to (1) pledge to complete the OPD reforms mandated by the *Doyle* settlement, which also would largely satisfy the American Bar Association's Ten Principles for public indigent defense systems; and (2) implement the Kalmanoff report's plan to streamline and improve the operation of the County's criminal justice system while saving the County money. The OPD has many fine, dedicated public defenders who are shackled by a broken and mismanaged system, prevented from fulfilling their professional responsibility to provide clients with a constitutionally adequate defense. Without change, the County exposes itself to liability for the ongoing deprivation of indigent defendants' constitutional rights.

I. Standards for Criminal Indigent Defense Systems

A. Constitutional Right to Counsel

Almost fifty years ago, the United States Supreme Court held that the Sixth Amendment to the U.S. Constitution gives individuals subjected to state criminal prosecution a fundamental right to appointed counsel.[6] This right applies to the full spectrum of charges that can lead to the imprisonment of poor defendants, from less serious crimes to the most serious of felonies. It applies to all phases of the prosecution including preliminary hearings, trial, sentencing, and appeal.[7] Criminal defendants are entitled to "more than just the opportunity to be physically accompanied by a person privileged to practice law."[8] Similar rights to counsel have been extended to minors facing delinquency charges[9] and people subjected to loss of liberty through involuntary mental health commitment.[10]

"[T]he essential aim of the [Sixth] Amendment is to guarantee an *effective* advocate for each criminal defendant."[11] As a result, it envisions defense counsel forcing prosecuting attorneys to "survive the crucible of meaningful adversarial testing."[12] Unless an accused has an attorney "able to invoke the procedural and substantive safeguards that distinguish our system of justice, a serious risk of injustice infects the trial itself."[13] "Because the right to counsel is fundamental to a fair trial, the Constitution cannot tolerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on the merits."[14] "A party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all."[15]

B. The ABA Ten Principles

In 2002, the American Bar Association's ("ABA") Standing Committee on Legal and Indigent Defendants established the "Ten Principles of a Public Defense Delivery System."[16] These principles describe the fundamental requirements of an indigent defense system capable of providing representation that satisfies an individual's Sixth Amendment right to counsel.[17] The standards include general proscriptions, like independence

1. **Independence:** The public defense function must be independent from both political and judicial influence.
2. **State Funding & Structural Integrity:** The public defense delivery system may consist of both a public defender office and participation from the private bar. The State has the duty to provide funding and a uniform structure.
3. **Eligibility & Early Appointment:** Potential clients must be screened for eligibility and assigned defense counsel as soon as possible.
4. **Confidentiality & Early Client Interviews:** Counsel must have sufficient time and space to meet with the client confidentially. Counsel should meet with and interview their client as soon as practicable before preliminary hearings or trial.
5. **Availability:** The workload of public defenders must be controlled to ensure that counsel can provide all clients with adequate representation.
6. **Competency:** Public defenders should never be assigned cases which they lack the experience or training to handle competently.
7. **Consistency:** The same attorney should represent the client continuously from the initial hearings through trial and sentencing.
8. **Resources:** Defense counsel, whether assigned or a member of the public defender's office, should be provided with sufficient resources so that they can operate as an equal partner in the criminal justice system.
9. **Training:** Defense counsel is required to attend continuing legal education.
10. **Quality & Accountability:** Defense counsel must be supervised and reviewed for quality representation in light of local and national standards.

for the public defender office (free from political and judicial interference) and sufficient resources to ensure that lawyers can prepare a constitutionally adequate defense. But they also call more specifically for early interviews with clients (before both preliminary hearing and trial), manageable case loads, training for the lawyers and supervision to ensure quality representation.

There has been a growing movement across the country to ensure that public defenders offices adhere to these principles. By instituting reforms in line with these foundational principles, states have not only increased the fairness of their criminal justice systems and reduced prison populations, but have increased economic efficiency and saved money.

II. The ACLU's 1996 Lawsuit Against Allegheny County[18]

A. An Already Underfunded Public Defender's Budget is Cut

In late 1995, a private consulting group sponsored by the American Bar Association ("ABA"), the Spangenberg Group, issued a report reviewing the Allegheny County OPD.[19] The report concluded that due to "years of neglect" "the overall conditions of the office create a major impediment to providing quality representation to indigent defendants."[20] The report highlighted deficiencies in staffing, office space, resources and written standards, plus excessive caseloads. In terms of necessary resources, the Allegheny County OPD ranked at the bottom of comparable offices in similar jurisdictions.[21]

Notwithstanding the major concerns expressed by the Spangenberg Group, Allegheny County failed to implement any of the recommended changes. Instead, newly elected leadership in the County drastically reduced the Public Defender's budget by over twenty-five percent.[22] These budget cuts led to the dismissal of 15 attorneys from the original staff of 49, 20% of the clerical staff and dismissal of all social workers and investigators.[23]

B. The ACLU Files a Class Action Lawsuit that Leads to a Settlement Agreement

In response to the Spangenberg report, the subsequent budget cuts and numerous complaints from OPD clients, the ACLU filed a class action lawsuit alleging that the Allegheny County Salary Board, County Commissioners and the Chief Public Defender had failed to provide a constitutionally adequate system for indigent defense.[24] The complaint detailed a variety of long-standing systemic problems such as overwhelming caseloads, severe understaffing and flawed policies that were resulting in a denial of constitutionally adequate legal representation. The complaint alleged that the County was aware of these deficiencies and failed to provide the needed resources or make necessary changes to improve the situation.

The lawsuit ended with a court-enforceable "Settlement Agreement" in 1998, providing for many changes to the OPD.[25] These changes included a doubling of the budget and staff, development of written personnel policies and practice standards, a system of supervisory performance monitoring and providing new and current staff with extensive training. In addition to their own litigation expenses, the County paid the ACLU nearly $1 million dollars in attorneys' fees. Aside from the mandated budgetary and staffing increases, however, the County never fully complied with the provisions of the settlement agreement aimed at changing how attorneys are trained, managed and, ultimately, how they represent clients.

C. Settlement Agreement and Court Monitoring of OPD is Terminated in 2005

In June 2003, the ACLU filed a motion requesting the Defendants be held in contempt for failing to comply with the terms of the settlement agreement.[26] The ACLU noted that some positive changes had occurred in the Allegheny County OPD since the initial filing of the lawsuit, but several problems remained unaddressed. Crucial among the neglected provisions were the County's failure to implement written practice standards that modeled national standards, to create a system of employee oversight, to maintain training and to properly deploy investigators.

In response to the ACLU's contempt motion, the Court appointed a pro bono arbitration panel to analyze the County's compliance with disputed provisions of the settlement agreement.[27] While the arbitration panel recommended that the Court deny the ACLU's motion, it recommended further steps to improve representation within the Allegheny County OPD. The panel advised the OPD to employ the "Client Interview" form utilized by the Defender Association of Philadelphia, which should be completed during the initial client interview and updated by each attorney subsequently representing the client with important information, including jury trial demand, alibi witnesses, and the need for and/or results of investigation and legal research. The panel advised that the questionnaire should follow the case and be reviewed by counsel prior to court appearances. The use of this document would reduce confusion and ensure that each attorney would be well informed about the case and the client's wishes. Supplementary recommendations included adopting a form letter informing clients about the purpose and procedures of the preliminary hearing and increased accountability for attorneys. The County never implemented even these simple changes suggested by the arbitration panel.

III. Serious Problems in OPD Operations Persist

Problems with the OPD's representation persist to this day and have worsened. The ACLU's assessment is based on a report commissioned by Allegheny County that was released in 2009, but never made public, and a year-long investigation by the ACLU's Pittsburgh office. The investigation relied on dozens of complaints received from public defender clients, documents obtained through public records requests, and interviews with people who work in the Allegheny County criminal justice system, including assistant public defenders. The problems identified by the 2009 report, complained of by OPD clients, and confirmed by people inside the system show remarkable consistency.

A. The 2009 "Kalmanoff Report"

In 2008, the Allegheny County Solicitor requested an assessment of the OPD from the Institute for Law and Policy Planning, led by Professor Alan Kalmanoff, to analyze "concerns expressed by judges and others about the high rates of continuances and operational inefficiencies in the County's criminal defense function."[28] The Kalmanoff report was completed in late 2008 and slated for release in 2009, but for unknown reasons was never released publicly. Its thirty recommendations for improving the performance and efficiency of both the OPD and the entire criminal justice system, while saving the County substantial funds, have been ignored. The problems cited within the report virtually mirror those the *Doyle* litigation sought to remedy fifteen years ago.

Kalmanoff criticizes nearly every phase of the OPD's operations, saying "the agency's current program is dysfunctional"[29] and that the "management" of it is "dysfunctional" and "getting worse."[30] He writes that "almost all agree that the amount of training is inadequate,"[31] and that "practice standards are not employed beyond initial orientation, nor are they enforced by supervisors and managers over time, thereby demonstrating a lack of the most basic management oversight."[32] The problems with inadequate representation identified in *Doyle* and the subject of post-settlement monitoring have not been corrected and have worsened. Kalmanoff notes that "[d]efenders do not meet their clients after they are booked into the jail,"[33] and that "there is an unacceptable period of approximately four months, between the pre-trial conference and the preliminary hearing of a case, when jailed offenders do not see their lawyer," a practice "labeled by some as the '*OPD's hidden shame*.'"[34]

Although the Kalmanoff report's focus is on the OPD, the study also assessed the performance of other agencies within the County's criminal justice system and identified improvements to the practices of the District Attorney's Office and Allegheny County's criminal courts that would help the OPD increase the quality of representation and save the County additional monies.[35] The ACLU's investigation focused on problems at the OPD, as does this report, but obviously the other components of the County's criminal justice system that strain the OPD's performance need to be addressed by County and Court leaders as well.

B. Kalmanoff's "Action Plan"

Kalmanoff proposed a broad "Action Plan" consisting of thirty recommended changes in how the OPD and, to a lesser extent the criminal courts and District Attorney's Office, operate in order to upgrade the quality of OPD representation, improve the entire criminal justice system's efficiency and, simultaneously, save millions of tax dollars. The report states that some of the changes, most notably ones that involved improving the OPD's operations, would result in major (defined as millions of dollars annually) or substantial (defined as hundreds of thousands of dollars) savings.[36]

For instance, Recommendations 2 and 3 call for hiring someone to "[r]espond to an acknowledged core deficiency in management expertise and capability," which will over time result in significant savings.[37] Recommendation 13 calls for improving OPD office systems, including the application and enforcement of practice standards, which in the short term will result in "substantial" savings and "major" ones in the long term, i.e., millions of dollars.[38] Recommendation 15 calls for improving and bringing into line with the District Attorney's Office the OPD's informational technology ("IT") systems, something that over time will result in "major" savings.[39] Simply improving quality control by instituting basic management concepts like file reviews will result in substantial savings in the short and long term.[40]

Despite these potentially significant savings, the ACLU has learned that more than two years after receipt of the Kalmanoff report the County has yet to implement any of these vital changes. The ACLU has been unable to ascertain why Allegheny County never released the Kalmanoff report publicly, or never adopted the thirty recommendations for reform contained in the report. The recommendations are not only sensible and likely to improve OPD representation without significantly increasing the budget, but could save Allegheny County taxpayers millions of dollars.

IV. The OPD's Serious Problems Must be Fixed

The ACLU's investigation over the past year has confirmed most of the findings of serious deficiencies in OPD operations described in the Kalmanoff report, which translate into probable constitutional violations involving OPD clients. We discuss below the most serious problems based on the Kalmanoff report and ACLU's investigation.

A. Ineffective Management

Kalmanoff's greatest concern was OPD's management, or lack thereof, especially by the Chief Public Defender. "His management skills are clearly lacking, which is evident from almost every aspect of the OPD operation reviewed for this study, including a lack of actual knowledge of what is going on in the office and courtrooms, and a lack of effort to identify and remedy the most serious and obvious OPD and system problems."[41] The report remarked that he "is not a natural manager," cannot communicate effectively and "appears virtually disinterested in administration and management." This disinterest manifests itself through infrequent meetings, non-involvement in overseeing supervisors and "fail[ing] almost completely to even try to identify and to address the major system problems that plague his office."[42]

There is a perception from many persons spoken to that the Chief Public Defender is minimally present, unresponsive to concerns, avoids friction, avoids making decisions and avoids responsibility. Essentially, his actions are focused on ensuring that he does not rock the political boat on which his position is based.[43] He is perceived as being unsupportive of his team, staff, office and the clients. When advocacy is needed to overcome problems with the District Attorney's Office or an unreasonable judge, he rarely takes up the battle to champion his staff or the clients.

The rest of the management team has no common mission, no strategic plan, poor communication, a lack of consistency and a lack of accountability. Many within the OPD are unsure how managers are identified. While some members of management obviously care deeply, and try against all odds, many others can rarely be located and are nonresponsive to the concerns of assistant public defenders and the support staff.

Poor management infects and exacerbates other OPD operational systems: "Poor administration furthers the problems caused by shortfalls in space, equipment and technology, a long-standing culture of private practice and lawyer autonomy, inadequate management supervision and incentives, and an absence of adequate policies and procedures."[44] Management deficiencies lead to other problems as well. There is no "plan for managing or transferring caseloads when case numbers increase and exhaust the allocated funding," "[c]rucial mechanisms for identifying conflicts and scheduling issues are lacking," and "[t]here are no procedures for maximizing the usefulness of expensive attorney staffing."[45] Kalmanoff concludes that while the "dysfunctional management" in the overall court system "is improving," at the OPD it "is getting worse."[46]

The Kalmanoff report proposed that all members of the leadership of the OPD undergo management and supervision training to improve the management of the OPD and strengthen communication within the agency.[47] It expressed doubts that the current Chief Public Defender could be trained to be an effective leader of the OPD as it was "apparent that the Director was not aware of or interested in management or leadership."[48] It encouraged that "other personnel changes should be investigated," such as hiring a strong manager from outside of the OPD.[49]

B. Essential Personnel Management Functions are Practically Non-Existent

The OPD's deficiencies are perhaps nowhere more noticeable (and damaging) than in the area of personnel management. Training programs are grossly deficient, there is no mentoring or other program to aid junior lawyers in preparing and trying cases, practice standards that set expectations and guide performance are ignored or non-existent, case loads are not monitored and performance evaluations are rarely employed. Part-time attorneys are largely unmonitored and unaccountable. The number of essential support staff, like investigators and social workers, has been allowed to decrease through attrition and non-replacement. The almost complete absence of personnel management may be the single biggest drag on the ability of the office to provide effective representation. As will be discussed below, the consequence of these personnel management failures is that representation is inconsistent at best and in too many cases unconstitutional. These are flaws that should be fixed quickly and can be repaired without substantial expense.

1. Virtually Non-Existent Attorney Training

The Kalmanoff report found a "widespread perception among judges that there is little or no training of assistant public defenders."[50] There is minimal formal training within the office for new attorneys. Unlike well-run public defender offices like the one in Philadelphia, the OPD has no formal mentoring program to assist young lawyers in learning the idiosyncrasies of criminal defense practice generally and in Allegheny County particularly. The OPD does encourage lawyers to attend "brown-bag-lunch CLE's" (continuing legal education) on criminal law and practice, but those are often ineffectual because they are presented for and to both prosecutors and criminal defense lawyers, which means that important practice tips unique to defense lawyers are omitted. Periodically, but with no real planning or strategy, the OPD sends small numbers of trial lawyers to good quality training programs, such as one run annually by the Public Defender Association of Pennsylvania (PDA of PA), but far more lawyers could benefit from that education.

In the past a "Trial Advocacy Program" was required for attorneys transitioning between the Pre-Trial and Trial Divisions. This program was viewed as a useless formality by those who went through it and has not been held in over a year. Attorneys at OPD believe that the training they receive is inadequate by any measure, but astonishingly so in comparison to the extensive training provided at comparable offices, such as the Defender Association of Philadelphia. Moreover, attorneys transfer

between divisions without any preparation or training on how to proceed in matters that decide the ultimate fate of their clients. In sum, attorneys new to the office or a division are essentially left to learn by trial and error, at the expense of the clients.

Kalmanoff concluded that the OPD needs to provide training in the basics, including ethics and motions and trial practice.[51] The report noted that additional training in legal ethics, including regular refresher classes, was "badly needed."[52] The report suggested the office create a "Training Coordinator" position to streamline ongoing development of training programs for all attorneys.[53] There is simply no replacement for a rigorous introductory training program, supplemental in-house training for attorneys moving to new units, and an ongoing mentoring program.

2. Unused Written Practice Standards

Practice standards complement and inform the training program, and the OPD's failure to conform its practice to minimum national and constitutional standards is a major problem. National standards emphasize the importance of an *early* client interview, case assessment, investigation and preparation.[54] It is vitally important to perform these activities early in the life of the case to ensure that valuable evidence and testimony is not lost, and that the lawyer gains familiarity with the client, knows the client's response to the charges, and can begin necessary fact investigation and legal research. This information arms the defense lawyer with the crucial knowledge necessary to advocate effectively for the client in a number of ways, including seeking pre-trial release, moving to dismiss charges, negotiating a fair plea bargain and preparing a trial defense.

Presently, practice standards established after *Doyle* are not actively utilized. The standards are "not employed beyond orientation, nor are they enforced."[55] Kalmanoff observed a "lack of norms concerning baseline practice management or expectations."[56] Standards introduced at orientation only, without subsequent repetition and enforcement, might as well not exist at all. This is evident in that many attorneys and staff of the OPD are unaware that the practice standards even exist. Only a handful of employees would know where to find a copy of the standards if they were interested in doing so.

In addition to the inattention paid to the existing standards, there are no procedures for identifying conflicts of interest or scheduling issues. Kalmanoff's Action Plan included the development of a comprehensive Office Manual comprised of job descriptions, qualifications, trial practice standards and performance standards as a critical change that would provide the County with substantial immediate savings and major savings over time.[57]

3. Workload

Management has an obligation to ensure that lawyers' caseloads are not overwhelming and that the work is distributed equitably among staff. Under the NLADA's Guidelines "counsel has an obligation to make sure that they have available sufficient time… to offer quality representation to a defendant."[58] This obligation was reiterated by the ABA's Ten Principles, which insists that a public defense delivery system must ensure that workload is controlled to prevent it from interfering with counsel's ability to render quality representation.

Kalmanoff noted that no one at the OPD manages or controls the adult criminal caseload.[59] The County invested in database software, at great expense, but the system is not being employed office-wide. Attorneys are tasked with the responsibility of maintaining the information, which requires time-consuming data entry work that doesn't yield a clear benefit for the attorneys or their clients. Attorneys view the software as simply creating more administrative work and do not prioritize updating the system among their responsibilities. Support staff only contribute minimal data entry. As a result, there is no reliable way to track case or workload. There is no balance to the caseload of Pre-Trial Attorneys. Attorneys are assigned to particular courts based on what has historically been done and not the volume of the cases. Consequently, some attorneys are routinely swamped while others are consistently underutilized.[60] Nothing undermines effective representation more or promotes employee burnout quicker than giving lawyers an overwhelming and unmanageable workload.

4. Absence of Performance Reviews

At the back end of the personnel management system is the performance review, which instructs lawyers on proper practice, corrects problems and provides employee accountability. As with the written practice standards, performance review of assistant public defenders and support staff remain practically non-existent. Allegheny County OPD never complied with the settlement agreement by implementing a supervisory system with periodic and systemic monitoring. Without any system of oversight the OPD lacks a mechanism to ensure accountability and quality representation. Kalmanoff concluded that problems with chronically deficient representation are attributable directly to a "lack of the most basic management oversight."[61]

In the past nine months, after the ACLU began submitting public records requests focused on the agency, the OPD has required that every division conduct at least some performance reviews of the attorneys. Attorneys within the office view these reviews as "superficial" or "shams." There are no uniform standards for what the performance review should contain. The Chief Public Defender has acknowledged to members of the OPD that the divisions need not put significant time or effort into these reviews, as they will not be used for any particular purpose.

Outside of these "sham" reviews, current members of the OPD do not recall any other time when their performance has been reviewed by a supervisor or other member of the management team. No one has asked to look over their case files, read over a motion, or watched them in court. No supervisor has provided advice on what the attorneys can do to improve their

performance or criticized them when they've done poorly. Supervisors cannot critique performance because they simply don't know the actual quality of the work of the attorneys they are "supervising." Without frequent substantive performance reviews, assistant public defenders' performance will remain variable and in some cases patently unacceptable.

Kalmanoff recommended that the OPD begin conducting regular performance reviews (at least annually) for all employees to promote a better use of resources, identify training needs and motivate attorneys to provide a higher level of representation to clients.[62] These performance reviews must be rigorous and regular. The report also advised the OPD to establish a Quality Assistance Protocol that involves periodic random review of case files by a supervisor that would "provide an on the spot remedy for potential problems."[63] These changes would result in significant short and long term savings for the County.[64]

5. Staffing Issues

Fifteen years ago, the OPD had no investigators or social workers on staff and lacked paralegals and clerical personnel. The settlement agreement mandated that the OPD raise its staffing levels of attorneys and support staff. For years the OPD had maintained staffing levels mandated by the settlement; however, in recent years the process to fill open spots in the OPD has become bogged down, with no transition plans to compensate during the prolonged staffing shortages. Currently, the OPD employs less than the 79 full-time-equivalent attorneys mandated by the settlement agreement, and has been slow to fill vacancies.[65]

Investigators are an integral part of effective representation, and thus were addressed separately in the *Doyle* settlement agreement. The agreement required the OPD to hire one investigator for every six lawyers, for a total of thirteen investigators. The OPD currently has an Investigative Division consisting of approximately nine investigators; however only seven actually conduct investigations, barely half of the total in 1998.[66] Attorneys, who are not trained on how to best engage the services of investigators, unsurprisingly find it difficult to get the level of cooperation necessary for productive investigation. The lack of investigators makes it difficult if not impossible to adequately serve the attorneys' needs for timely and effective investigation.

Social work staff is essentially nonexistent. There is one social work related position in the entire OPD, an "Ombudsman" who works exclusively in the Juvenile Division. Her contribution to the improvement of juvenile cases is minimal. In other public defender offices, social workers serve an essential function by investigating a client's eligibility for alternative justice programs that reduce or alleviate the extent of a client's jail time. The absence of social workers at the OPD is a significant void in the quality of service provided to its clients.

Moreover, the remaining support staff in place is inefficient at best. The staff is viewed as minimally skilled, incompetent, and disorganized. Many attorneys write their own letters, do their own photocopying, type up simple motions, as well as numerous other clerical tasks because they fear the quality of the final product if left to the clerical staff. As with the attorneys, there are no office-wide standards ensuring accountability for support staff.

6. Conflicted Part-time Lawyers

Fifteen years ago the public defender system consisted exclusively of fifty-five part time attorneys.[67] At that time, Allegheny County was the only large metropolitan area that still followed this "relic of the 50's and 60's."[68] The problem with this type of system is the enormous potential for abuse. The size and complexity of the caseload can overwhelm a part-time attorney and interfere with their ability to work on cases for private clients. The resulting conflict of interest leaves the attorney with limited choices: work on neither group of cases competently, provide public defender clients with inadequate representation while tending to the needs of paying private clients, or work full time on public defender cases for part-time pay. In recognition of the shortcomings of a system of part-time public defenders, the settlement agreement in *Doyle* provided that no future attorneys hired by the OPD or appointed to a supervisory position would be permitted to maintain a private practice.

While no new part-time attorneys have been hired, many of those who worked in the office at the time of *Doyle* remain.[69] It is important to note that the part-time public defenders were, and had to be, "grandfathered" into the system for collective bargaining reasons, which continue in effect. In other words, any changes must take into account the realities of the collective bargaining agreement and the laws related to it.[70]

Nevertheless, in practice there is continued friction between full-time public defenders and part-time attorneys. The Kalmanoff report noted continued allegations that the part-time lawyers do not put in a sufficient amount of time on their public defender cases.[71] A culture has developed where the attorneys prioritize the needs of their private clients and their own schedules above the needs of their public defender clients.[72] The report cautioned that this culture could only be eliminated by discontinuing the part-time practice as soon as legally feasible.[73]

C. Unequal Partner in the Justice System

To ensure fair trials, the ABA's Ten Principles stresses that public defender systems must be included as an equal partner in the justice system. This means that there should be parity of workload, salaries and other resources, including technology, facilities, support staff and access to forensic services and experts between the prosecution and public defense. The presumption is that the only way for public defenders to properly participate in the adversarial system is if they start on equal footing. A strong chief public defender who will not succumb to pressure

from his political bosses, like the county executive or the judges, is essential to maintaining the indigent defense function as a strong and independent leg of the criminal justice triad (the courts, prosecution and defense). Unless the chief public defender fights for his agency's coequal station within the criminal justice system, the program will not function properly.

The Spangenberg report observed in 1995 that the District Attorney's "staffing, salaries and resources far outweigh[ed] those of the Public Defender."[74] It described public defender salaries as "miserably low" and their offices as "totally inadequate."[75] While the settlement agreement in *Doyle* initially led to improvements in this area, there has been some backsliding in the OPD's resources today, both in absolute terms and in relation to the District Attorney's Office. In 2011, the District Attorney's office received over $14 million in funding from the County while the OPD was allocated only $7.5 million.[76] These budget discrepancies are apparent in the resources available to each office.

1. Salary

Perhaps most importantly in the area of resources, the salaries provided to assistant public defenders remain abysmally low. Many public defenders are living paycheck to paycheck, and quite a few attorneys maintain part-time, non-legal, jobs outside of their full-time public defender work to supplement their income. Starting salaries for both assistant district attorneys and assistant public defenders are about $39,000.

The District Attorney's Office regularly rewards assistant district attorneys with not only the annual cost-of-living adjustment, but with advances in "grade," which amount to more substantial pay increases and serve as an effective retention tool. These "grade" pay raises occur roughly 3-5 years into an assistant district attorney's term in the office, a time frame that roughly corresponds to when many public defenders leave the OPD. In a recent review, the OPD had no "grade 3" lawyers, which is the first grade advancement from the lowest grade of 4. Comparatively, the District Attorney's Office had 33 attorneys at grade 3. The difference in salary is about $6000, meaning that assistant public defenders with five to six years of experience are making about $44,000 to $45,000 while comparably experienced assistant district attorneys are earning about $51,000. During the current Chief Public Defender's term, financial and job classification grade increases have been unheard of -- employees can only recall a single one – leaving assistant public defenders making far less than equally seasoned assistant district attorneys. Some of the OPD lawyers who have never received a grade increase were hired 10 or more years ago, and many more have over 5 years experience.

While this has not curbed the recruitment of young attorneys, the lack of gradation in salary and benefits has produced a high turnover rate among more experienced attorneys; "another truly major but largely hidden expense" to the OPD.[77] High turnover further lowers OPD morale and increases the existing "external and internal perception of the OPD as a training ground."[78] The continuing attrition of seasoned public defenders can only contribute to the office's difficulties in providing constitutionally adequate representation to its clients. In well-run offices "the most experienced trial attorneys in the office are usually the most respected role models for younger inexperienced attorneys," however this is not the case in the OPD.[79] Without the presence of experienced attorneys, younger attorneys have no one to go to for advice and no one from whom to learn best practices. Sadly, as discussed previously, many of the experienced lawyers in the office are pre-*Doyle* part-time holdovers who are rarely in the office and thereby unavailable to assist younger lawyers.

Kalmanoff recommended that the OPD adopt a personnel structure similar to that of the District Attorney's office, "which is divided into specialized units that provide attorneys with the opportunity to increase their income, improve their overall legal skills, and receive good supervision."[80] A revised salary structure that allows for merit based raises and creates a professional development track for career public defenders is needed.[81] This structure would encourage dedicated public defenders to remain with Allegheny County OPD and would provide the OPD with a pool of seasoned skilled litigators who could give needed mentorship and be trained for supervisory roles. Despite the Kalmanoff report's alarm about the salary situation, Allegheny County OPD administrators have shown little concern about lawyers' distress over the low salaries, responding instead that attorneys shouldn't expect to make a life career out of being a public defender.

2. Resources

Kalmanoff found that the OPD's resources are "highly limited" and that there are shortages in all areas, ranging from inadequate and poorly maintained office spaces to deficient technologies and low salaries.[82] Supplies are generally scarce. The OPD has been known to run out of paper or pens without the budget capacity to purchase more. The fear of running out of basic supplies has resulted in staff hoarding supplies and not sharing them with another section of the office when it runs out. The shortages force some attorneys to spend their limited personal income purchasing necessary office supplies. Attorneys lack sufficient personal work space and meeting space for private communications with clients. The District Attorney's Office periodically receives new furniture, while the Public Defender's office furniture consists of furniture handed down from law firms.

Kalmanoff observed that the OPD seems to have received "short shrift from the County" in the realm of information management systems and other technologies, receiving only hand-me-down desktop computers for years.[83] Basic office equipment is old, slow and unreliable, while the District Attorney's office has overhead projectors, computers and computer technicians to assist with trial. There are insufficient computers and printers for the OPD attorneys and support staff. There is one ancient fax machine to serve both the juvenile and trial divisions. The report proposed a number of minimum cost changes to the information technology systems at OPD, which would improve overall office efficiency.[84]

D. Sub-Constitutional Representation Persists

The single biggest problem with OPD representation, one heavily targeted by the *Doyle* lawsuit, is OPD lawyers' failure to meet with clients early in the process to give them advice, begin collecting crucial information, and establish plans for investigation, evidence gathering and legal research. Early case evaluation and preparation is the lynchpin of effective representation, yet sadly the OPD is nowhere near where it needs to be on this score.

1. Woefully Inadequate Client Communication -- No One Recognized as "My Lawyer"

Client communication is an integral component of any attorney client relationship. Without ongoing communication between client and lawyer, it is practically impossible for a defense attorney to establish the relationship necessary to create a competent defense.[85] Moreover, a lawyer has an ethical duty to keep her clients informed and to promptly respond to clients' requests for information about their case.[86] The appointment of counsel for an indigent defendant can quickly become a "cruel joke" when that counsel does not take the time to communicate with the client and leaves them in the dark about the progress of their case.[87]

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At the time of the *Doyle* litigation, attorneys from the Office of the Public Defender were not keeping their clients reasonably informed about the status of their case. When placing calls to the Allegheny County OPD, individuals were unable to find out who their attorney was, ask for information about their case or provide their attorney with important information. Today this problem is an integrated component of the system, encouraged by the lack of practice standards addressing the issue and the most frequent complaint heard by the ACLU. OPD clients simply do not know who their attorney is. They cannot contact any lawyer, have never met their lawyer – except maybe for a few minutes in the courtroom right before a hearing – and the lawyer they met momentarily at the preliminary hearing will not represent them at trial. Some Pre-Trial attorneys do not give their full names to their clients at preliminary hearings so they cannot be contacted. Clients are notified of their assigned Trial attorney at the formal arraignment stage, but there is often no correlation between the attorney identified to the client and the attorney eventually assigned to represent the client for trial. Once the case gets to trial, all too often, it is even another public defender that appears to handle the case, sometimes not knowing the client and his or her case details.

2. Lawyers do not Conduct Meaningful Client Interviews Before the Preliminary Hearing

An essential stage for effective client representation is the initial meeting with the client. At this meeting an attorney seeks to establish trust with the client and advises them of crucial information, including their rights and the need to not discuss the case with others, especially while in jail.[88] This meeting is the time when the attorney gains critical information about the case, including any alibis, potential witnesses and defenses. Failure to obtain this information at this critical juncture in the case may irrevocably harm the defendant by undermining preparation for the preliminary hearing, compromising crucial physical and testimonial evidence and permanently affecting vital future case decisions. The importance of this interview is highlighted by a detailed description of the information to be exchanged in the NLADA's Performance Guidelines and specific mention as one of the ABA's Ten Principles.[89]

Courts have also frequently recognized the unique importance of this consultation to effectuating an individual's Sixth Amendment right to counsel. "Informed evaluation of potential defenses to criminal charges and meaningful discussions with one's client of the realities of the case are the cornerstones of effective assistance of counsel."[90] The information an attorney can gain from discussion with his client "is a prime source of the factual bedrock upon which counsel must rely in making strategic choices."[91] Notably, communicating with the client for this purpose has been determined to be a necessary element of adequate assistance of counsel.[92] At a minimum, "the consultation should be sufficient to determine all legally relevant information known to the defendant" and to inform the defendant of his constitutional rights.[93]

The Allegheny County OPD's practice falls far short of this constitutional standard. Pre-Trial attorneys handle a high volume of cases during any given court session, allowing them only a few minutes to meet with each defendant prior to his or her hearing. Likewise, attorneys in the Trial Division only meet with defendants minutes before the pre-trial conference (if at all) and frequently do not engage in subsequent

communication with the defendants until the next scheduled court appearance. These brief interactions do not provide attorneys with the opportunity to obtain vital information such as alibis, potential defenses or to even hear the defendant's version of events.

Kalmanoff emphasized the extent of the problem when he wrote that there is a general consensus among trial judges that public defenders are not meeting with their clients prior to key court appearances.[94] He found that there is in fact little or no contact with the client before an appearance; sometimes the only conversation that occurs is a mere fifteen seconds of introduction before the hearing.

What little communication that transpires rarely takes place in a confidential environment. Rather, it happens on the day of an appearance in a holding area surrounded by other criminal defendants and law enforcement personnel or in the court room itself. Countless clients are often moved through the entire preliminary hearing phase with no substantive lawyer-client communication and consequently, without any understanding of what has happened or what to expect next. Communication is a key component of representation and there is virtually none between the OPD and its clients. Kalmanoff was so concerned by the poor client communication that the report repeatedly emphasized that the OPD needed to quickly implement mandatory ethics training, focusing specifically on client communication.[95] The OPD has not addressed these deficiencies over the past two years and there remains no mechanism in place to ensure that all public defenders communicate with their clients on a regular and sufficient basis.

3. Grossly Deficient Intake Procedures, Investigation and Preparation

According to the U.S. Supreme Court, the pretrial period is "perhaps the most critical period of the proceedings;" the time "when consultation, thorough-going investigation and preparation [are] vitally important."[96] This time of investigation is "perhaps the most critical stage" of a lawyer's representation, because "it provides a basis upon which most of the defense case must rest."[97] "Pretrial investigation and preparation are the keys to effective representation of counsel," and the "exercise of the utmost skill during the trial is not enough if counsel has neglected the necessary investigation and preparation of the case."[98]

> Informed evaluation of potential defenses to criminal charges and meaningful discussions with one's client of the realities of the case are the cornerstones of effective assistance of counsel."[90]

This requirement of thorough investigation exists because a "careful investigation of a case and the thorough analysis of the information it yields may disclose evidence of which even the defendant is unaware and may suggest issues and tactics at trial which would otherwise not emerge."[99] A criminal defense attorney "must investigate a case, when he has cause to, in order to provide minimally competent professional representation" within the meaning of the Sixth Amendment.[100] The investigation cannot be a superfluous inquiry; rather defense counsel is obligated to undertake reasonable steps to investigate all apparently substantial avenues of defense.[101]

i. Intake Procedures

A foundational step of thorough investigation is the intake process itself. Without comprehensive intake it is nearly impossible to correctly assess and investigate the case. Allegheny County OPD does not have an effective intake process. The OPD intake staff are not lawyers and have not been trained by lawyers. Consequently, they do not obtain necessary information. Intake has been limited primarily to contact information, with little if any discussion of facts important to the case such as possible witnesses and available physical evidence or records. Approximately 1 out of 4 "jailers"[102] go to their preliminary hearing without having spoken even to intake staff.

This ineffective intake process exacerbates the other problems associated with the early stages of indigent client representation by the OPD. The Kalmanoff Action Plan proposed assigning a senior attorney to supervise jail interviews and other intake functions to determine the deficiencies in early stages of intake.[103] Increasing the efficiency at this stage of representation would provide significant time savings, promote a better use of resources and reduce the costs associated with prolonged incarcerations and repeated court appearances.

ii. Preparation

Only the most diligent Pre-Trial attorneys review case files or speak with clients in advance of preliminary hearings. Even for these diligent attorneys this practice is limited due to the extreme time constraints between receiving the client file and the hearing itself. Trial attorneys are likewise only provided with limited time to prepare. They are not assigned to a case until the week before the pre-trial conference and do not receive the actual case files until the week of, or even the day before, the conference itself. This timetable does not provide attorneys with adequate time to prepare properly for their cases.[104] Moreover, Kalmanoff contends that a "culture of delay" permeates the system and encourages attorneys to not be fully prepared early in a case.[105] This results in a "waste of opportunities" and a "loss in justice and monies [that are] hard to justify."[106] "[T]he cost is enormous."[107]

4. The OPD's "Hidden Shame" – The Appalling Gap in Representation

The organizational structure of the Allegheny County OPD continues to result in significant gaps in client representation.[108] Every client is first assigned a Pre-Trial Attorney for the preliminary hearing and then a Trial Attorney to represent them at the Pre-Trial Conference and beyond, but between these two events most incarcerated clients are largely unrepresented.

During the *Doyle* settlement agreement period, the Pre-Trial Attorney's lone duty following the preliminary hearing was to obtain and preserve any evidence that might disappear before the assignment of the Trial Attorney. This task was significantly impaired by office practice. Without an in-depth client interview Pre-Trial attorneys were frequently unaware of crucial evidence that needed to be preserved. The responsibility of developing any theory for the case, including alibis and defenses, was left to the Trial Attorney. On average 45-60 days would pass between the end of the Pre-Trial Attorney's obligations and when a Trial Attorney was assigned to the case. During this period no meaningful evaluation, strategy or investigation of the case took place.

Disappointingly, this gap in representation not only continues, but has widened. Kalmanoff discovered a period of approximately four months between the preliminary hearing and the pre-trial conference during which no attorney is assigned and clients experience a "total lack of representation."[109] Literally no one is assigned to the case and nothing is done. This dead time results in long waiting times, lost communication between clients and attorneys (jail mail) and multiple disciplinary board complaints. This period has been labeled by some public defenders as the "OPD's hidden shame."[110]

Aggravating the effects of this dead period is the complete disorganization associated with the transition between attorneys. For budgetary reasons, Pre-Trial Attorneys are no longer allowed to request preliminary hearing transcripts, arguably the most effective method of communicating to the Trial Attorney what has happened thus far in the case. Additionally, Pre-Trial Attorneys are not required to conduct any follow up work on the case. Many believe that *any* follow up is the responsibility of the Trial Attorney alone and avoid such communication with clients. Clients frequently give their Pre-Trial Attorney critical information, such as names of witnesses or physical evidence, but this information is not always put into the client's file and consequently never seen by Trial Attorneys. Trial Attorneys have no expectation that Pre-Trial Attorneys will contribute notes to the client's file. Therefore, most client files are given to Trial Attorneys without anything more than cursory notes from the Pre-Trial Attorney. The absence of standards requiring early case evaluation and the transmission of notes undermines and in some cases irreparably harms effective representation by the Trial Attorney.

5. Scarce Use of Experts

In addition to a right to expect the *services* of a reasonably competent attorney, an indigent defendant has a right to expect that he will be provided with the "basic *tools* of an adequate defense" if he cannot afford to pay for them.[111] "[A] criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense."[112] Among these tools, in appropriate cases, are mental health and other kinds of expert witnesses.[113]

It remains difficult for public defenders to obtain the experts necessary for their cases. Some experts are reluctant to work for the OPD because it has a history of delay in paying for services rendered. There is no clear procedure in place specifying who an attorney should go to for permission to obtain an expert. When requesting an expert, some trial attorneys have been informed by their supervisors that they should simply make the Commonwealth's expert their own instead, a profoundly disturbing suggestion that reflects deliberate indifference to constitutional and ethical obligations. There are still numerous occasions when experts are not being hired, even when a defense expert is absolutely vital to the case.

V. CONCLUSION

An effective public defender office is an essential component in maintaining the fairness and integrity of the criminal justice system. As documented above, the OPD is sadly lacking in virtually every area of operations. Within the OPD there are attorneys and staff members who are enormously talented and committed to serving the best interests of their clients, but are simply hamstrung by the system in their ability to provide effective representation. Other attorneys and non-legal staff take advantage of the lack of oversight and accountability by doing as little as they can get away with, which in some cases is very little, thereby exacerbating the pressures on the hard-working, responsible staff. Without dramatically improved management, training, practice standards, supervision and employee accountability the situation will not improve, and too many clients will continue to receive sub-constitutional representation.

Kalmanoff made thirty recommendations as part of a strategic plan to improve the quality of the representation provided by the OPD and to increase the general efficiency of the County's criminal justice system. The Action Plan included suggestions for the OPD, the County Executive, the Sheriff's Department and the Court of Common Pleas to address the problems that pervade the entire Allegheny County criminal justice system. The following list combines the unfinished and lapsed reforms mandated by *Doyle* with some of Kalmanoff's recommendations.

Recommendations for the OPD

- Upgrade OPD management.
- Provide management training for the OPD leadership.[114] Return attorney staffing levels to those mandated by the *Doyle* settlement agreement, i.e., at least 79 full-time-equivalent attorneys.
- Return investigator staffing levels to those mandated by the *Doyle* settlement agreement, i.e., at least 13 investigators.
- Hire and/or appoint a full-time director of training.
- Improve the entry-level training program in the basics of representation,[115] devise training programs for lawyers entering different divisions, and develop a program whereby supervisors and more senior attorneys mentor and assist new and younger lawyers.
- Create a comprehensive office manual, including trial practice and performance standards, and incorporate the standards into daily office culture.[116]
- Institute and enforce practice standards that require attorneys, except in extenuating circumstances, to do intake with clients before preliminary hearings, to develop and use forms that assist in gathering and memorializing important information and strategic decisions for representing the client, and result in clients being assigned during the four-month gap between the preliminary hearing and the pre-trial conference an attorney who will ensure that necessary investigation, legal research and filing of pre-trial motions is accomplished in a timely fashion.
- Assign a senior attorney to supervise intake functions and determine the deficiencies in early stages of intake.[117]
- Conduct meaningful performance reviews of all staff members at least annually.[118]
- Establish a QA Protocol that includes weekly case reviews by a supervisor.[119]
- Improve the office space.
- Discontinue Part Time attorneys "as soon as legally possible," recognizing the limitations imposed by the collective bargaining system, and in the meantime institute effective procedures to ensure the employees' accountability.[120]
- Revise the personnel structure to include a grade and step progress with performance criteria so that public defenders receive salary increases similar to those given district attorneys.[121]

Recommendations for the County Executive

- Upgrade leadership at the OPD.[122]
- Require comprehensive reorganization of the OPD.[123]
- Provide adequate access and space for OPD attorneys, paralegals and investigators to conduct confidential client and witness interviews and to facilitate trial preparation.[124]
- Obtain additional office space for the OPD.[125]
- Update information technology ("IT") systems and expand contract for computer research services for use by the OPD.[126]
- Ensure that the OPD implements and enforces the changes recommended by Kalmanoff and this report.

Recommendations for the Court

- Review internal court procedures to ensure timely case management.[127]
- Revise and enforce discovery rules to expedite discovery (preferably electronically) by the D.A.'s Office.128

Allegheny County stands at the same fork in the road it encountered in 1996, with a choice of whether to save money by continuing to ignore serious, systemic problems at the OPD or invest in necessary improvements, which will not cost nearly as much as before and that may ultimately save the County substantial sums. County Officials and the three arms of the criminal justice system must work together to make the changes outlined above, which are necessary to improve the OPD's representation of clients to constitutionally-mandated levels. If the County persists in burying its head in the sand regarding problems at the OPD, in essence choosing the same road taken by Allegheny County in 1996, years of litigation are likely to ensue. But with the benefit of projected savings, even potentially millions of dollars, to be achieved by the changes, the ACLU hopes the County will take the other road, one that will finish the reforms begun but never completed by *Doyle*.

Endnotes

1 Inst. for Law and Policy Planning, Allegheny County Office of the Public Defender Assessment, Final Report, Presented to Michael Wojcik Allegheny County Solicitor 14 (Oct 20, 2008) [hereinafter Kalmanoff].
While the date listed on the report cover is October 2008, the footer on each page of the report notes the date as "January 2009." A copy of the report is attached as Appendix 1, and can be downloaded at http://www.aclupa.org/opd.

2 *Id*. at 26.

3 *Id*. at 6.

4 *Id*.

5 *Id*. at 21.

6 *See Gideon v. Wainwright*, 372 U.S. 335, 342 (1963).

7 *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972); *Starr v. Lockhart*, 23 F.3d 1280, 1284 (8th Cir. 1994).

8 *Frazier v. United States*, 18 F.3d 778, 782 (9th Cir. 1984).

9 *See In re Gault*, 387 U.S. 1, 41 (1967) (extending the right to counsel to juveniles in delinquency proceedings which may result in the juvenile's loss of freedom); *Argersinger*, 407 U.S. at 36-37 (holding that the right to counsel applies to anyone facing the loss of liberty); 42 Pa. Cons. Stat. § 6337.

10 *See* 50 Pa. Cons. Stat. § 7304(e)(1).

11 *Wheat v. United States*, 486 U.S. 153, 159 (1988) (emphasis added).

12 *See United States v. Cronic*, 466 U.S. 648, 656 (1984).

13 *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980).

14 *Evits v. Lucey*, 469 U.S. 387, 395 (1985).

15 *Id.* at 396.

16 ABA Standing Comm. on Legal Aid and Indigent Defendants, ABA Ten Principles of a Public Defense Delivery System (Feb. 2002) [hereinafter ABA].

17

18 *Doyle v. Allegheny County Salary Board*, No. GD-96-13606 (Allegheny Co. Ct. Com. Pl., 1996).

19 Robert L. Spangenberg & Catherine L. Schaever, The Spangenberg Group, A Review of the Allegheny County (Pennsylvania) Public Defender Office (Nov 1995) [hereinafter Spangenberg].

20 *Id.* at 6.

21 *Id.* at 6-7.; At the time of the study Allegheny County's population was approximately 1.3 million, and the OPD's budget was $3.9 million. Philadelphia County, with a population of approximately 1.6 million had a budget of $19.6 million; Middlesex County, Massachusetts, population 1.4 million, budget $14 million.
These similarly sized jurisdictions had public defender budgets of almost four times that of Allegheny County *before* the severe budget cuts. *Id.*

22 *Doyle* Compl. 14

23 *Doyle* Compl. 15

24 *Doyle* Compl. 8

25 *Doyle* Settlement Agreement.

26 *Doyle* Mot. Req. that Defs. Either be Directed to Comply with the Terms of the Settlement agreement Issued in This Case or be Held in Contempt 1.

27 *Doyle* Findings of Fact and Recommendations of Pro Bono Panel 2.

28 Kalmanoff, *supra* note 1 at 7,9.

29 *Id*. at 6.

30 *Id*. at 14 (parentheticals in original).

31 *Id*. at 23.

32 *Id*. at 28.

33 *Id*. at 11.

34 *Id*. at 11.

35 While the Kalmanoff report expended a fair amount of time discussing the system wide problem of excessive continuances, we will not focus on that issue in this report as we recognize there are sometimes legally sound reasons for defense counsel to seek continuances in a case.

36 Kalmanoff, *supra* note 1 at 37.

37 *Id*. at 42-44.

38 *Id*. at 50.

39 *Id*. at 51-52.

40 *Id*. at 52. (Recommendation 16)

41 *Id.* at 23-4.

42 *Id.* at 26.

43 This criticism could possibly be true of many individuals placed in the Chief Public Defender's position. Without greater independence from the judiciary and the political machinations of the County, very few individuals would be able to perform the duties of this position effectively and without being influenced by concerns about the political waters upon which their position tenuously floats.

44 Kalmanoff, *supra* note 1 at 6.

45 *Id*. at 11.

46 *Id*. at 14.

47 *Id.* at 54.

48 *Id.* at 31.

49 *Id.*

50 *Id.* at 23.

51 *Id.*at 33.

52 *Id.*

53 *Id.*

54 National Legal Aid & Deefender Association, Performance Guidelines for Criminal Defense Representation [hereinafter NLADA], , *Guideline 4.2, commentary* ("[d]elay in investigation may result in loss of potential evidence or testimony that would support a defense… investigation may reveal information that could be utilized in plea negotiations, pretrial motions and motions concerning pretrial detention").

55 Kalmanoff, *supra* note 1 at 28.

56 *Id.* at 11.

57 *Id.* at 50.

58 NLADA, *supra* note 53, *Guideline 1.3*.

59 Kalmanoff, *supra* note 1 at 11.

60 The Kalmanoff report noted that the excessive caseloads have contributed to a trend where "the defense tends to focus primarily on the priorities of the defense attorneys to the point where they have become more concerned in a great many instances with their own personal calendars than with the best interests of the defendant." *Id.* at 19.

61 Kalmanoff, *supra* note 1 at 28.

62 *Id.* at 49.

63 *Id.* at 52.

64 *Id.*

65 The figure is derived from an OPD employee roster provided by Allegheny County in response to public record request in July 2011, and has been updated by reports from staff.

66 This figure does not include currently empty positions.

67 Spangenberg, *supra* note 18 at 4.

68 *Id.* at 7,12.

69 Information as of June 2011 cites 15 part –time attorneys remaining in the office. At present there appear to be 14.

70 A number of the issues discussed in this report would likely require discussion and cooperation with the attorneys' bargaining agent in the union.

71 Kalmanoff, *supra* note 1 at 14.

72 *Id.* at 31.

73 *Id.*

74 Spangenberg, *supra* note 18 at 15.

75 *Id.* at 5,10.

76 Both of these numbers reflect cuts from previous years, however, like before *Doyle*, information shows that the cuts sustained by the OPD were much greater than that to the DA's office, almost 8% compared to 0.3%.

77 Kalmanoff, *supra* note 1 at 25.

78 *Id.* at 32.

79 *Id.*

80 *Id.*

81 *See id.* at 48.

82 *Id*. at 13.

83 *Id.* at 24.

84 *Id.* at 33.

85 *See Ramseyer v. Blodgett*, 853 F.Supp 1239, 1258 (W.D. Wash. 1994), aff'd 64 F.34 1432 (9th Cir. 1995).

86 Pennsylvania Rules of Professional Conduct 1.4(a).

87 *Thomas v. Zelker*, 332 F.Supp. 595, 600 (S.D.N.Y. 1971).

88 *See* NLADA, *supra* note 53, *Guideline 2.2*.

89 *Id. Guideline 2*.

90 Weekly v. Jones, 56 F.2d 889, 896 (8th Cir. 1995).

91 *Montgomery v. Peterson*, 846 F.2d 407, 412 (7th Cir. 1988).

92 *See Coles v. Peyton*, 389 F.2d 224, 226 (4th Cir. 1968); *Ramseyer*, 858 F.Supp. at 1259.

93 *United States v. Tucker*, 716 F.2d 576, 882 n.12 (9th Cir. 1983); *see Wallace v. Kern*, 392 F.Supp. 834, 846 (E.D.N.Y 1973).

94 Kalmanoff, *supra* note 1 at 21.

95 *See e.g. id.* at 53.

96 *Massiah v. United States*, 377 U.S. 201, 205 (1964) (quoting *Powell v. Alabama*, 287 U.S. 45, 57 (1932)).

97 *House v. Blakcom*, 725 F.2d 608, 618 (11th Cir. 1984).

98 *Tucker*, 716 F.2d at 581; *United States v. Williams*, 615 F.2d 585, 594 (3rd Cir. 1980).

99 *Moore v. United States*, 432 F.2d 735, 739 (3rd Cir. 1970).

100 *United States v. Kaufman*, 109 F.3d 186, 190 (3rd Cir. 1997).

101 *See Wallace*, 392 F.Supp. at 846-47, *Blackburn v. Foltz*, 828 F.2d 1177, 1183 (6th Cir. 1987).

102 "Jailers" denotes public defender clients who are in jail, not on bond, during their representation.

103 Kalmanoff, *supra* note 1 at 56.

104 This timetable combined with the heavy caseloads many attorneys experience can be identified as a frequent factor leading to the excessive continuances noted by the Kalmanoff report.

105 Kalmanoff, *supra* note 1 at 22. The report found that available data "suggests that repeatedly postponed cases are the rule rather than the exception." *Id.* at 15.

106 *Id.* at 22.

107 *Id.*

108 The ABA's Ten Principles recommend a vertical representation system (where one attorney represents the defendant through all proceedings) in part to avoid this issue of gaps in representation.

109 Kalmanoff, *supra* note 1 at 11,21.

110 *Id.* at 11.

111 *See Ake v. Okla.*, 470 U.S. 68, 70 (1985) (quoting *Britt v. North Carolina*, 404 U.S. 226, 226 (1970)) (emphasis added).

112 Kalmanoff, *supra* note 1 at 77.

113 *See id.* at 83, 86.

114 *Id.* at 32, 54.

115 *Id.* at 23, 33.

116 *Id.* at 50.

117 *Id.* at 56.

118 *Id.* at 49.

119 *Id.* at 52.

120 *Id.* at 31.

121 *Id.* at 48.

122 *Id.* at 31.

123 *Id.* at 42; Pennsylvania is the only remaining state in which all public defender funding is provided by the County government alone. A preferred organizational model by many public defender focused organizations, a reform which would require the involvement of forces outside of Allegheny County, is one in which funding is provide state wide by the state itself. Another model which would be useful for Allegheny County to consider is that of Philadelphia, where the County is the main, but not only funding source.

124 *Id.* at 44.

125 *Id.* at 45.

126 *Id.*

127 *Id.* at 56.

128 *Id.* at 57.

Appendix 1

Institute for Law and Policy Planning, Allegheny County Office of the Public Defender Assessment, Final Report, presented to Michael Wojcik, Allegheny County Solicitor (Oct 20, 2008), referred to throughout as "Kalmanoff" or the "Kalmanoff Report."

A copy of the report can be downloaded at www.aclupa.org/OPD.

Allegheny County Office of the Public Defender – Wish List & Requested Documents

ALLEGHENY COUNTY OFFICE OF THE PUBLIC DEFENDER

OFFICE–WIDE WISH LIST

THE BOTTOM LINE: Experienced, well-trained, fairly compensated and adequately supervised attorneys working in a professional office environment, who have reasonable workloads and sufficient resources and support, will not only enable the Office of the Public Defender (OPD) to achieve its mission of providing competent and effective legal counsel to the poor where representation is constitutionally required, thereby providing equal justice for the indigent, but also will facilitate the efficient and cost-effective operation of the entire criminal court system.

BACKGROUND: The case of *Gideon v. Wainwright,* 372 U.S. 335 (1963), ruled that free counsel for criminal defendants who cannot afford to hire an attorney is mandated upon the states by the Sixth Amendment of the U.S. Constitution. The Office of the Public Defender of Allegheny County was created in 1965 pursuant to the U.S. Supreme Court's ruling. In 1968, pursuant to Article 9, Section 4 of the Constitution of Pennsylvania, the state legislature enacted the "Public Defender Act," 2 P.L. 1144, No. 358, Section 1 et seq., 16 P.S. 9960.1 et seq. In 2002, the American Bar Association developed the attached "Ten Principles of a Public Defense Delivery System," which have been adopted and endorsed by the Allegheny County Bar Association. The Principles set forth the best practices approach to organizing and sustaining the delivery of quality indigent defense legal services.

I. Facilities Improvements -

A. Carpeting throughout the OPD needs to be replaced. The reception area (both the waiting room and receptionist's area) would best be served by installing some type of parquet flooring instead of carpeting.

B. Additional space is needed for private client interviews, a lunchroom, and a bigger, or additional file room (currently file cabinets line the hallways).

C. Functioning air conditioners in all areas of the office are a necessity.

II. Office Equipment and Tools -

A. More computers and workstations are needed for use by Preliminary Hearing attorneys, both in the main office and in City Court, which could also be used by law clerks and interns.

B. An upgraded printer/copier/scanner combination machine, and/or an additional machine of the same grade machine currently in use, is/are needed for use by the Trial Division, Investigators and Intake.

III. Part-time Training Coordinator and Grant Writer – Because attorneys and support staff are hired and moved in and out of divisions throughout the year, it is imperative to have a part-time training coordinator who can be available on an as needed basis to set up training programs for new attorneys and support staff, transferring attorneys and support staff who, and to find and develop free and low cost continuing education programs. The most effective and efficient training calls for a combination of in-

house instruction and mentoring, instruction by experienced criminal lawyers in the private sector, and the utilization of other training resources. Organizations such as the National Association of Criminal Defense Lawyers offer "Train the Trainer" programs. Other public defender offices such as the Philadelphia Defender's Association, as well as offices across the country have training manuals and resources that could be utilized by our office. Investing in a qualified person to gather those resources, organize, schedule, develop and implement training programs for attorneys and support staff.

The same individual could be utilized to search for and apply for grants to cover the costs of training, as well as other initiatives, positions and improvements.

NOTE: County administrators should be prevented from reducing the office's budget when grants are awarded. In the past, when our office successfully obtained grant money, our office's budget was reduced by a substantial portion of the same amount as the grant. Then the funds were not restored when the grant term ended or was not awarded the following year. In fact, during the past two years, the approved budgets were based on the fiction that the office was going to receive funds from a grant that was awarded three years ago. By these means, the value of grants was not only nullified, but ultimately resulted in a financial loss to our office.

IV. Part-time Legal Assistant - The Office would not only better able to serve clients at the initial stages of representation, hiring a part-time legal assistant, preferably with a law degree, would result in cost savings system-wide. The legal assistant would be responsible for handling client correspondence not addressed to a specific attorney, would handle bond reduction requests, initiate early investigation of cases where time is of the essence in obtaining videotapes, phone records, and other potentially exculpatory evidence, gather information to determine what pretrial motions should be filed and discovery materials that should be formally requested.

V. Social Worker - In addition to reaching out to the local colleges to find graduate students pursuing a degree in social work who would be interested in interning with our office, we should employ at least one permanent social worker. The social worker would work with our attorneys to help both our juvenile and adult clients find and get admitted into treatment and other rehabilitative programs, which could not only reduce prison costs, but lower the recidivism rate.

VI. Preliminary Hearing Transcription Services - The OPD could significantly reduce its costs of transcription services it uses in City Court and the district courts if it utilized court reporters provided through the Allegheny County Bar Association, instead of the reporting service currently under contract. A prior request by the former OPD Director to implement this cost-saving initiative was not approved by county administrators for unknown reasons.

VII. Manager Positions - The addition of "Second Line" Supervisors is absolutely necessary in order to adequately supervise, evaluate, discipline, train, and advise attorneys, identify and head off potential problems, and troubleshoot when necessary. Three second line supervisors are needed in the Trial Division, and at least one is needed in the Pretrial Division.

VIII. Attorney Positions - Vacated attorney positions throughout the office must be filled as soon as possible to prevent a crippling effect on the office's ability to meet its constitutional mandate of providing effective representation. Furthermore, at least two attorneys are on long-term military leave. They are not expected to ever return to work for our Office. Thus, a minimum of two additional attorney positions must be allotted to make up for those absences.

By employing a sufficient number of attorneys, the perceived "gaps" in representation would be covered; bond and detainer issues would be resolved earlier resulting in lower jail costs; investigations and case analyses could begin sooner resulting in faster processing of cases; workloads would be reduced giving attorneys more time to prepare and negotiate with the DAs leading to more expeditious and just dispositions; the number of continuances would decline; and the OPD would benefit from the respect of judges and others working in the system, as well as improved client satisfaction and more positive public opinion of the services provided by this County agency, which impacts tens of thousands of County residents each year.

NOTE: In prior years, it has taken from 3 months to more than a year for County Administration just to approve of filling vacant attorney, investigative, support staff, and even part-time law clerk positions (most of which are mandated by the Consent Decree between the County and the ACLU), and several more months to process the paperwork submitted to hire the selected applicants. While these hiring delays may save the County money in the short term, they have costly long-term adverse effects on our Office's operations.

VIX. Staff Attorneys Promotions and Benefits –

A. ***Promotions/Salaries*** - Despite the fact that the starting salary for new attorneys has remained at $39,100 per year (gross) for the past eight years, the Office has been successful at attracting and hiring candidates with strong academic and/or professional credentials. To the extent possible, the Office invests significant time and energy training them, only to watch them leave within five years when they realize that promotions are non-existent, and that their salary won't increase more than about $900 per year, if at all. It would be far more cost-effective to give attorneys an incentive to stay, rather than have to continually hire and train new attorneys. Inexperienced attorneys make more performance and judgment errors, take longer to process cases, are not as skilled in client-communications, require closer supervision, and are less successful at negotiating with prosecutors. In addition, a high turnover rate adversely affects public perception with regard to the quality of services provided by the office.

In addition, the disparity between the salaries of our staff attorneys and those of their counterparts (with comparable duties and number of years of experience) in the DA's Office, has not been corrected via union contracts. The gap widens each year. For example, one appellate attorney with this Office who started in 2001 is earning approximately $49,500. An appellate attorney hired by the DA's Office in 2002 is earning approximately $54,200. The difference is that the OPD attorney is classified as an "Attorney 4" whereas the DA attorney is classified as an "Attorney 3." In fact there are no "Attorney 3s" in the OPD – only Attorney 4s and a handful of Attorney 2s. The levels are not defined by any distinct criteria such as number of years or duties; they are merely labels used to designate different pay grades.

The argument that the DA's Office handles 100% of the criminal cases and the OPD handles 60%-65% of the cases justifies the pay disparity is flawed. The DA's office employs more attorneys, investigators and other personnel in order to handle their caseload. The DA's office also has more managers. In any event, about 95% of all cases result in guilty pleas. In addition, the DA's Office is not subject to the constitutional mandates imposed on the OPD.

One means to remedy this disparity would be to allow the Director to give merit-based promotions in the form of re-classifying OPD attorneys. A proposed promotions policy for staff attorneys appears below.

1. All full-time attorneys with seven or more years of employment with the Office of the Public Defender will be eligible for a merit-based promotion from a Trial Defender 4 to a Trial Defender 3 position.

2. All full-time attorneys with fourteen or more years of employment with the Office of the Public Defender will be eligible for a merit-base promotion from a Trial Defender 3 position to a Trial Defender 2 position.

3. Recommendations for promotions will be submitted to the Director by the Division Deputy who supervises the candidate. Recommendations will be based on Performance Evaluations, and other measures as determined by the Director. Final approval of the recommendations will be made by the Director.

4. Each Deputy Director may submit up to 4 names per year for consideration for promotions.

B. ***Benefits*** - A further de-moralizing disparity between the OPD and DA's Office affecting both attorneys and support staff is the fact that the District Attorney is permitted to give his employees more days off than the OPD employees are allowed by the County/Union contracts.

In order to partly offset the County's apparent lack of sufficient funds to give fair and reasonable salary increases, it is requested that at least until such increases are effectuated, the County allow the Director of the OPD to give additional leave to all employees. Like the DAs, OPD staff should be given the same Holidays taken by the Court of Common Pleas employees. Since the OPD conducts most of its business with that court, and its different offices, the impact on the OPD's business operations would be minimal.

X. Deputy Directors' and "Second Line" Supervisors' Salaries –

The disparity between the salaries of OPD managers and those of their counterparts in the DA's Office also is substantial. For example, the deputy director of appeals in the OPD earns $15,000 less than her male counterpart in the DA's office, who assists his boss in other areas (as does the appellate deputy in appeals), but who supervises fewer people, carries a minimal caseload, and delegates many of his duties to a senior staff attorney in the division. Salary increases for OPD managers are few and far between. The most recent increase was almost eight years ago. No cost of living increases have been given. In addition, ten staff attorneys earn salaries between $10,000 and $15,000 more than the deputy directors. It is difficult to attract and hire experienced, qualified attorneys as managers under these circumstances.

Proposed salary and salary increases for deputy directors and "Second Line" supervisors appear below. "Second Line" supervisors refer those managers in trial and possibly pretrial services whom it is recommended be hired to assist the deputies in those respective divisions. For example, as discussed above, the trial division should have one deputy and three "second line" supervisors to manage the more than 30 attorneys in that division.

1. All Deputy Directors shall make a starting salary that is at a minimum the same as that of his or her manager counterpart in the District Attorney's Office. In the absence of a counterpart manager, the Director shall set the starting salary of a Deputy Director at an amount no less than the lowest starting salary of a Deputy Director who has a counterpart manager in the DA's Office.

2. All Deputy Directors with one to ten years of employment with the Office as a manager will be eligible for merit-based increases in salary totaling up to $10,000.

3. All Deputy Directors with eleven to twenty years of employment with the Office as a manager will be eligible for merit-based increases in salary totaling up to $20,000.

4. All "Second Line" Supervisors shall make a starting salary that is at a minimum the same as that of his or her manager counterpart in the District Attorney's Office. In the absence of a counterpart manager, the Director shall set the starting salary of a Second Line Supervisor at an amount no less than the lowest starting salary of a Second Line Supervisor who has a counterpart manager in the DA's Office, or $15,000 more than a union attorney with the same number of years of experience working in the OPD, whichever is higher.

5. All Second Line Supervisors with one to ten years of employment with the office as a manager will be eligible for merit-based increases in salary totaling up to $10,000.

6. All Second Line Supervisors with eleven to twenty years of employment with the office as a manager will be eligible for merit-based increases in salary totaling up to $20,000.

XI. **Support Staff Salaries** - The possibility of providing merit increases to support staff should be explored. There are several secretaries and other support personnel who are highly proficient and regularly "go the extra mile," in doing their jobs, assisting our clients, and providing general information to the public. Training, experience, responsibilities and performance evaluations would all be considered in approving such salary increases, to the extent allowed by the SEIU contract.

XII. **Non-profit Status** - Our Office should be allowed to become a "nonprofit" - a 501(c)(3) organization - so that we can solicit charitable contributions and conduct fundraising events to raise money to supplement specific line items in our budget that are underfunded. Philadelphia's PD's office is such an organization I believe. The County/State would still be responsible for providing a substantial portion of our funding.

XII. **State Funding** - **Allegheny** County government, along with all county governments in Pennsylvania, should put political pressure on the state government to provide state funding for public defender services.

The Pennsylvania legislature's own Joint State Government Commission, after four years of study at the request of the state Senate, issued *A Constitutional Default: Services to Indigent Criminal Defendants in Pennsylvania* in December 2011. It found that Pennsylvania fails its constitutional mandate to adequately protect fairness in its state court criminal and delinquency justice system, and does not meet reasonable professional standards of accountability, oversight, training, and supervision.

Pennsylvania remains the **only state** that refuses to provide funding for any level of legal criminal or delinquency defense representation services...delegating its constitutional mandates to the counties.

As Phyllis H. Subin, Executive Director of the **Pennsylvania Coalition for Justice** reported:

It is time for Pennsylvania to get *smart on crime* and to make better informed policy decisions on how it funds the state's justice system. Without state funding for indigent defense legal services tax payers will continue to pay for retrials when cases are not tried *right* the first time around; tax payers will continue to pay for higher prison and county jail/detention center costs; victims will experience court delays and not receive a faster settlement for their cases; and innocent adults and children will continue to suffer the unfairness of the system.

The Pennsylvania Joint State Government Commission's *Constitutional Default Report* got it right: while the Commonwealth faces a difficult fiscal environment, the Governor and General Assembly must perform their duties under the U. S. Constitution, and, as a civilized society, finally address the imbalance and deficiencies that undermine the Commonwealth's mandated system for delivering indigent defense legal services to adults and children. Achieving fair criminal and delinquency justice system outcomes reduces prison/detention costs and benefits all citizens of Pennsylvania.

Trial Division Needs List:

The Trial Division endorses the requests listed in the Office-wide memorandum.
In addition, Trial Division requests the following:

1. Additional staff attorneys.
2. Additional support staff.
3. Access to the non-public CPCMS.
4. Replacement and up-grades to aging IT equipment: most immediately the replacement of 12 CRT monitors with flat-screen monitors.
5. Equipment for video visits between attorneys and ACJ inmate clients.
6. At least one social worker.
7. One Para-legal/Legal Assistants to handle referrals from Adult criminal courts to specialty courts, (Mental Health, Drug, Veterans, ARD, etc.)
8. New office chairs, (approx 25).
9. Carpet protectors for all work spaces.
10. New window blinds.
11. New desk phones with speakers.
12. Clean the Central Air Conditioning vents.

The Juvenile Division of the Office of the Public Defender is composed of 2 Legal Secretaries, Secretary, 11 staff Attorneys (2 retain the right to private practice) and the Supervising Juvenile Chief. The division represented children at 13, 151 matters in 2011.

Juvenile Division Needs List:

Materials

1. The unit printer is 10-12 years old and showing signs of rapid disintegration.

2. New Fax is functioning, but not designed to handle the daily load of 50-150 pages.

3. Two of the Juvenile division staff attorneys do not have desktop computers.

4. We are unable to accommodate students and volunteers because we lack desktops for their use. We lack space to house them during work.

5. At Shuman Center, we are in need of a notebook/net book which would facilitate entry into Legal Edge, Conflict checks and use of the Court E-File systems. Additionally, we need to be able to show our clients essential information about proposed placements etc.

6. At Shuman Center, we are in need of a dedicated printer with scanning capabilities. We are not authorized users of the machine at Shuman maintained by probation. This would permit us to e-mail detention hearing notes and materials to the office as well as to mount them within Legal Edge.

7. The "***Importer***" to Legal Edge would turn the program into an efficient case management system. This idea was fully developed by Legal Edge and the County Computer Department. At the time, estimated costs were $10,000. It would populate the Juvenile portion of Legal Edge with information from the County Family Court/Juvenile Court filing system.

8. Improved Legal Edge would allow us to reduce file storage issues.

9. The County Computer Dept. and Mr. Machen received approval for a special grant permitting us to receive "netbooks" as the technology became outdated (under $100/unit). These netbooks would permit our staff to show our clients essential information about proposed placements, utilize Legal Edge etc. These netbooks would not replace desktops. They are fragile, inexpensive, nearly obsolescent technology. We await their arrival.

10. The printer assigned to Chief Juvenile Counsel is frequently non-functional. A new one was ordered several months ago and never arrived. The life of the large printer in the Juvenile division could be extended by providing each of the current support staff with printers.

11. I've attached a copy of Ms. Cleary's Requirements & Capital Office Resources Plan

12. Please consider the following office resources for the Juvenile Division:

13. **Carpeting** – Needs replacement. Carpet is currently unraveling at the seams creating a trip hazard, as well as being stained.

14. **General Cleaning** – The entire space needs a heavy-duty cleaning as there is a large amount of dust, dirt, and stains present on surfaces including the air vents.

15. **Door Locks** – The Juvenile Counsel's door currently has no locking mechanism.

16. **Filing cabinets** – At least 3 cabinets have broken drawers, some are without keys, and on others, locks are difficult to use. The suggestion is for a rotary filing cabinet system---which would require less space. Alternatively, it is estimated there is a need for 5 new lateral cabinets.

17. **Windows** – 4 windows are currently without blinds. 1 window can't be opened due to a broken chain.

18. **Chairs** – 3-4 desk chairs will need replacement over the next couple years. The mechanism is already malfunctioning on several. For the small interview area, better chairs, that are a better fit with the space, should be considered.

19. **Desk Fans** – Suggestion was made for the purchase of 2-3 desk fans to improve air circulation.

20. **File racks and bins** – A better designed and more uniform system would increase efficiency as well as provide a more professional look.

21. **Walls** – The walls in the Juvenile Division area were last painted around 2001 when the division moved from Oakland. A new coat should probably be considered as part of the 3 year plan.

22. **Coat rack(s)** – A stable, modern design to fit the available space.

23. Vis-à-vis technology—Frank may have already reviewed this area with Larry:

24. **Computers** – 2 work areas currently have no computer or a nonworking computer. Laptops are also requested.

25. **Fax machine** – Needs replacement, maybe sooner rather than later, and with a model that is heavy-duty due to the large volume of faxes.

26. **Printers** – The current large 8000 printer will likely need replacement or extensive overhaul. Another networked printer is also needed for busy time periods and the easy production of envelopes.

27. **Scanner** – specifically for use with paper exhibits (electronic filing requires) and scanning paper input for Legal Edge.

Personnel:

1. Because the nature of our work changed dramatically following the Luzern County tragedies and new case law, we need a team which specializes in Disposition and within that, complex disposition. We need an additional (2) Social Workers and several (6) attorneys to meet the burdens imposed upon us by the aforementioned and impact wrought by mandated representation of all children at all stages. We are responsible for proving that a child does not need treatment, rehabilitation and supervision as part of the Court's delinquency adjudication process. ***In re: M.W.,*** 994 A.2d 620 (PA. Super. 2010) etc. Input from outside sources is more significant earlier on in the process. Investigative Interview staff needs to be increased by (2) to accommodate this change.

2. Children who are detained at Shuman Center on weekends are not interviewed by staff prior to their Monday morning detention hearings. At present, we do not have available attorney staff or paralegals to perform this essential function.

3. We are not adequately staffed to fulfill our duties regarding contact with adjudicated clients. Presently, our attorneys "prioritize" client contact instead of assuring that each client is contacted regularly to assess ongoing legal needs. Similarly, we cannot meet their needs with the mere presence of one Social Worker (Placement Specialist). We are obligated to make more contact with our clients. Children respond better to physical contact. Video may be an acceptable substitute.

4. Until the departure of Robbie Henderson, we had an investigator specifically assigned to the Juvenile Unit. This dramatically increased efficiency for the staff regarding interviews with witnesses and essential records gathering both in the office and at Shuman Detention center.

5. We are blessed at present in that most of our attorneys type their own motions etc. Upon inheriting staff that is unable or unwilling to perform these functions, we would have a huge impediment. The 3 support staff of the Juvenile Division handled 10000+ matters. We are in need of support staff dedicated to filing.

6. We need assistance with the process of gathering statistics both for the office and for grant application and maintenance. A substantial amount of this could be shouldered by a paralegal and an additional legal secretary. These duties could be performed by an assistant supervisor, who would also assist with training requirements.

Pre-Trial Services Division Needs:

- An upgrade in the quality, quantity and usability of the workspace in room 417, which is the workspace shared by the attorneys primarily assigned to do preliminary hearings for the office;
    - Work surfaces / desks / cubicles, whatever design would maximize the work space as well as look more professional and accommodate the need of up to 15 people to work in the room at the same time;
    - Computers, a printer (perhaps combined with a copier), multiline phones which allow conference calling, drawer space;
    - A much more powerful air-conditioner;
    - Chairs which are appropriate for office work;
    - Additional basic industrial office supplies: 2 & 3-hole paper punchers, staplers, staple removers, tape dispensers, scissors, desk lamps;
    - Fresh paint & carpeting would be great;
    - It would also be very helpful if a significant size glass window cut-out could be placed in the wall the separates the bigger open room from the office inside the big room.

- An upgrade in the quality and usability of the workspace designated for use by the Public Defenders in City Court
    - Work surfaces / desks / cubicles that will maximize the small space for more productive use by the staff of five or so, who are routinely there;
    - Another computer and a better quality printer / copier / fax machine, at least one multiline phone which allows for conference calling;
    - Chairs which are appropriate for office work;
    - A bookcase or some type of shelving unit;
    - Additional basic industrial office supplies: 2 & 3-hole paper punchers, staplers, staple removers, tape dispensers, scissors, desk lamps;

- Fresh paint & carpeting would be great;
- A small vacuum cleaner would be very helpful, since apparently there the cleaning or maintenance service provided within the building is not available to the Public Defender office.

- An additional two attorneys assigned to the Division would allow a much more effective and productive assignment of work tasks in the Division, allowing some leeway for cross-training, and reducing the crises response when there are "call-off's," the use of FMLOA and other unexpected absences.
    - The staffing concerns are also exacerbated because there are several highly specialized practice areas within PTS and several attorneys with significant longevity who have maximum vacation leave options which have to be honored and their work assignments covered.

- A Master's level or more Social Worker on staff who could develop and supervise an ongoing social work internship program, which would include student social workers assigned to PTS.

- Pre-printed labels for client files which will not subject staff to hand-writing interpretation issues.

- A user-friendly database which would permit better analysis of work performed and better planning for upcoming work assignments.

- Electronic access to criminal complaints and affidavits for our cases, rather than taking the client copy to make our files.

- Electronic access to the "risk assessment" document and supporting information developed by the A/C Pre-Trial Services Agency, Bail Division.

Electronic access to "Gag 1" documents relevant to our clients

Appellate Division Needs List:

DIVISION FUNCTION: The federal and state constitutions have been interpreted by the U.S. Supreme Court and the Pennsylvania Supreme Court as mandating that all indigent criminal defendants who have been convicted of a crime have an absolute right to take an appeal even where counsel, and/or the lower court, and/or the Commonwealth believe that there are no meritorious issues or hope of obtaining relief. The Pennsylvania legislature also has mandated that the Public Defender's Office provide representation to indigent defendants in appeals from probation and parole revocations, from juvenile adjudications, and in state post-conviction proceedings after a direct appeal has been taken.

I. <u>Division Equipment and Tools</u> -

A. *Computers* - Appellate work requires full-time use of computers, printers and copiers. Our computers "burn out" regularly. They need to be updated or replaced.

B. *Printer/Copier/Scanner* - We will need a second copier/printer/scanner combination machine that is similar, if not better, that the one that is now in constant use by not only the division, but by the entire office.

The Pennsylvania Supreme Court has recently launched a pilot program for its e-filing system. It will be fully implemented within the next two years, if not sooner. Within the next four years, it is anticipated that the Superior Court will do the same. The e-filing system requires certain technology – both hardware and software – to utilize it fully and effectively. Our Office cannot afford not to invest in the necessary tools to allow make the appeals process as efficient as possible. To that end, the following items are needed:

1. High speed scanner that can convert to OCR (Optical Character Recognition) to edit scans

2. Acrobat Software to be able to create and edit PDFs ("Adobe Pro") – it is our understanding that the County currently is negotiating to obtain this software.

3. CD readers and burners

4. Large capacity paper shredder (to protect confidential records)

II. Attorneys - Two of our division's attorneys resigned within a few months of each other. One attorney retired, and one took a job as a Clerk for a Superior Court Judge. We were able to fill one vacancy, but have been waiting several months for approval to fill the second position. The newest attorney cannot yet handle a full caseload. As a result, the workload of the remaining attorneys has been steadily increasing, as have the requests for extensions of time to file petitions and briefs.

III. Support Staff – Our division produces, files, retrieves and receives a high volume of letters, motions, petitions, briefs, and orders, in addition to telephone calls from clients, their friends and relatives, judges, clerks and staff in other divisions and outside the office. Two legal secretaries work very hard to keep up with the work given to them by 12 attorneys, law clerks and interns. They are skilled and proficient in their work; however, they are overburdened with multiple and varied tasks. In order for our secretaries to be more efficient and reduce the number of oversights/errors, the division would benefit greatly from the assistance of a clerk/typist.

IV. Part-time Law Clerks - The Office currently has 3 unfilled part-time law clerk positions. All law clerks and interns are supervised by the Deputy Director of the Appellate Division, with the exception of those who are assigned to the Pretrial Services Division. We require our part-time law clerks to commit to a year of working 20 hours per week. Their consistent, reliable presence and assistance in doing research and preparing motions for attorneys throughout the office, providing investigative assistance, and conducting preliminary hearings, saves our attorneys countless hours, and frees them to focus their attention on other aspects of case preparation. In turn, these law clerks gain much knowledge and skills. Because we are able to observe them over a significant period of time, we are better able to evaluate them in considering whether to hire them as attorneys in the future.

IV. Books - Westlaw Next is an invaluable research tool for the entire Office. However, it is most efficiently utilized if a researcher can narrow the search as much as possible before using it. In addition, attorneys in all divisions, law clerks and interns would benefit from having certain reference books "on hand." Such books put at the researcher's fingertips all the basic cases for which the holding is

remembered, but the name is not. Furthermore, certain publications contain information that specifically addresses the practice of law in Allegheny County. Finally, attorney training manuals would be very useful as a training tool. The following books are requested:

1. The Western Pennsylvania Court of Common Pleas Judges Book – provides helpful tips to young lawyers regarding practices and procedures specific to individual judges.

2. The Defender Association of Philadelphia Training Manuals

3. Trial Techniques by Thomas A. Mauet

4. Pennsylvania Rules of Evidence with Trial Objections, 4th by Charles B. Gibbons, published by Thompson Reuters

5. Pennsylvania Criminal Procedure by Bruce Antkowiak

6. The Law of Arrest, Search and Seizure in Pennsylvania by David Rudovsky

7. Pennsylvania Driving Under the Influence, by Timothy P. Wile and Marc A. Werlinsky, published by Thompson Reuters

8. Pennsylvania Post-Conviction Relief Act – Practice and Procedure, by Thomas M. Place

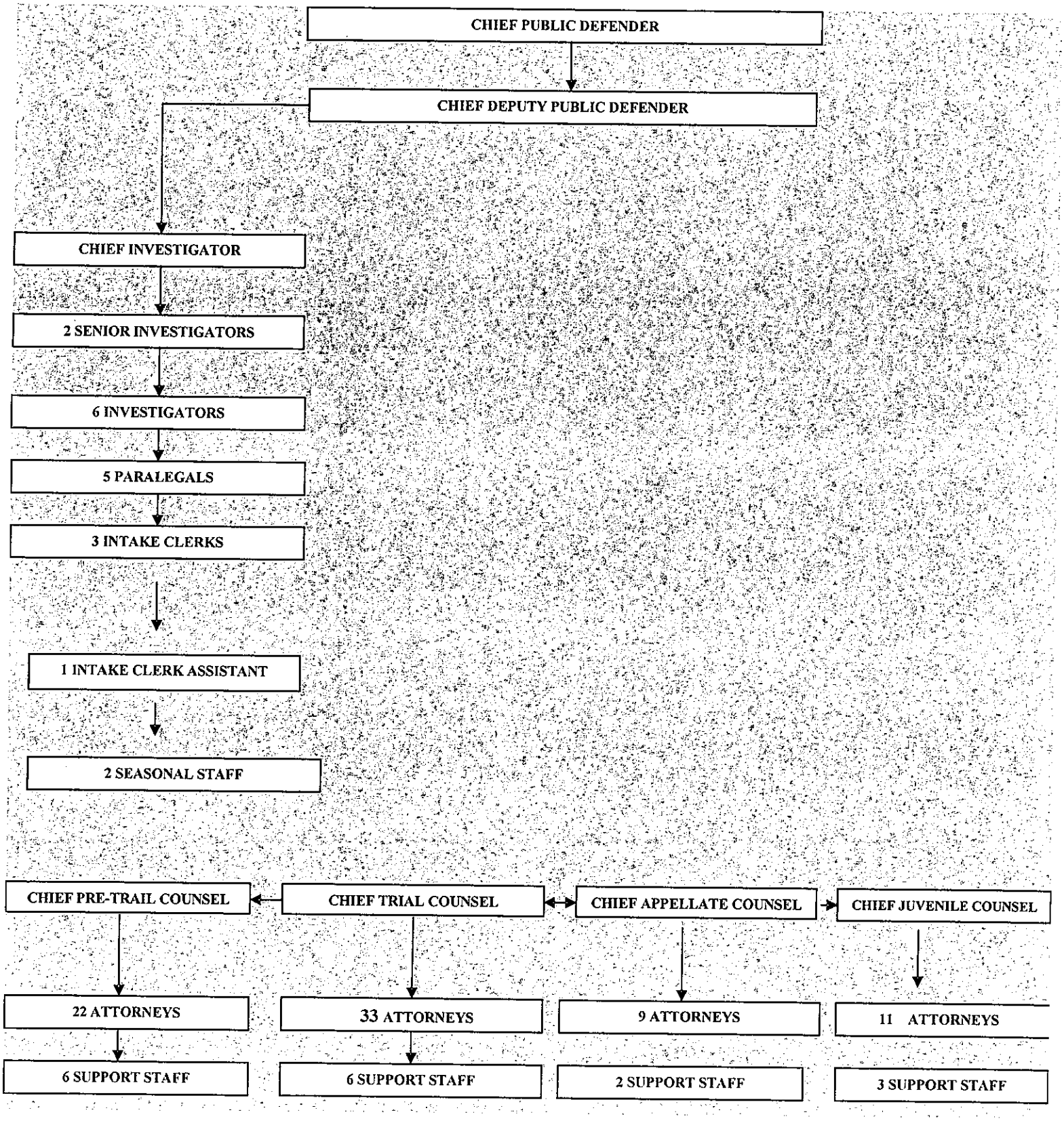
9. Law of Probation and Parole, West's Pennsylvania Practice Volume 12

V. Appellate Practice Out-of- Pocket Expense Coverage -

A. *Capital case certification credit funding* - The OPD and District Attorney's Office offer joint free seminars to their attorneys to enable them to meet their CLE credit requirements. However, none of those seminars offer credits needed by our attorneys who handle capital trials and appeals. Those attorneys attend free capital case seminars offered by outside organizations, and sometimes are able to get scholarships to attend other capital case seminars. However, our attorneys often have to cover the cost of those seminars out of their own pockets. The OPD should reimburse them to ensure that selected attorneys are prepared to handle capital trials and appeals every year.

B. *Supreme Court Bar Fees* – Appellate attorneys are responsible for representing clients on appeal from the Court of Common Pleas through the Superior, Supreme and Commonwealth Courts. Each year, a few cases merit the filing of petitions for writs of certiorari. Currently, only two attorneys are admitted in the Supreme Court of Pennsylvania. The cost of admission to that Bar ($200) prevents the remaining attorneys in the division from applying for admission. This consequently impacts on decisions of whether or not to seek certiorari, despite the existence of strong issues.

Office of Public Defender Organizational Chart


CHIEF PUBLIC DEFENDER
CHIEF DEPUTY PUBLIC DEFENDER
CHIEF INVESTIGATOR
2 SENIOR INVESTIGATORS
6 INVESTIGATORS
5 PARALEGALS
3 INTAKE CLERKS
1 INTAKE CLERK ASSISTANT
2 SEASONAL STAFF
CHIEF PRE-TRAIL COUNSEL
CHIEF TRIAL COUNSEL
CHIEF APPELLATE COUNSEL
CHIEF JUVENILE COUNSEL
22 ATTORNEYS
33 ATTORNEYS
9 ATTORNEYS
11 ATTORNEYS
6 SUPPORT STAFF
6 SUPPORT STAFF
2 SUPPORT STAFF
3 SUPPORT STAFF

Services to Indigent Criminal Defendants in PA: Report of the Task Force & Advisory Committee on Services to Indigent Criminal Defendants

11/14/11 REPORT DRAFT

A CONSTITUTIONAL DEFAULT: SERVICES TO INDIGENT CRIMINAL DEFENDANTS IN PENNSYLVANIA

REPORT OF THE TASK FORCE AND ADVISORY COMMITTEE ON SERVICES TO INDIGENT CRIMINAL DEFENDANTS

DECEMBER 2011

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
108 Finance Building
Harrisburg, Pennsylvania 17120

The release of this report should not be interpreted as an endorsement by the members of the Executive Committee of the Joint State Government Commission of all the findings, recommendations and conclusions contained in this report.

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The Joint State Government Commission was created by the act of July 1, 1937 (P.L.2460, No.459) as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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EXECUTIVE SUMMARY

In the landmark case of *Gideon v. Wainwright*, the U.S. Supreme Court ruled that free counsel for criminal defendants who cannot afford to hire an attorney is mandated upon the states by the Sixth Amendment of the U.S. Constitution. Justice Hugo Black explained why this conclusion is necessary if the courts of this nation are to administer genuine justice:

> [R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the wide-spread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.[1]

The U.S. Supreme Court has subsequently extended the requirement of free counsel from the felony prosecution involved in *Gideon* to misdemeanor prosecutions and juvenile proceedings and from the trial itself to all "critical proceedings" after arrest.

However, a thorough study of the Commonwealth's indigent defense system (IDS) published in 2003 by the Pennsylvania Supreme Court Committee on Racial and Gender Bias concluded that the Supreme Court's mandate has been ignored by the General Assembly, and largely because of that neglect, is not being fulfilled in Pennsylvania:

> Despite the expansive procedural rights afforded under law, indigent criminal defendants in Pennsylvania are not assured of receiving adequate, effective representation. Notably, Pennsylvania, South Dakota, and Utah are the only three states that provide no state funds to ensure that

[1] *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S.Ct. 792, 796-97 (1963).

> indigent citizens are afforded adequate criminal defense services. Pennsylvania also does not provide any statewide oversight of indigent defense systems.
>
> The study reported here . . . indicates that Pennsylvania is generally not fulfilling its obligation to provide adequate, independent defense counsel to indigent persons. Contributing factors include the Commonwealth's failure to provide sufficient funding and other resources, along with a lack of statewide professional standards and oversight. In addition, efforts to improve the indigent defense system have been impeded by the lack of reliable, uniform statewide data collection.[2]

In the intervening eight years, the only significant change is that South Dakota and Utah now do provide some state funding for indigent defense, leaving Pennsylvania as the *only state* that does not appropriate or provide for so much as a penny toward assisting the counties in complying with *Gideon's* mandate.[3] This failure is particularly burdensome to the poorer counties, which must contend with the dual handicap of scant resources and high crime rates.

The lack of state financial support and oversight has led to a service deficiency syndrome, as summarized in the *Racial and Gender Bias Report*:

> Pennsylvania has no mechanism in place to hold accountable either the lawyers who represent the poor or the county and judicial officials who administer indigent defense systems. The absence of guidelines for the appointment of counsel has resulted in minimal quality control. In addition, the flat fee paid to appointed counsel can be a disincentive to effective preparation and advocacy; the low compensation rates create little incentive to develop expertise in criminal defense. Moreover, the sparse resources available for support services, coupled with exploding and unmanageable caseloads, allow indigent defense counsel little time, training, or assistance for conferring with clients in a meaningful manner, researching relevant case law, reviewing client files, conducting necessary pre-trial investigations, securing expert assistance or testimony, or otherwise preparing adequately for hearings and trials. Compounding these deficiencies is the lack of political independence afforded PDs whose budgets are controlled by local county politicians.[4]

---

[2] *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System* (*Racial and Gender Bias Report*) (n.p.: Pennsylvania Supreme Court, 2003), 164-65.

[3] Some counties received small amounts that helped support indigent defense for juveniles in FY 2010-11 and earlier fiscal years through the Department of Public Welfare (DPW), but that funding has been terminated for FY 2011-12. There has never been a line item in the Commonwealth budget specifically for funding indigent defense, nor do our statutes provide for funding through a special fund or any similar mechanism.

[4] *Racial and Gender Bias Report*, 168.

For many defendants, this means the attorney's knowledge of the facts of the case will be supplied entirely by the police report, perhaps supplemented by a hurried conversation with the client on the way to the hearing that will dispose of the case. Due to the impediments faced by those representing indigent defendants, despite their best efforts, there have been instances where a man or woman who was completely innocent of the offense or who had a perfectly valid defense to the charge nevertheless served jail time.

The problem is not the public defenders (PDs) themselves, but the system in which they work. Most PDs are hard-working, committed, and competent professionals. The problem is that they must work against daunting obstacles: inadequate training and oversight, severely limited resources, and unmanageable caseloads. In many of Pennsylvania's counties, the most brilliant and accomplished lawyer could not provide adequate representation because he or she simply would not have the time and resources needed to mount a constitutionally adequate defense. Broadly speaking, Pennsylvania's indigent defense labors under an obsolete, purely localized system, a structure that impedes efforts to represent clients effectively. The General Assembly can greatly improve the system by adopting systemic reforms based on the ABA's "Ten Principles of a Public Defense Delivery System,"[5] which state the widely accepted standards for improving a state indigent defense system (IDS).

Because our IDS is funded and managed exclusively at the county level, there are glaring disparities in the services, training and supervision provided in different counties and often a lack of professional independence from outside interference. The "kids for cash" scandal in Luzerne County has thrown these deficiencies into sharp relief. Former Judge Mark Ciavarella of the Court of Common Pleas of Luzerne County violated the constitutional rights of up to 4,000 juveniles. The special master appointed to determine the final disposition of these cases identified 1,866 cases in which juveniles appeared before Judge Ciavarella without counsel or where the right to counsel was not properly waived. Juveniles who had committed minor offenses were consigned for harshly excessive terms to juvenile detention centers in return for kickbacks and other favors that a co-owner of the centers rendered to Ciavarella and former Judge Michael Conahan. The chief PD of the county at the time directed office staff to deemphasize juvenile cases because of lack of resources. Partly because of this official policy, it became accepted practice before these judges that juveniles would face the court with either no legal representation, or only token representation, and that no effort would be made to ensure that waivers of constitutional rights would be informed and voluntary.

The failure of the legal community to respond appropriately to these unconstitutional practices enabled them to continue unchecked. This scandal illustrates the need for statewide structures to ensure that local IDSs will be overseen and held accountable for unprofessional practices and will be independent of political and judicial interference.

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[5] American Bar Association, "Ten Principles of a Public Defense Delivery System," (ABA, February 2002) http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciples booklet.pdf.

While recognizing the difficult fiscal environment the Commonwealth faces currently, the advisory committee urges the General Assembly to perform its duties under the U.S. Constitution and as a civilized society by finally addressing the deficiencies that undermine its indigent criminal defense system by reforming the system to comply with national standards.

FINDINGS

Based on the data collected for this study and the personal observations of the advisory committee members, based on their extensive experience, the committee presents the following findings regarding the Commonwealth's IDS, many of which are nearly identical to those reached eight years ago in the *Racial and Gender Bias Report*:

- In much of the Commonwealth, the IDS suffers from interference from the county administration and the county judiciary. An IDS can perform its function only when it is free from those influences.

- Lack of standardized, well-defined training, supervision, and accountability has contributed to the failure of some indigent defense practitioners to provide representation that meets professional standards.

- Lack of state support has undermined the effectiveness of indigent defense in much of Pennsylvania.

- Local defenders lack access to resources essential to effective representation: investigators, experts, technology, training and supervision, social workers, administrative staff, private meeting space, and access to legal research materials.

- Salaries for PDs are seriously inadequate and are often below salaries for prosecutors, leading to low morale and high attrition rates.

- Lawyers representing indigent defendants often carry caseloads so excessive as to drastically impede the ability of counsel to provide competent, effective, and ethically responsible representation.

- Processes and practices for appointing and remunerating assigned and conflict counsel result in poor quality representation.

- The system lacks any systematic statewide mechanism for collecting data, and access to existing data is unnecessarily impeded. Since there is no centralized data collection point, the current data from individual counties is so inconsistent and unreliable that no useful statewide caseload numbers can be reported.

- Additional state funding necessary to improve the system is likely to be partially offset by savings generated by reducing the cost of retrials due to ineffective representation and the cost of inappropriate jail sentences.

This report will describe in more detail the deficiencies in the system and recommend that statewide oversight and funding are necessary to create an IDS that recognizes the rights and dignity of individual defendants and complies with the Constitutions of the United States and of Pennsylvania. Throughout the nation, much careful thought has gone into formulating the broad principles and particular standards that should characterize an effective IDS. The "Ten Principles of a Public Defense Delivery System," as developed by the ABA are the accepted criteria for IDS reform throughout the nation. The Commonwealth must strive to develop and implement these principles if it is to have a system that meets the constitutional demands of basic justice.

The following chart sets forth the advisory committee's evaluation of Pennsylvania's IDS as measured against the ABA's Ten Principles:

ABA PRINCIPLE	**PENNSYLVANIA IDS PERFORMANCE**
1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.	In many counties, the IDS is subject to interference from the judiciary, the county commissioners, or both.
2A. Where the caseload is sufficiently high, the IDS consists of both a defender office and the active participation of the public bar.	The private bar is meaningfully involved in the provision of indigent defense, but the quality of representation is not monitored and attorneys are significantly underpaid.
2B. There should be state funding and a statewide structure responsible for ensuring uniform quality statewide.	There is no direct state funding, nor is there a statewide administrative structure for ensuring uniform quality of representation or reasonably consistent eligibility standards.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.	In some counties, representation begins before the preliminary hearing (as it should), but in other counties, that hearing is the first time the attorney meets with the client.

ABA PRINCIPLE	PENNSYLVANIA IDS PERFORMANCE
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.	Compliance unknown, due to lack of data. However, in some counties problems with providing adequate space have been identified.
5. Defense counsel's workload is controlled to permit rendering of quality representation.	In many if not most counties, attorney workloads substantially exceed recommended limits, which do not include several types of cases that did not exist when those limits were formulated.
6. Defense counsel's ability, training, and experience match the complexity of the case.	Counties use a variety of systems for assigning counsel to cases. In many counties, an attorney license and membership in the county bar are the only requirements for a noncapital case.
7. The same attorney continuously represents the client until the completion of the case.	In many counties, PDs are assigned to courtrooms rather than clients, and it is common for several attorneys to handle a case throughout the entire criminal process.
8. There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.	In most counties, the resources available to the DA are much greater than those of the PD and the DA has more political influence than the defense bar.
9. Defense counsel is provided with and required to attend continuing legal education.	Aside from mandatory CLE requirements, indigent defense counsel generally do not participate in professional development courses, and when they do they often must pay all or part of the cost themselves.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.	The system's inability to provide supervision and accountability has resulted in a deterioration of professional standards.

In general, the Defender Association of Philadelphia measures up to these standards much better than IDSs elsewhere in the Commonwealth. However, the compensation for contract and conflict counsel in Philadelphia is lower than in the other counties and thus utterly inadequate. There is considerable variation in the performance of the other county IDSs in Pennsylvania, but the Commonwealth as a whole meets only one of these principles, viz., Principle 2, involvement of the private bar. (Continuing legal education (Principle 9) is mandated but often not "provided" except at the attorney's expense.) The advisory committee therefore concludes that Pennsylvania fails to meet its constitutional duty to provide effective legal defense for indigent defendants in criminal cases.

RECOMMENDATIONS

Recommendation 1: Compliance with the Constitution

The Commonwealth of Pennsylvania should adhere to its obligations regarding the right to competent counsel under the Sixth Amendment of the Federal Constitution and article I, § 9 of the Pennsylvania Constitution, in order to guarantee fair adult criminal and juvenile proceedings. Accordingly, the Commonwealth should assure that quality indigent defense services are provided to accused persons who cannot afford to hire counsel. This can best be done by adopting the ABA's "Ten Principles of a Public Defense Delivery System" as the guiding principles for Pennsylvania's indigent defense system.

Recommendation 2: Statewide Indigent Defense Agency

Pennsylvania should establish a statewide, independent, non-partisan Office of Indigent Defense, headed by a board responsible for all components of indigent defense services. Because of the longstanding status of the Defender Association of Philadelphia (DAP) as the city's the provider of indigent defense services and its recognized excellence in meeting the heavy responsibilities of that task, it should be exempt from the control of the statewide office.

Recommendation 3: Composition of Indigent Defense Agency Board

The members of the board overseeing the indigent defense agency should be appointed by leaders of the executive, judicial, and legislative branches of government. The board should include representatives of local bar associations, among other groups. Members should not bear any obligation to those responsible for their appointments. All members of the board should be committed to the delivery of quality indigent defense services. A majority of the members should have accumulated substantial experience in providing indigent defense representation.

Recommendation 4: Structure of the Statewide Agency

The agency should be under the management of an executive director appointed by the board. The following components of the agency are so essential to its effective functioning that they should be provided for by statute: a capital case division, under a

division director; an appellate and postconviction review division, under a division director; a director of juvenile defense services; an information management and technology officer; and a director of training and professional development.

Recommendation 5: Powers and Duties of the Statewide Agency

The statewide indigent defense agency should have the power and duty to manage the delivery of legal representation for indigent adults in criminal cases and all children in delinquency cases in such a manner as to ensure that such services will be effectively and competently done. The agency should do this primarily by setting statewide standards and enforce compliance with them. The standards should cover all key areas of service delivery and administration, including performance, supervision, training, attorney workload, support services, eligibility of defendants for public counsel, timeliness of commencement of representation, and data collection and analysis. In addition, the statewide agency should have the following powers and duties:

- To contract with county PD offices, non-profit defender agencies, and other providers to deliver local indigent defense services.

- To hire, supervise, and fire county chief PDs serving after reform legislation goes into effect. (Chief county PDs serving currently should be able to retain their current positions, but should be subject to dismissal for good cause.)

- To receive and act upon client complaints of inadequate representation where they indicate a pattern of poor performance.

- To provide for appellate and postconviction litigation services for adults and juveniles, either directly or through contracts with qualified providers.

Recommendation 6: Defender Association of Philadelphia

Because of the unique and outstanding accomplishments of the Defender Association of Philadelphia, the advisory committee recommends that it should continue to handle indigent defense representation for cases arising in Philadelphia. In view of DAP's excellent record in maintaining professional standards, it should not be subject to the professional supervision of the statewide office and should be responsible for formulating and enforcing its own professional guidelines. The statewide office should contract with DAP to remunerate the latter for its handling of appeals arising from Philadelphia cases (including appeals from capital cases). The statewide office should

also contract with DAP to handle 20% of Philadelphia capital trials. The remaining capital cases in Philadelphia should continue to be assigned by the Philadelphia Court of Common Pleas to qualified counsel.

Recommendation 7: Funding

Funding for the agency should be provided primarily by the Commonwealth from the general fund. Such funding should be sufficient to enable publicly funded defense attorneys to deliver zealous and highly competent indigent defense representation in accordance with the adversary system. In addition, the statewide agency and local providers should seek supplemental funding as available from federal and private sources. None of the funding for the IDS should come from its clients.

Recommendation 8: Workload

Caseloads for defense attorneys must be controlled so as to be consistent with the provision of quality defense services as defined by the Rules of Professional Conduct and must take into account administrative responsibilities as well as direct client representation. Standards should be formulated and implemented to ensure that caseloads will not become excessive.

Recommendation 9: Compensation

State and local authorities should provide fair remuneration to publicly funded defenders, including PDs, appointed counsel and contract counsel. Full-time PDs should receive salaries commensurate with their professional experience and equal to equivalent prosecution attorneys when prosecutors are fairly compensated.

Recommendation 10: Conflict Counsel

The IDS must assure that every indigent defendant will be represented by an attorney who is free from a conflict of interest. There should be a pool of conflict counsel in each judicial district, independently managed from the PD of that district, but subject to the jurisdiction of the statewide agency.

Recommendation 11: Full-Time Counsel

The IDS should employ full-time attorneys to the greatest practicable extent. The executive director and the attorneys employed by the office of indigent defense should be required to be full-time employees. Chief PDs should also be required to be full-time, unless the statewide office determines that it is not feasible to require a full-time

commitment in the particular county. Assistant PDs should be full-time to the maximum extent feasible as determined by the statewide office. Full-time PDs should be prohibited from engaging in private practice, but that restriction should not apply to assigned counsel or contract counsel.

Recommendation 12: Data Collection and Access

The system of data collection established by the agency should provide continuous and accurate data, according to a plan that is rationally designed to capture the kinds of data that are most useful for policy analysis. The system's database should include the number of new appointments by case type, the number of dispositions by case type, and the number of pending cases, based on uniform definitions of a "case," and other data as determined by the statewide agency after consultation with local defenders. Funding of local indigent defense agencies should be contingent on their satisfactory compliance with data reporting requirements.

CHAPTER ONE
INTRODUCTION

This report is submitted pursuant to 2007 Senate Resolution No. 42, which mandated a study of Pennsylvania's "current system for providing services to indigent criminal defendants."[6] As directed by SR 42, the Joint State Government Commission assembled an advisory committee to guide this study. The advisory committee held a series of meetings with Commission staff, and its guidance was essential to the conduct of the study and the drafting of this report.

Throughout its discussions, the advisory committee held a strong consensus on many basic points. In their view, the indigent defense system (IDS) of the Commonwealth is inadequate to reliably afford defendants the rights they are guaranteed under the Constitutions of the United States and of Pennsylvania. In order to remedy this defect, the Commonwealth must create a statewide office, under an independent board, to administer its IDS in accordance with the "Ten Principles of a Public Defense Delivery System" as formulated by the ABA. The statewide office would ensure that the IDS would be free of political and judicial interference and would operate under high professional standards. Such a system requires state funding for the operation of the central office, but it should incorporate, not supplant, the existing county PDs. Among other advantages, a statewide office with Commonwealth support would help ameliorate the disparities in the quality of representation across counties and help equalize the resources allotted to PD and DA offices.

The advisory committee initially determined that it needed reliable data about the status of indigent defense in Pennsylvania to inform its discussions. A series of surveys were conducted by Commission staff with the assistance of several members of the advisory committee. This study encountered considerable difficulty in collecting usable data, which supports the committee's call in this report for a rational data collection system administered by the statewide office. In addition to its own surveys, the committee relied to a significant extent on the findings of the 2003 study by the Supreme Court Committee on Racial and Gender Bias in the Justice System.[7]

Several national experts on indigent defense suggested by members of the advisory committee were brought in to address the committee. On September 15, 2009, David Carroll, director of research and evaluation for defender legal services of the National Legal Aid and Defender Association (NLADA), presented his research on indigent defense systems around the country. Mr. Carroll highlighted several states'

[6] SR 42 is included in this report as Appendix A.

[7] *Racial and Gender Bias Report*, chap. 5, 163-97, which contains the findings of the extensive study of Pennsylvania's indigent defense system by the Spangenberg Group.

systems that had faced severe problems and the reforms they implemented with some success. He discussed the ABA principles and how each is being addressed in state reforms.

At that same meeting, Phyllis Subin made a presentation based on her experience as a PD with the Defender Association of Philadelphia (DAP), as chief PD in New Mexico, and as a national consultant. She emphasized the importance of training in creating a culture of adherence to high professional standards through statewide training programs for all supervisory and front-line attorneys.

On November 10, 2009, the committee heard a presentation from Robin Dahlberg, senior staff attorney for the ACLU racial justice program. She discussed the ACLU's reform efforts in Allegheny County and Venango County, as well as in Michigan and Montana. She observed that ACLU's current strategy focuses on litigation to force the creation of state systems where county systems exist. Needed reforms include client-centered adversarial representation, training, supervision, and standards for practice and workload, as well as increased funding.

At the same meeting, Professor Norman Lefstein made a presentation on IDSs and reform efforts throughout the United States. He is dean emeritus and professor of law at the University of Indiana School of Law at Indianapolis and a nationally recognized expert on indigent defense, whose career includes seventeen years of service as chair of the Indiana Public Defender Commission, and co-authorship of *Justice Denied*, the most comprehensive report on contemporary IDSs in the United States. He stressed the importance of the Ten Principles, especially the need for independence from judicial and political interference, control of attorney caseloads, and active involvement of the private bar.

At the committee's next meeting on January 26, 2010, Robert Listenbee, chief of the juvenile unit of DAP and president of the Juvenile Defenders Association of Pennsylvania, and Barbara Krier, senior assistant PD for York County, presented the committee with a draft report of the Pennsylvania Juvenile Indigent Defense Action Network (PA-JIDAN). They provided background information on the structure of juvenile indigent defense and advocated committee approval of PA-JIDAN's recommendations for reform of juvenile defense. These included adoption of standards for PDs and court-appointed counsel representing juveniles, establishment of a Pennsylvania Center for Juvenile Defense Excellence, support for legislation providing that children in the juvenile justice system be deemed indigent and entitled to a court-appointed lawyer, and restriction of waiver of counsel by juveniles and appointment of standby counsel when such waiver is permitted.

At the advisory committee meeting on October 12, 2011, Harry J. Cancelmi, chief public defender of Greene County, and Wieslaw T. Niemoczynski, chief public defender of Monroe County, presented evidence that the wide disparity in resources between DAs and PDs seriously undermines the effectiveness of the latter. Mr. Cancelmi detailed how underfunding the county PDs compromises their independence and impedes the career

development of professional staff. Mr. Niemoczynski emphasized that the support organizations for DAs are far better funded than their counterparts on the defense side and called the imbalance "shortsighted."

Meetings of the advisory committee took place on March 24, 2010, September 27, 2010, March 3, 2011, and October 12, 2011, to develop and oversee the drafting of the report.

Drafts of the report have been circulated to the members of the advisory committee for review. Factual assertions that are not cited to published sources are supported by the extensive personal experience of advisory committee members. While individual members of the advisory committee may disagree with particular points made in this report, the factual observations and policy recommendations in the report reflect the broad consensus of the advisory committee.

The Joint State Government Commission would like to express its deep appreciation to the members of the advisory committee, to David Carroll, Robin Dahlberg, Barbara Krier, Norman Lefstein, Robert Listenbee, and to the PDs throughout the Commonwealth who contributed invaluable assistance to this study.

CHAPTER TWO
THE RIGHT TO COUNSEL

This chapter describes the leading cases establishing the right to publicly paid counsel for indigent defendants, the constitutional standard regarding the performance of counsel, and litigation regarding the minimum standard of effectiveness for the IDS as a whole.

The right to counsel in the United States is grounded in the Sixth Amendment to the U.S. Constitution, which states in pertinent part as follows: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel in his defense." When originally adopted as part of the Bill of Rights, the Sixth Amendment applied only to the federal government, not to the states, and it guaranteed only that the government could not prohibit a defendant who had hired counsel to have the benefit of counsel in court.[8]

Since 1776, the Constitution of Pennsylvania has provided that "[i]n all criminal prosecutions, the accused hath a right to be heard by himself and his counsel . . . ." This provision, along with guarantees of several other rights relating to criminal proceedings, currently appears in Article I, § 9.

INDIVIDUAL REPRESENTATION

Development of the Right to Representation

In *Powell v. Alabama*, 287 U.S. 45, 53 S. Ct. 55 (1932), the federal Supreme Court expanded the Sixth Amendment to guarantee a right to counsel provided at government expense to persons who could not afford a lawyer. This case arose from the famous Scottsboro Boys trial, where nine black youths were accused of raping two white women. In a whirlwind proceeding, all but the youngest were sentenced to death by an all white jury. The defendants were afforded a lawyer, as required by Alabama law in a capital case, but the lawyers were not assigned and did not meet their clients until the very morning of the trial.[9] Speaking through Justice George Sutherland, the Court held

[8] The Constitution Project, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* (Washington, D.C.: Constitution Project, 2009), 18.
[9] Ibid., 18-19.

that the defendants, convicted under these circumstances, were denied meaningful assistance of counsel in violation of the Due Process Clause of the Fourteenth Amendment. The Court elaborated on the importance of counsel in assuring a fair trial:

> The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. 287 U.S. at 68-69, 53 S. Ct. at 64.

The right to counsel at this stage was limited to capital cases, and arguably to defendants who were "incapable adequately of making [their] own defense because of ignorance, feeble-mindedness, illiteracy, or the like." However, the right already attached "whether requested or not" and was not satisfied "by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation or trial of the case." 287 U.S. at 71, 53 S.Ct. at 65.

The Court declined to apply the Sixth Amendment to the states in *Betts v. Brady*, 316 U.S. 455, 62 S.Ct. 1252 (1942). In a 6-3 decision, the Court retained a case-by-case approach.

> [T]he Fourteenth Amendment prohibits the conviction and incarceration of one whose trial is offensive to the common and fundamental ideas of fairness and right, and while the want of counsel in a particular case may result in a conviction lacking in such fundamental fairness, we cannot say that the amendment embodies an inexorable command that no trial for any offense, or in any court, can be fairly conducted and justice accorded to a defendant who is not represented by counsel. 316 U.S. at 473, 62 S. Ct. at 1262.

The Court dealt with *Powell* by recalling that its holding was limited to capital cases (the defendant in *Betts* was charged with robbery) and to defendants whose inability to mount a defense was limited by the factors listed above. 316 U.S. at 463, 62 S. Ct. at 1256-57. The Court then reviewed the corresponding provisions of the various state constitutions both at the time of the Constitution's enactment and contemporaneously with *Betts*. In three states the state constitution required appointment of counsel where the defendant was unable to afford a lawyer, and in eighteen states a statute provided for a right to free

counsel. In most states, the state constitution guaranteed only that the state could not deny the defendant the right to be represented by counsel retained by the defendant. 316 U.S. at 466-72, 62 S. Ct. at 1258-61.

Writing for the three dissenters, Justice Hugo Black maintained that the Sixth Amendment applies to the states, but noted the majority's disagreement with that position. At the same time, he argued that the conviction of Betts without counsel violated the Due Process Clause, giving a rationale that would be broad enough to apply the Sixth Amendment to the states as a fundamental right.

> A practice cannot be reconciled with common and fundamental ideas of fairness and right, which subjects innocent men to increased dangers of conviction merely because of their poverty. Whether a man is innocent cannot be determined from a trial in which, as here, denial of counsel has made it impossible to conclude, with any satisfactory degree of certainty, that the defendant's case was adequately presented. . . .
>
> Denial to the poor of the request for counsel in proceedings based on charges for serious crimes has long been regarded as shocking to the universal sense of justice throughout this country. 316 U.S. at 476, 62 S. Ct. at 1263 [internal quotations omitted].

In *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792 (1963), one of the most celebrated cases in the history of the Supreme Court,[10] Justice Black wrote for the Court in a decision that overturned *Betts v. Brady* and applied to the states the right to free counsel for indigent defendants. As with other decisions of the Warren Court, *Gideon* embraced an approach to the Constitution that was more protective than previous Courts of individual rights and less solicitous of federalist diversity among the states. Justice Black argued strongly that legal representation is essential to the fairness of a criminal proceeding.

> [R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who

[10] The case is the subject of *Gideon's Trumpet* (1964) the bestselling book by Anthony Lewis and a Hallmark Hall of Fame film of the same name, in which Henry Fonda played the defendant Clarence Earl Gideon.

> have the money hire lawyers to defend are the strongest indications of the wide-spread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. 372 U.S. at 344, 83 S. Ct., at 796-97.

The opinion relied on the passage from *Powell v. Alabama*, quoted above, to establish the need for an attorney to conduct a defense of even an innocent defendant.

By itself, *Gideon* established the right to be represented at trial where the indigent defendant was charged with a felony (in Gideon's case, breaking and entering a pool hall with intent to commit a misdemeanor, which was a felony under Florida law). Subsequent precedents have broadened the right to counsel in several ways.[11] It applies to "critical stages" of the criminal justice process prior to trial, but after judicial proceedings are initiated against the defendant; a "critical stage" is "any stage of the prosecution, formal or informal, in court or not, where counsel's absence might derogate from the accused's right to a fair trial."[12] Such stages include line-up identification,[13] arraignment,[14] preliminary hearing,[15] plea negotiation, entry of a guilty plea,[16] and appeals.[17] Second, the right has expanded to proceedings other than the felony trial involved in *Gideon*, to encompass juvenile delinquency proceedings[18] and misdemeanors that may result in imprisonment.[19] The Court has also afforded the indigent the right to related services other than counsel, including trial transcripts[20] and expert assistance.[21]

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[11] American Bar Association, Standing Committee on Legal Aid and Indigent Defendants (ABA/SCLAID), "*Gideon's* Broken Promise: America's Continuing Quest for Equal Justice" (Chicago: ABA, December 2004).
[12] *United States v. Wade*, 388 U.S. 218, 87 S. Ct. 1926 (1967).
[13] *Id.*; *Gilbert v. California*, 388 U.S. 263, 87 S. Ct. 1951 (1967).
[14] *Hamilton v. Alabama*, 368 U.S. 53, 82 S. Ct. 157 (1961).
[15] *Coleman v. Alabama*, 399 U.S. 1, 90 S. Ct. 1999 (1970).
[16] *White v. Maryland*, 373 U.S. 59, 83 S. Ct. 1050 (1963).
[17] *Douglas v. California*, 372 U.S. 353, 83 S. Ct. 814 (1963); *Halbert v. Michigan*, 545 U.S. 605, 125 S. Ct. 2582 (2005).
[18] *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428 (1967).
[19] *Argersinger v. Hamlin*, 407 U.S. 25, 92 S. Ct. 2006 (1972).
[20] *Griffin v. Illinois*, 351 U.S. 12, 76 S. Ct. 585 (1956).
[21] *Ake v. Oklahoma*, 470 U.S. 68, 105 S. Ct. 1087 (1985).

In Pennsylvania, the right to counsel is in certain respects broader than it is under the U.S. Constitution.[22] The right applies upon the arrest of the suspect, even if no formal proceedings have commenced.[23] Convicted defendants in Pennsylvania have a constitutional right to representation in postconviction proceedings[24] and parole revocation hearings.[25] In both respects, Pennsylvania law may exceed the minimum requirements under federal constitutional law.

Effective Representation

In *Strickland v. Washington*, 466 U.S. 468, 104 S. Ct. 2052 (1984), the U.S. Supreme Court held that the right to counsel includes the right to the effective assistance of counsel, which is denied when counsel fails to represent the client competently.[26] This case permits a convicted defendant to file a "collateral attack" on the conviction to overturn it if ineffective assistance of counsel is established. The Court laid down the standards under which effectiveness would be determined.

> A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable. 466 U.S. at 687, 104 S. Ct. at 2064.

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[22] *See* The Spangenberg Group, "A Statewide Evaluation of Public Defender Services in Pennsylvania" (West Newton, Mass.: SG, May 2002), 5-7 (Appendix vol. 1 to the *Racial and Gender Bias Report*, 164).

[23] *Commonwealth v. Richman*, 320 A.2d .351, 352-54 (Pa. 1974) (right to counsel commences upon arrest); *Kirby v. Illinois,* 406 U.S. 682 (1972) (right to counsel commences at the indictment), *but see U.S. v. Ash*, 413 U.S. 300 (1973) (right to counsel does not apply to postindictment photograph identification). The governing rule under the Sixth Amendment is that the right attaches upon the initiation of adversary judicial proceedings. *Kirby*, 406 U.S. at 688, 92 S. Ct. at 1881.

[24] Compare *Commonwealth v. Mitchell*, 235 A.2d 148 (Pa. 1967) (defendant entitled to free counsel for a collateral attack under PCRA) with *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (U.S. Constitution requires free counsel only for a direct appeal).

[25] *Commonwealth v. Tinson*, 249 A.2d 549 (1969) (relying on Public Defender Act, § 6(a)(10); 16 P.S. § 9960(a)(10)); *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756 (1973) (applicability of right to counsel to parole revocation hearings is decided on a case-by-case basis).

[26] The court had already held that effective assistance could be denied by the government if it "interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense" such as when the government barred counsel from consulting with the defendant during an overnight recess. *Strickland*, 466 U.S. at 686, 104 S. Ct. at 2063 (citing cases).

Clarifying the first prong of this test, the Court added:

> When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness. . . . The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. 466 U.S. at 687-88, 104 S. Ct. at 2064-65.

These include adhering to the ethical standards applicable to legal representation. Professional guidelines "are guides to determining what is reasonable, but they are only guides." 466 U.S. at 688, 104 S. Ct. at 2065.

> Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission was unreasonable. . . . Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. 466 U.S. at 689, 104 S. Ct. at 2065 [citations omitted].

Justice Denied comments that "commentators have been virtually unanimous" in their criticism of *Strickland* because the standard is so deferential to counsel that it has "proved impossible to meet."[27] In Pennsylvania, however, convictions have been overturned due to ineffectiveness of counsel, although the majority of such appeals are unsuccessful.[28] The test for ineffectiveness in Pennsylvania, whether applying the U.S. Constitution or article I, § 9 of the Pennsylvania Constitution, is very similar to the *Strickland* test. *Commonwealth v. Pierce*, 527 A.2d 973 (Pa. 1987). The prejudice requirement under Pennsylvania law is more stringent than under federal law, in that the defendant must prove that counsel's ineffectiveness "so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa.C.S. § 9543(a)(2)(ii). *Commonwealth v. Buell*, 658 A.2d 771, 777 (Pa. 1995).

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[27] *Justice Denied*, 40, 41, quoting with approval David Cole, *No Equal Justice*, 78-79 (1999).

[28] 42 Pa.C.S.A. § 9543 nn. 91-180. *See,* e.g., *Commonwealth v. Hague*, 840 A.2d 1018 (Pa. Super. 2003), *appeal denied*, 878 A.2d 863 (Pa. 2005); *Commonwealth v. Johnson*, 875 A.2d 328 (Pa. Super. 2005), *appeal denied*, 892 A.2d 822 (Pa. 2005); *Commonwealth v. Scassera*, 965 A.2d 247 (Pa. Super. 2009), *appeal denied*, 985 A.2d 219 (Pa. 2009). Ineffectiveness challenges are governed by the Post Conviction Relief Act (PCRA), 42 Pa.C.S. Ch. 95, Subch. B, §§ 9541—9546.

The U.S. Supreme Court further spelled out its analysis of ineffectiveness of counsel in *United States v. Cronic*, 466 U.S. 648, 104 S. Ct. 2039 (1984). It laid down three conditions, proof of which enabled ineffectiveness to be presumed, so that it did not need to be established by the detailed facts of a particular case. These are the complete failure to furnish counsel at all, the failure of the opposing counsel to subject the prosecutor's case to any meaningful adversarial scrutiny, and circumstances where "the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." *Cronic*, 466 U.S. at 658-60, 104 S. Ct. at 2046-47 (1984). Although *Cronic* is not directly applicable to a broad challenge to the constitutionality of an IDS (because it involved a posttrial collateral attack on the result of a single prosecution), it has been argued that the third criterion can serve as a test of whether the IDS as a whole meets the requirements of the Constitution, especially where defense counsel are faced with clearly excessive caseloads.[29]

INDIGENT DEFENSE SYSTEMS

Because of the real or perceived inadequacies of IDSs across the United States, a variety of court challenges have been mounted in order to have the system declared unconstitutional. These challenges have been adjudicated at both the state and federal level, with a variety of results. In many cases, the litigation has terminated in a settlement that avoided a final judgment. In others, courts have ordered remedies that threatened to bring the criminal justice system to a halt unless the issue was addressed.

Indigent defense attorneys have sued on behalf of all indigent defendants to obtain sweeping relief. In *Lavallee v. Justices in Hampden Superior Court*, (2004)[30] indigent defendants in Massachusetts petitioned the trial court with the claim that insufficient compensation for their defense had led to a withdrawal of attorneys from the system, leaving an insufficient number of attorneys willing to accept assignments of cases. The Supreme Judicial Court upheld this claim. Though it did not directly grant increases in compensation rates, the Court ruled that "any indigent defendant incarcerated pretrial in the county had to be released after seven days if counsel was not appointed, and any pending case against an indigent defendant had to be dismissed after 45 days if no attorney filed a court appearance on the defendant's behalf."[31] The cases were dismissed "without prejudice," meaning that charges could be refiled until the statute of limitations ran out on the offense. The following year, the Massachusetts legislature raised the compensation to $100 per hour for homicide cases, $60 per hour for trial court cases, and

[29] *Justice Denied*, 110-11.
[30] http://caselaw.findlaw.com/ma-supreme-judicial-court/1014501.html; 812 N.E.2d 895 (Mass. 2004).
[31] *Justice Denied*, 113-14.

$50 per hour for other cases, and appropriated funding for 100 additional PDs.[32] Similar litigation claiming that insufficient compensation for assigned counsel in New York City denied indigent defendants their right to counsel resulted in a permanent injunction requiring the City to pay counsel $90 per hour pending legislative relief, which was enacted by the New York General Assembly while the case was on appeal.[33]

[32] Ibid., 114, n. 44.

[33] Ibid., 114, referring to *New York County Lawyers' Association v. New York*, 196 Misc. 2d 761 (N.Y. Sup. Ct. 2003).

CHAPTER THREE
INDIGENT DEFENSE SYSTEMS IN OTHER STATES

GENERAL STRUCTURES

There are three basic types of indigent defense systems in the United States: assigned counsel, contract attorney, and public defender.[34]

Under the assigned counsel system, private attorneys represent indigent defendants. There are two variations to the assigned counsel model, the ad hoc model, and the coordinated assigned counsel model. In the ad hoc model, attorneys are selected without any system or set of criteria for the assignment. Often a judge assigns a case to an attorney who happens to be in the courtroom at the defendant's first appearance or arraignment. Attorneys who are appointed through the ad hoc assigned counsel system are usually paid an hourly fee for their work, and must petition the court to pay expenses for expert witnesses, investigators, and support staff. Criticisms of the ad hoc assigned counsel system include complaints that it allows selection by political patronage, disregards attorney qualifications, and leads to ineffective representation.[35]

The second variation of the assigned counsel system is the coordinated assigned counsel model. This assigned counsel system features an administrative or oversight agency that determines minimum qualification standards for assigned attorneys, and provides supervision, training, and support. The agency may coordinate a rotation system for assignments and may recommend attorneys based on their training and expertise in relation to the case.[36]

In the contract attorney system, the court contracts with one or more private attorneys, law firms, bar associations, or nonprofit organizations for indigent defense. There are two types of contract systems: fixed price and fee per case. In fixed price contracts, the attorney's fees are fixed for the duration of the contract, regardless of the number or complexity of the cases assigned. The attorney is responsible for all support costs, secretarial services, expert witnesses, investigators, and other litigation expenses. The financial burden placed on the attorney by this arrangement can be so oppressive as to lead to ineffective representation. For this reason, much criticism has been directed at the fixed fee system, so much so that in 1985 the ABA issued a resolution condemning the awarding of contracts based on price. The fee per case system awards contracts based

[34] Marea L. Beeman and Robert L. Spangenberg, "Toward a More Effective Right to Assistance of Counsel," *Law and Contemporary Problems* 58, no. 1 (Winter 1995): 32.
[35] Ibid., 33.
[36] Ibid.

on a set fee for a predetermined number of cases. When the stipulated number of cases has been assigned, the contract allows the provider to renegotiate the terms and conditions.[37]

The predominant system in Pennsylvania and many other states is the PD system, which is defined as a "public or private nonprofit organization staffed by full- or part-time attorneys . . . designated by a given jurisdiction to provide representation to indigent defendants in criminal cases."[38] Pennsylvania counties are required to establish a PD by statute.[39] Ideally, this system should put indigent defense on an equal or nearly equal footing to the prosecution in that the state provides both functions with support personnel and technology.[40]

> When adequately funded and staffed, defender organizations employing full-time personnel are capable of providing excellent defense services. By devoting all their efforts to legal representation, defender programs ordinarily are able to develop unusual expertise in handling various kinds of criminal cases. Moreover, defender offices frequently are in the best position to supply counsel soon after an accused is arrested. By virtue of their experience, full-time defenders also are able to work for changes in laws and procedures aimed at benefiting defendants and the criminal justice system.[41]

The PD model can readily be supplemented by attorneys from the private bar, who can handle excess case loads and represent defendants that the PD is unable to handle due to conflict of interest.[42]

SYSTEMS IN SELECTED STATES

A number of sister states that have IDSs may serve as useful models for Pennsylvania. Some of the states have recently instituted comprehensive reforms of their systems, whether by legislative initiative or in response to judicial mandates. States such as Montana have moved to a statewide PD system while others, such as Indiana, have established oversight boards that set standards for performance, training, and funding. Regardless of their different forms, IDSs throughout the U.S. have come under increasing fiscal pressure due to the current economic difficulties.

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[37] Ibid., 34.
[38] Ibid., 36.
[39] Act of December 2, 1968 (P.L.1144, No.358) (Public Defender Act); 16 P.S. §§ 9960.1–9960.13.
[40] Amy Bach, *Ordinary Injustice: How America Holds Court* (New York: Metropolitan Books), 28.
[41] ABA Standards for Criminal Justice: Providing Defense Services, 3rd ed. (Washington, D.C.: ABA, 1992), 7.
[42] Ibid., 7, 8.

Robert Spangenberg has developed a useful typology of the IDSs of the states, which is adopted in *Justice Denied*. Twelve states use a state PD with an oversight commission, and another seven states have a state indigent defense director, who is also supervised by a commission. Another eight states use a statewide director who operates without an oversight commission but with comprehensive authority. Nine states have a state commission, but the counties maintain substantial authority over the administration of their respective systems. Six states have statewide commissions whose authority is limited to appellate defense. Finally, eight states, including Pennsylvania, use a localized system with no statewide body. The trend in recent years has been toward centralizing authority with the state. Of the eleven states that have changed their systems in 2000 or thereafter, eight have adopted a commission and state PD or director with full supervisory authority and three have a statewide body with partial authority. The full authority systems are almost entirely state funded, while all but two of the eight partial authority states rely predominantly on local funding. *Justice Denied* advocates a statewide, full authority structure comprised of a state PD or director and an appointed commission to provide oversight and help protect the system's independence.[43]

Georgia

Structure and Funding

Responding to the recommendations of a study commission established by Supreme Court Justice Robert Benham, Georgia enacted the Georgia Indigent Defense Act of 2003 (GIDA).[44]

This legislation provides a more centralized system, whereas the former system was funded and operated almost entirely by the counties. The state funds defense for adult felonies, criminal appeals, and juvenile delinquency cases, while counties pay for misdemeanors and violations of ordinances. The system nevertheless remains predominantly county funded.[45]

GIDA created an eleven member oversight board, the Georgia Public Defender Standards Council (GPDSC) to oversee the PDs serving in the state's 49 judicial districts. The board has authority to set performance standards and the power to remove PDs who fail to meet them. The board also directs the provision of administrative assistance, education, and training. Counties that can demonstrate that their PD systems meet or exceed the state standards can opt out of the statewide system but must forgo state

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[43] *Justice Denied*, 151-166. The table at p.151 of the source shows the states that operate under each of these systems and the year each state's system was established. A table showing the respective funding responsibilities of the states and counties is at p. 54 of the source.

[44] Stephen B. Bright and Lauren Sudeall Lucas, "Overcoming Defiance of the Constitution: The Need for a Federal Role in Protecting the Right to Counsel in Georgia," (Washington, D.C.: American Constitution Society, September 2010), 3. The Georgia Indigent Defense Act of 2003 is codified at Ga. Code §§ 17-12-1—17-12-81.

[45] *Justice Denied*, 54, 56.

funding if they do. Cases that are heard by the Superior or juvenile courts are handled by the new system. State court cases are handled by county offices that contract with the PD offices.

From 2003 to 2004, the budget for indigent defense increased from $7.5 million to $9.5 million, a 32 percent increase.[46] This increase was requested by the Council to increase local funding for indigent defense.[47] As of the 2005 Spangenberg report, there were full-time PDs working in the 43 judicial districts under the statewide system, while six counties opted out of that system. From 2005 to 2010, the percentage of county funding has stood at about 63 percent, and expenditures have increased from $55.6 million to $70 million. The state expenditure has increased from $31 million to $41 million.[48] Georgia's system is funded through fees and surcharges on civil and criminal cases, bail bonds, and application fees for PD services. These sources are not sufficient to cover rising costs and are unpredictable.[49] Because the funding mechanism created by GIDA was not explicitly earmarked for indigent defense, from 2006 through 2010, approximately $30 million of the amounts collected under the legislation was appropriated for other purposes.[50]

A Problematic Reform

This diversion of funds was an indication that the reformist impulse behind GIDA has dissipated, and the system is now seen as a grossly inadequate one that suffers from many of the inadequacies that characterize ineffective IDSs around the country.

> While unquestionably an improvement over the fragmented approaches that existed before it, the new system has in some cases failed completely to provide representation to some indigent defendants and has provided inadequate representation to many others. Many PDs carry crushing caseloads, often lack the investigative and expert assistance needed to represent their clients effectively, and are pressured to represent defendants with conflicting interests. Some capital cases have gone without funding for counsel, investigation, and experts for years, making a timely investigation and a fair trial impossible. Hundreds of defendants in felony cases have not had *any representation*—some pre-trial and others

[46] "Governor Sonny Perdue Signs Indigent Defense Legislation," May 22, 2003, http://gov.georgia.gov/00/press/detail/0,2668,78006749_91290006_91665626,00.html.
[47] Vicky Eckenrode, "Georgia's Public Defender Funds Running Low; Council Requests $9.5 million for Local Judicial Circuits," *Augusta Chronicle*, Jan. 28, 2007, http://www.nacdl.org/public.nsf/defenseupdates/georgia026?opendocument.
[48] Georgia Public Defenders Standards Council Legislative Oversight Committee Annual Report (Feb. 2010), 18, http://www.gpdsc.com/docs/2010%20Public%20Defenders%20LegislativeOversightCommitteeReport.pdf.
[49] Ibid., 4. See Ga. Code § 15-21A-6(a) ($15 civil action filing fee); § 15-21A-6(c) ($50 indigent defense application fee).
[50] Stephen B. Bright and Lauren Sudeall Lucas, "Overcoming Defiance", 3.

> on motions for new trial and appeal. And fixed-fee contracts have increasingly been used to provide only nominal representation to many other defendants.[51]

The system has failed to provide counsel for defendants seeking a new trial or an appeal. A class action lawsuit was filed in December 2009 on behalf of 187 defendants at these stages who were awaiting appointment of counsel for up to three years. On February 23, 2010, the Superior Court granted the plaintiffs class certification and directed the State and the GPSDC through a writ of mandamus to provide members of the plaintiff class "effective and conflict-free counsel" within 30 days of receiving a request (or within 30 days of the court order in this case for current members of the class).

Noted civil rights activist Steven Bright and his colleague Lauren Sudeall Lucas charge that "cost containment has prevailed over constitutional rights." They conclude that litigation is "the sole means to compel compliance from such a mismanaged system." and that only federal oversight could discourage Georgia and other states from perpetuating unconstitutionally ineffective systems.[52]

A widely distributed book on America's criminal justice system cited Georgia's experience as a prime example of the failure of a state IDS to provide adequate indigent defense.[53] According to PDs and DAs interviewed for the book, continued underfunding, overwhelming caseloads, and the stagnant culture of Georgia's indigent defense in most of the state have thwarted the reform attempted by GIDA. Problems that range from poor data collection to lack of computer resources to the lack of office supplies as common as postage stamps have continued to plague indigent defense in Georgia.

The GPDSC Legislative Oversight Committee Annual Report of 2010 charged that, despite the reforms that created the statewide system, "external forces have caused parts of the system to become structurally broken." The report argued that the Georgia IDS faced collapse because reformist "crusaders" had used litigation "to seek judicial orders that usurp and disregard the policies of the elected legislature in favor of compelling the State to adopt expensive and unattainable goals that exceed the requirements of the Georgia Constitution."[54] The report cited the substantial burden caused by postconviction review and the Georgia state bar's formal advisory opinion requiring conflict counsel to be appointed whenever two attorneys under a common supervisor would represent defendants in the same case, thereby disallowing "Chinese wall" arrangements to address such conflicts.[55]

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[51] Ibid., 2.
[52] "Overcoming Defiance," 20.
[53] Amy Bach, *Ordinary Justice*, 11-76.
[54] Georgia Public Defenders [sic] Standards Council Legislative Oversight Committee Annual Report (February 2010), 2.
[55] Ibid., 7, 8.

The *Augusta Chronicle* reported that the statewide system was foundering under financial difficulties (especially the cost of defending death penalty cases) and received only "tepid" support from Georgia lawmakers. The system's inadequacies resulted in trial delays and failures to provide attorneys for appeals, spawning a number of lawsuits aimed at reforming the system. The article observed that the system faced the threat of being parceled back to the counties by legislative action. The chair of the House Judiciary-Non-Civil Committee delayed action on proposed legislation until the end of 2010 in order to give the GPDSC time to reach a compromise with "other legal groups."[56]

In May 2011 legislation was enacted revising the provisions that govern the Georgia Public Defender Standards Council. The board overseeing the council is reduced from 15 members to nine, five of whom will be appointed by the governor. The legislation also expands the director's authority to remove attorneys. Under the previous system, attorneys could be removed only by action of the board. Finally, this legislation permits appointment of an attorney from a judicial circuit other than the one where the defendant resides. While critics concede that consolidating decision power in the director of the GPDSC may raise the quality of indigent defense, they fear that placing the majority of members under the Governor's appointment power jeopardizes the independence of the agency. Stephen Bright observes that cross-circuit representation will cause scheduling conflicts and further burden overworked PDs.[57]

Indiana

Indiana indigent defense is funded in part by a block grant program administered through the Indiana Public Defender Commission (IPDC). The duties of the Commission include:

- Making recommendations to the Supreme Court regarding:
  - determining indigency and eligibility for legal representation
  - selection and qualifications of attorneys to represent indigent defendants at public expense
  - determining conflicts of interest

- Determining guidelines and standards for reimbursement to participating counties, including:
  - determining indigency and eligibility for legal representation
  - enforcement of court orders for reimbursement of defense costs
  - use of county supplemental PD services funds

[56]"Public Defender Shakeup Delayed," *Augusta Chronicle*, Apr. 23, 2010, http://chronicle.augusta.com/news/metro/2010-04-23/public-defender-shakeup-delayed?v=1272066374.

[57] Georgia House of Representatives Bill No. 238; Jon Mosher, "A lack of independence in Georgia's public defense system," NLADA Justice Standards, Evaluation & Research Initiative, May 4, 2011, http://www.nlada.net/jseri/blog/lack-independence-georgia%E2%80%99s-public-defense-system. Bill Rankin, "New legislation proposed for struggling public defender system," *Atlanta Constitution Journal*, February 11, 2011, http://www.ajc.com/news/georgia-politics-elections/new-legislation-proposed-for-835520.html.

- qualifications of attorneys practicing indigent defense
- compensation rates for salaried, contractual, and assigned counsel
- minimum and maximum caseloads of PD offices and attorneys

- Making recommendations concerning delivery of indigent defense services

- Submitting an annual report to the Governor, Legislature, and Supreme Court[58]

In addition to the commission, Indiana also has established a PD council comprised of PDs and contract counsel, with the responsibility to establish centralized resources, such as procedure manuals, and assistance with briefs and jury instructions.[59]

According to the ABA, the state's legislation prescribes an effective means for enforcing indigent defense standards.[60] However, *Justice Denied*, which was cowritten by Norman Lefstein, the former chair of the IPDC, gives a more guarded assessment of its effectiveness:

> The experience of Indiana, which is one of the more successful partial-authority commissions, illustrates the difficulty with such programs. In Indiana, the state provides less than half of the funding for indigent defense, although the commission has persuaded the more populous of the state's 92 counties to create independent local boards to oversee indigent defense in their jurisdictions, which includes determining the indigent defense delivery method. In order to qualify for 40% state reimbursement of the county's indigent defense expenses, counties have had to adhere to the commission's caseload standards and increase their overall expenditures. In some years, however, the commission has received less funding from the state than was needed for its reimbursements to the counties, so reimbursements were reduced to less than 40%, which in turn has frustrated the counties that were part of the program. In addition, many of the smaller counties have never agreed to become part of the commission's reimbursement program, and therefore, have not been obligated to increase their expenditures or improve their indigent defense systems. Thus, in Indiana, there is not full statewide oversight and, rather than having just one commission with full authority over the entire state, there is a single partial commission and numerous local boards, all of which are independent of one another.[61]

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[58] Ind. Code § 33-40-5-4.
[59] Ind. Code § 33-40-4 et seq.
[60] ABA/SCLAID, "Indiana" American Bar Association, 2005, http://www.abanet.org/legalservices/sclaid/defender/brokenpromise/downloads/in.pdf.
[61] *Justice Denied*, 171.

ABA/SCLAID echoed these criticisms and also noted the system's lack of complete independence from undue judicial and political interference.[62]

In order to qualify for the state block grant, a county must submit a plan that complies with IPDC guidelines.[63] Fifty-eight of the state's 92 counties, containing 65% of the state's population, are eligible to receive reimbursement for non-capital cases.[64] The 2010-11 appropriation to the Public Defense Fund, which funds these reimbursements, is $18.25 million.[65]

On the local level, county PD boards may be established by the county executive. The board appoints the county PD, who may use his or her staff to provide representation, contract out services, or use assigned counsel in accordance with its comprehensive plan. The county board may apply to the commission for the reimbursement for noncapital cases other than misdemeanors.[66] In counties with a population under 400,000, the court may contract to provide counsel for indigents at the county's expense.[67]

Louisiana

The state's IDS was fundamentally reformed by the enactment of the Louisiana Public Defender Act in 2007.[68] This act was adopted to remedy a severely dysfunctional system.

> Until the passage of the Louisiana Public Defender Act (Act 307), public defense was carried out through a variety of delivery mechanisms with only superficial oversight by the state PD agency. Many offices could not produce accurate caseload information, had limited access to investigative or expert witness resources, were unable to spend adequate time with their clients, and struggled to retain qualified, competent counsel. Most PDs had no health insurance or retirement plan, were forced to pay for their own investigators, support staff, office space and overhead expenses out of inadequate flat fee contracts and handled workloads far in excess of reasonable expectations.[69]

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[62] ABA/SCLAID, "Indiana."
[63] Ind. Code §§ 33-40-6-4 and 33-40-6-5.
[64] Indiana State Court Administration, Public Defender Commission, "About the Commission," last modified Sept. 15, 2010, http://www.in.gov/judiciary/pdc/about.html.
[65] Ibid.
[66] Ind. Code § 33-40-7 et seq.
[67] Ind. Code § 33-40-8 et seq.
[68] La. Rev. Stat. §§ 15:141—15:183.
[69] Louisiana Public Defender Board, "Louisiana Public Defender Act," http://lpdb.la.gov/Serving%20The%20Public/Legislation/Louisiana%20Public%20Defender%20Act.php. (accessed May 24, 2010).

The Act delegated supervisory responsibilities to the statewide Public Defender Board, and dissolved the existing 41 local indigent defense boards.[70] The system is a full authority statewide commission with a director who acts as chief PD.[71] In addition to an executive director, the Act mandates the appointment of a director of training, director of juvenile defender services, budget officer, information technology and management officer, trial-level compliance officer, and juvenile justice compliance officer. The statute spells out in detail their qualifications and duties of the mandatory officers.[72] In addition, the board is authorized to establish up to eleven service regions and is mandated to hire a regional director for each region.[73]

The primary source of funding for the parish indigent defense is the state appropriation, which more than quadrupled from $7 million in 2004 to over $28 million in the 2007 budget.[74] Additional revenue is supplied by surcharges on court costs.[75] Most of the parishes operate on a contractual system, which may be in addition to a full-time PD office.[76]

The PD system of Louisiana has not escaped the funding challenges confronting these systems throughout the nation. For instance, the PD of Calcasieu Parish stopped taking new cases as of August 1, 2010, because the office lacked the resources to provide adequate defense. In a letter to the district's chief judge, the chief defender stated that the office's workload exceeded state standards, and the moratorium was necessary given the office's lack of adequate funding and the potential civil liability of staff attorneys.[77]

The Louisiana Public Defender Board received a budget increase of $5.3 million for FY 2011-2012, raising the agency's budget to $33.1 million. The increase is seen as an example of the commitment of the governor and legislature to the Public Defender Act of 2007. (The amount budgeted represents about $7.35 per Louisiana resident, which would correspond to about $93.4 million for Pennsylvania.) Further, the LPDB believes that its increased emphasis on training and data collection, its being named in the litigation alleging the Calcasieu Parish PD failed to provide constitutionally required right to counsel, and threats of similar litigation in other parishes contributed to the willingness of the governor and legislature to increase its appropriation.[78]

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[70] Ibid.
[71] *Justice Denied*, 166.
[72] La. Rev. Stat. §§ 15:153, 15:154, 15:155, 15:156, and 15:157.
[73] La. Rev. Stat. §§ 15:159 and 15:160.
[74] Louisiana Justice Coalition, "History," http://www.lajusticecoalition.org/About/History.php (accessed Feb. 8, 2011).
[75] "Louisiana Public Defender Act."
[76] Louisiana Public Defender Board, "The State We're In," 4 http://lpdb.la.gov/About/txtfiles/pdf/LPDB%20Fact%20Sheet.pdf (accessed September 8, 2010).
[77] Jason Brown, "Calcasieu To Stop Taking Indigent Cases," 2theadvocate, May 29, 2010, http://www.2theadvocate.com/news/95165714.html. Calcasieu, a rural parish in the southwestern part of the state, is one of only two parishes that exclusively employs a full-time PD staff, the other being Orleans Parish.
[78] Louisiana Public Defender Board, "Legislature Approves $5.3 Million LPDB Budget Increase For FY 11," July 10, 2010, http://lpdb.la.gov/Serving%20The%20Public/News/News12.php.

Massachusetts

Indigent defense in Massachusetts is provided through the Committee for Public Counsel Services. The Massachusetts Supreme Judicial Court appoints the 15 member board that oversees indigent representation in criminal and civil cases. Approximately 3,000 attorneys receive training and certification to receive appointments. The system is subdivided into the Private Counsel Division, the Children and Family Law Division, the Mental Health Litigation Unit, and the PD Division. Approximately 200 attorneys staff the Committee's PD Division and are located in offices throughout the commonwealth. The PDs represent indigent defendants in Superior, District, and Juvenile Courts.[79] The Massachusetts system is noteworthy for its effectiveness in involving the private bar in the provision of indigent defense services.[80]

Early in the 2000s, Massachusetts faced a crisis in indigent representation because of shortages in available attorneys, due primarily to the rates of compensation paid to appointed counsel. A lawsuit alleging that the shortage of attorneys led to violation of defendants' right to counsel reached the Supreme Judicial Court. In July 2004, the Court held that defendants were indeed denied their right to counsel, yet also that the Court lacked authority to raise the compensation rates, because setting compensation rates is the legislature's responsibility. Using its supervisory power, the Court decreed that indigent defendants in the affected county would be released after seven days if counsel was not appointed, and cases would be dismissed after 45 days if no counsel entered an appearance before then.[81]

In a second lawsuit, petitioners asked the Court to set rates through the appointment of a special master. The Court stayed the lawsuit after a slight increase in rates appeared to pave the way for future increases. However, the increases were not sufficient to attract and retain enough defenders. In August 2003, judges began to conscript attorneys to serve as court-appointed defenders under the Professional Ethics Rules of Massachusetts.[82]

In response to this crisis, the Governor and Legislature appointed a nine member Commission to Study the Provision of Counsel to Indigent Persons in Massachusetts. In 2005 the commission recommended that by 2008 hourly compensation rates should be increased from $61.50 to $110 for homicide cases, from $46.50 to $70 for felony cases,

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[79] Committee for Public Counsel Services website, http://www.publiccounsel.net/ (accessed August 9, 2010).

[80] Professor Norman Lefstein presentation to SR42 Advisory Committee, November 10, 2009.

[81] *Justice Denied*, 113-114. See *Lavallee v. Justices in Hampden Superior Court*, 812 N.E.2d 895 (Mass. 2004) http://caselaw.findlaw.com/ma-supreme-judicial-court/1014501.html.

[82] NACDL, "The Reform Efforts in Massachusetts," http://www.nacdl.org/public.nsf/defenseupdates/mass010 (accessed Feb. 8, 2011).

and from $37.50 to $55 for all other cases.[83] In July 2005 the legislature raised the compensation rates to their current schedules, effective January 1, 2006. Rates range from $50 to $100 per hour.[84]

The National Association of Criminal Defense Lawyers (NACDL) reports continuing difficulties with the Commonwealth's indigent defense program:

> In July of 2005, a number of court-appointed counsel chose not to renew their contracts. In Suffolk County, which includes Boston, only 140 of the 320 bar advocates renewed, and in Middlesex County, only 90 of the 325 lawyers renewed. The result was yet another indigent defense crisis. On the first day of the new fiscal year, courts statewide were without defenders. At least one judge threatened to hold a lawyer in contempt for refusing to accept a case, even though the lawyer did not have a contract. It is noteworthy that the Massachusetts Association of Criminal Defense Lawyers immediately offered to represent any attorney charged with contempt, and no attorneys were jailed for their refusal to take new cases.[85]

In early 2011, Governor Deval L. Patrick announced a plan to reconstruct the IDS. The Governor's plan, which is included in his proposed budget for FY 2012, would create a Department of Public Counsel Services in the executive branch and abolish the Committee for Public Counsel Services.[86] About 90 percent of indigent cases that are now handled by private attorneys would be transferred to state employed PDs. Currently, 200 PDs represent 10 percent of indigent cases. The plan would add 1,000 new PDs and cut 3,000 private attorneys contracted through the Committee for Public Counsel Services.[87] Supporters of the plan predict the plan will reduce the annual cost of providing indigent defense by $45 million from the current $207 million budget.[88] (The current budget represents $30.60 per Massachusetts citizen, which would correspond to $401.4 million for Pennsylvania.) In defense of its plan, the Patrick administration reports that the amount budgeted for the Committee for Public Counsel Services has increased by $100 million since 2003. The plan would tighten eligibility requirements for indigency.[89] Critics of the plan argue that the present system is, in the long run, less expensive than PDs would be, because the Commonwealth is not obligated to pay for personnel, office,

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[83] Ibid.
[84] Committee for Public Counsel Services website, "V. Policies and Procedures Governing Billing and Compensation," last modified Apr. 6, 2006 http://www.publiccounsel.net/Billing_Information/compensation_rates.html.
[85] NACDL, "Reform Efforts."
[86] Andrea Estes, "Call for Public Defender Overhaul," *Boston Globe*, January 24, 2011, http://www.boston.com/news/local/massachusetts/articles/2011/01/24/patrick_wants_to_end_use_of_private_attorneys_for_public_defense//.
[87] Chris Cassidy, "Public Defenders Question Patrick's Legal System Plan," *The Salem News*, January 25, 2011, http://www.salemnews.com/local/x530800184/Public-defenders-question-Patricks-legal-system-plan.
[88] Estes, "Call for PD Overhaul."
[89] Ibid.

and other expenses of private attorneys currently representing indigent defendants.[90] The proposal is expected to meet with stiff resistance in the legislature, which includes many former defense attorneys.[91]

Michigan

Michigan's 83 counties are responsible for organizing and funding their own IDSs.[92] They use PDs, assigned counsel, or contract attorneys. The state role in the administration of the system is restricted to providing appellate representation.[93] There are two divisions of appellate counsel. The State Appellate Defender Office (SADO) provides appeal services for 25 percent of indigent defendants who are pursuing appeals. SADO is funded by the state and overseen by a seven member board, the Appellate Defender Commission, appointed by the governor. The Appellate Defender Commission also oversees the Michigan Appellate Assigned Counsel System (MAACS). Administrative costs for MAACS are provided for by the state, and counsel costs are borne by the counties in which the assigned counsels serve.[94]

The Michigan system has come under withering criticism. A 2003 study conducted by the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) listed the following deficiencies in the U.S. indigent defense systems, with the implication that Michigan's system suffered from all of them:

- Lack of independence of counsel from judges and politicians
- Absence of sufficient training, qualification standards, and performance evaluations for counsel
- Inordinately high caseloads
- Lack of standards and accountability
- Lack of uniformity of service within the state
- Absence of statewide oversight
- Inadequate funding
- Lack of resources for investigative, expert and other support services

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[90] Cassidy, "Public Defenders Question."
[91] Estes, "Call for PD Overhaul."
[92] Spangenberg Group, "State and County Expenditures for Indigent Defense Services in Fiscal Year 2005," 16.
[93] *Justice Denied*, 149, 151.
[94] NACDL, "Michigan Indigent Defense," http://www.nacdl.org/public.nsf/DefenseUpdates/Michigan1 (accessed Feb. 8, 2011).

- Inadequate compensation for counsel

- Disparity in funding and resources for indigent defense versus prosecution[95]

A second detailed study was published by NLADA in 2008.[96] The method consisted of an in-depth analysis of the system in ten representative counties using the ABA's Ten Principles as the basis for evaluation. Like the ABA study, the NLADA found widespread failure to meet the standards, due in part to the deficiencies in the structure and funding of the system. The report noted that all of the system's funding is supplied by the counties and there is no statewide administrative oversight. Michigan spent $7.35 per capita on indigent defense, ranking 44th among the states. (At that time, Pennsylvania ranked 40th at $8.10; the national average was $11.86.) While there was some variation among the counties studied, the NLADA found all of the ten counties constitutionally deficient.[97] The report emphasized that the state's responsibility to fulfill the Sixth Amendment cannot be completely delegated to the counties. "Though some may argue that it is within the law for state government to pass along its constitutional obligations to the counties, it is also the case that the failure of the counties to meet constitutional muster regarding the right to counsel does not absolve state government of its original responsibility to assure its proper provision."[98]

A class action lawsuit filed in Michigan is currently a significant legal battleground in the debate about judicial review of allegedly deficient IDSs. *Duncan v. Michigan* was filed in 2007 by the ACLU and the Brennan Center on behalf of indigent defendants in three Michigan counties, claiming that the PD system was not meeting its constitutional obligations and that the plaintiffs' Sixth Amendment rights had been and would be violated.[99] On June 11, 2009, the plaintiffs prevailed before the Michigan Court of Appeals on a 2-1 decision. On April 30, 2010, the Michigan Supreme Court upheld the Court of Appeals decision on the ground that it was premature to dismiss the suit without allowing the petitioners to present evidence, and further directed the trial court to consider the plaintiffs' motion for class certification.[100]

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[95] ACLU, "ACLU of Michigan Argues in Supreme Court that the Poor Have a Right to Counsel," April 25, 2005. http://www.aclu.org/racial-justice/aclu-michigan-argues-supreme-court-poor-have-right-counsel.

[96] NLADA, *Evaluation of Trial-Level Indigent Defense Systems in Michigan: A Race to the Bottom; Speed and Savings over Due Process; A Constitutional Crisis* (NLADA, June 2008).

[97] NLADA, *Race to the Bottom*, i-v.

[98] Ibid., 5.

[99] Tresa Baldas, "Michigan Faces Constitutional Case Over Cash-Strapped Public Defenders," *National Law Journal*, December 24, 2009, http://www.nacdl.org/public.nsf/DefenseUpdates/Michigan052.

[100] The Michigan Supreme Court reversed this decision on July 16, 2010, but reinstated it on November 30, 2010 http://coa.courts.mi.gov/documents/sct/public/orders/20101130_s139345_117_139345_2010-11-30_or.pdf.

The Judicial Crossroads Task Force, a collaboration of civic, business, and bar association leaders, recently released a report advocating reforms to the Michigan justice system.[101] The task force recommends that Michigan take the following actions:

- Create and enforce statewide standards for the delivery of indigent public defense to reduce errors and costs
- Shift the responsibility for public defense funding from local government to the state
- Create the necessary mechanisms to implement, measure, enforce, and fund statewide standards for indigent defense that will meet national norms and thereby reduce costly errors
- Enact statutory changes related to indigent defense to free up funds for the state's public defense system[102]

Montana

A class-action lawsuit filed by the ACLU in 2002 led to the nation's first state legislation aimed at implementing the Ten Principles.[103] The lawsuit (*White v. Martz*, CDV-2002-133), filed in February 2004, claimed that inadequate funding and lack of state oversight in Montana's PD system rendered Montana's IDS constitutionally deficient.[104] The lawsuit was stayed when Montana's Attorney General agreed to advocate for improving indigent defense services before the state legislature.[105]

Prompted by the impending lawsuit and the findings of its Law and Justice Interim Committee, the Legislature created a statewide PD system with statewide funding and comprehensive authority.[106] In June 2005, the Legislature passed the Montana Public Defender Act. The act replaced judicial appointment of counsel, local PD offices, and contract counsel with a single statewide system of assigned counsel. The system is supervised by an appointed independent, eleven-member Public Defender Commission and is administered by the Office of State Public Defender. All cases where publicly

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[101] Judicial Crossroads Task Force, "Report and Recommendations, Delivering Justice in the Face of Diminishing Resources," Judicial Crossroads Task Force, State Bar of Michigan, January 2011. http://www.michbar.org/judicialcrossroads/.
[102] Ibid., 15.
[103] ACLU, "ACLU Hails Montana's Public Defense Bill as Leading National Trend," June 8, 2005, http://www.aclu.org/racial-justice_prisoners-rights_womens-rights_immigrants-rights/aclu-hails-montanas-public-defense-b.
[104] ACLU, "ACLU Agrees to Postpone Trial over Lack of Legal Defense for Montana's Poor While Attorney General Seeks Legislative Remedy," May 7, 2004, http://www.aclu.org/racial-justice_prisoners-rights_womens-rights_immigrants-rights/aclu-agrees-postpone-trial-over-lack.
[105] NACDL, "ACLU Lawsuit against Montana," http://www.nacdl.org/public.nsf/defense updates/montana006 (accessed May 13, 2010).
[106] *Justice Denied*, 56, 148.

funded counsel is mandated by law are under the act, including felonies, misdemeanors, civil cases involving child abuse and neglect, juvenile delinquency, involuntary civil commitment, and guardianship.[107]

The office selects a state PD, who is directed to develop a strategic plan for delivering indigent defense services throughout the state. The Commission is also responsible for establishing statewide standards for qualification and training of public defense attorneys, caseloads, performance measures, and evaluation. Appellate defense is handled by the Office of Appellate Defender, which serves under the state PD. The act transferred authority to determine indigency from the judiciary to the PD so that statewide standards for indigency could be implemented. A person is considered indigent if his or her gross household income is at or below 133 percent of the federal poverty level, or whose personal and household assets are at a level that makes hiring an attorney a substantial hardship.[108]

Prior to the adoption of reform legislation, indigent defense was financed by the counties and reimbursed by the state at 65 percent.[109] Under the act, the Office of State Public Defender is funded by the state. The FY 2007 budgeted amount was $13.8 million.[110] This amount represents about $14.20 per capita, which corresponds to about $180 million for Pennsylvania.

In July 2009, American University issued a draft assessment of the performance of the Office of State Public Defender to the Public Defender Commission.[111] The report contained 32 recommendations for improvement in such areas as caseloads and caseload controls, data collection and sharing, training, and communications between office staff and attorneys, and lines of authority. In response to the draft report, the ACLU commented that the report demonstrates how the PD system has improved under the new office, but that further progress is still needed.[112]

As of March 2010, the Office of State Public Defender included eleven regions and used the services of 114 staff attorneys and 225 contract attorneys. The office covers 56 district courts, 140 lower courts, and 20 specialty courts. The budget for each of 2010 and 2011 is $19.9 million ($20 per person as of 2010). The office handled 28,417 new cases in 2009, at an average cost of $700 per case.[113]

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[107] Montana Legislative Services Division, Bill Summary: SB 146 (Montana Public Defender Act) (June 2005), http://publicdefender.mt.gov/forms/pdf/bill_summary.pdf; Mont. Code § 47-1-101 et seq.
[108] Bill Summary, SB 146.
[109] Spangenberg Group, "State and County Expenditures FY 2005," 19.
[110] Bill Summary, SB 146.
[111] American University, School of Public Affairs, "Assessment of the Initial Period of Operations of the Montana Statewide Public Defender System" (Washington, D.C.: American University, July 2009), http://publicdefender.mt.gov/meetings/docs/07302009/AUDraftRecomm.pdf.
[112] ACLU of Montana, "Public Defenders Office Scrutinized," Aug. 3, 2009, http://www.aclumontana.org/index.php?option=com_myblog&show=Public-Defenders-Office-scrutinized.html&Itemid=44.
[113] Phil Drake, "Public Defender: Cuts to Department Not Possible" (Montana Policy Institute, March 16, 2010), http://www.montanapolicy.org/main/story.php?story_id=46 .

Nevada

Nevada's system has moved from legislative to judicial management. The enabling statute established a limited authority commission system.[114] Indigent defense services were provided by the state PD offices. Counties with populations under 100,000 without a county PD office received services through the state office. The state PD was appointed by the governor to serve a four year term. In addition to providing services for the specified counties, the state PD handled post-trial proceedings and appeals on behalf of the county PDs.[115]

In 2007 the Nevada Supreme Court created the Indigent Defense Commission to examine the state's IDS and recommend improvements. The commission was directed to make recommendations for performance standards, removing judges from the appointment of counsel process, and to put the rural IDS offices under the supervision of the statewide office. In 2009 the Supreme Court accepted the report and ordered that standards be put in effect in April of that year.

David Carroll of the NLADA commented that the Nevada judiciary responded effectively to the system's deficiencies. In a single administrative order, the judges ended judicial control of the appointment of counsel, defined uniform eligibility standards for indigent defendants, adopted the ABA standards, established a statewide commission, and developed a system of case-weighting to help control workloads. The judiciary tailored the ABA and NLADA standards for juvenile and appellate representation, reforms that have not occurred in other states.[116]

New Mexico

Recently reformed in accordance with national models, the New Mexico Public Defender Department is a fully state-funded statewide system. The judiciary plays no role in qualifying or selecting contract counsel. The department establishes qualifications, reporting requirements and fees. The courts appoint contract and conflict counsel as named by the department by random assignment. New Mexico's centralized PD system under the governor's jurisdiction allows reforms to be implemented through executive order. New Mexico's Chief PD serves as a member of the Governor's cabinet and can advocate effectively for the system from that position. The state PD has overridden trial judges when they have attempted to bypass the standards to retaliate against zealous PDs.[117]

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[114] *Justice Denied*, 151, 170; Nev. Rev. Stat. § 180.101 et seq.
[115] Nev. Rev. Stat. § 180.060.
[116] Carroll, David, presentation to the SR 42 Advisory Committee, Joint State Government Commission, September 15, 2009.
[117] Phyllis Subin, presentation to the SR 42 Advisory Committee, Joint State Government Commission, September 15, 2009. Ms. Subin was Chief Public Defender of New Mexico from 1997 to 2003.

New Mexico's system is funded entirely through state appropriations for trial and appellate cases.[118] There are two divisions of the department. On one side of the agency, state employees at the centralized state PD office staff ten trial offices and four statewide units providing for appeals, mental health, post-convictions, and serious case representation. On the other side of the Public Defender Department, attorneys are contracted for primary and conflict counsel.[119] The office is equipped with updated technology statewide; especially notable are the case tracking and case management systems. The office's attorneys are supported by paralegals, investigators, social workers, an alternative sentencing advocate, and technology staff.[120] Private contract attorneys provide indigent defense services in counties where the state office is not present.

According to Tony Ortiz, Director of the New Mexico Sentencing Commission, funding for indigent defense services has not increased since the onset of the Great Recession.[121]

Oregon

The Oregon Public Defense Services Commission consists of seven members appointed by the chief justice and is an independent agency within the judicial branch.[122] The Office of Public Defense Services works under the oversight of the commission and consists of two divisions. Trial-level services are provided by contract defenders, certified and overseen by the Contract and Business Services division, which oversees training for psychologists, investigators, and other professionals who assist defense services. The other division, Legal Services, represents indigent clients in criminal appeals, and parole board and postconviction appeals.[123]

The ABA attributes the success of the Commission to its having a sufficient budget for indigent defense services provided entirely by the state.[124] NACDL reported in June 2009 that Oregon was among the top states in per capita spending for indigent defense, having maintained per capita funding of approximately $24 for several years.[125] (For Pennsylvania, this level of funding would correspond to about $305 million.)

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[118] Robert L. Spangenberg, "State and County Expenditures FY 2005," 21.
[119] E-mail from Phyllis Subin to Joint State Government Commission staff, April 22, 2010.
[120] ABA/SCLAID, "Primary Indigent Defense Delivery System."
[121] Telephone conversation between Mr. Tony Ortiz, Director of the New Mexico Sentencing Commission and Commission staff, August 9, 2010.
[122] The Oregon indigent defense system is governed by Ore. Rev. Stat. ch. 151.
[123] NACDL, "Oregon Indigent Defense" (Washington, D.C.: NACDL) http://www.nacdl.org/public.nsf/defenseupdates/Oregon001 (accessed August 18, 2010).
[124] ABA, "State Commissions Project: Final Report" American Bar Association, 5, accessed August 18, 2010, http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/statecommfinalreport.pdf (site discontinued).
[125] Rick Jones, "The New Frontier in Indigent Defense—Big Firms in State Trial Courts," *The Champion*, NACDL, 30, http://www.criminaljustice.org/public.nsf/01c1e7698280d20385256d0b00789923/cf5666f1ea26a303852576190065f43c?OpenDocument (accessed August 18, 2010).

Texas

Texas has a county based system with partial state agency oversight and predominantly state funding.[126] The Texas Fair Defense Act of 2001 provides state funding for counties to improve local IDSs and for state oversight through the Texas Task Force on Indigent Defense. The state has nearly doubled its contribution since enactment.[127]

The Fair Defense Act was prompted by reports by the State Bar of Texas and the Spangenberg Group[128] that documented the problems with indigent defense in the state.[129] Prior to enactment all responsibility for the funding and management of indigent defense fell to the state's 254 counties. The act created a statewide agency to administer statewide policies and appropriations. In exchange for state funding, the local judiciary submits indigent defense plans to the Task Force.[130] Each of the counties organizes and funds its own indigent defense program; most rely on assigned counsel and contract defenders.[131] To comply with the Fair Defense Act, counties must establish procedures for providing prompt access to appointed counsel, fair and neutral selection methods for appointed counsel; qualifications for appointed counsel; financial standards and procedures for determining indigency; and procedures and fees for appointed counsel, experts, and investigators.[132]

The Task Force on Indigent Defense is composed of 13 members. It is responsible for analyzing county expenditures, policies, and procedures; developing policies and standards; promoting local compliance and proficiency, assuring accountability in meeting statutory and constitutional indigent defense requirements, guided by evidence-based practices; and allocating and accounting for the effective distribution of state funds.[133]

Funding is provided to the counties by one of seven methods. Formula grants are awarded to counties that have submitted plans to improve indigent defense, accounting for $12 million to 219 counties. Direct disbursement grants are provided to counties that do not apply for formula grants, and accounted for $180,818 appropriated to 35 counties.[134] Equalization disbursement funds are made available to counties that have

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[126] *Justice Denied*, 54, 151, 170.
[127] ABA/SCLAID, "Primary Indigent Defense Delivery System"; *Justice Denied*, 56.
[128] The Spangenberg Group is a nationally recognized research and consulting firm specializing in improving justice programs. It has conducted nationwide research projects on a variety of topics relating to IDSs. See http://www.spangenberggroup.com/.
[129] Spangenberg Group, "State and County Expenditures FY 2005," 29.
[130] Texas Task Force on Indigent Defense (TFID), "Who We Are and What We Do," accessed May 14, 2010, http://www.courts.state.tx.us/tfid/whoweare.asp.
[131] "State and County Expenditures FY 2005," 30.
[132] Ibid., 29.
[133] TFID, "Who We Are and What We Do."
[134] Dollar amounts and numbers of affected counties are as of FY 2009.

increased indigent defense costs and a low proportion of state funds. Extraordinary grants are given to counties suffering financial hardship. The remaining funding streams are targeted specific funding, technical support funding, and discretionary grants.[135]

Several counties have taken initiatives to improve funding for their IDSs, which have come under increasing financial pressure. Property taxes have been the main tax revenue stream funding indigent defense services, but these taxes have not been able to maintain adequate funding, especially in the face of the Great Recession.

In 2007, 70 counties formed a regional PD office to handle capital cases. The counties pay a yearly fee into the cost-sharing system, which provides lawyers and investigators for each case. According to reports, the system saved the participating counties $400,000 in its first year of operation. Other counties have attempted to improve screening and verification systems for defendants claiming indigence. It was estimated that up to $2 million could be saved annually if 25 percent of defendants currently receiving indigent services were found ineligible.[136]

Utah

Utah's 29 counties are solely responsible for providing indigent defense services. Two of the counties have PD offices, with the remaining 27 counties relying on contract and assigned counsel. The NLADA ranks Utah 48th among the states in per capita spending for indigent defense services at $5.22 per resident (the corresponding spending level for Pennsylvania would be $66.3 million). There are glaring funding disparities within the state. For example, training is provided and CLE expenses covered for prosecutors by statute, while no standard training is provided for PDs, and defense attorneys must pay for their own CLE.[137]

In 2009 the Utah legislature established financial assistance for indigent defense in the form of four special funds administered by the state's Division of Finance: the Indigent Aggravated Murder Defense Trust Fund, the Indigent Felony Defense Trust Fund, the Indigent Inmate Defense Fund, and the Post Conviction Indigent Defense Fund. Counties that participate in these voluntary funds obligate themselves to contribute an amount based on formulas according to population and assessed property values. In exchange for its contribution to the Indigent Aggravated Murder Defense Trust Fund, a county is eligible to apply for benefits if the county has incurred or expects to incur

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[135] Texas Task Force on Indigent Defense, 2009 Annual and Expenditure Report 2009 (Austin: TFID, Jan. 10, 2010), 9-10, http://www.courts.state.tx.us/tfid/pdf/09AnnualReportFINAL011110.pdf.

[136] Jared Janes and Jeremy Roebuck, "Texas Counties Take Different Approach to Common Indigent Defense Problem," *The Monitor*, December 21, 2009, http://www.nacdl.org/public.nsf/defense updates/texas057?opendocument.

[137] Marina Lowe, "Utah Ranks First in the Nation When It Comes to Literacy, Volunteerism, Jell-O Consumption, and Birth Rates. Unfortunately, Utah's Ranking Dips Dramatically When It Comes to Providing for Indigent Defense," *The Defender UACDL*, Winter 2009. http://www.acluutah.org/uacdl.pdf.

expenses "arising out of a single criminal episode."[138] Similarly, a county that participates in the Indigent Felony Defense Trust Fund may apply for benefits if it has incurred or expects to incur expenses in excess of $20,000 arising from a single criminal episode.[139] The Indigent Inmate Defense Fund is to defray defense costs for inmates accused of a crime while serving a sentence in state prison. As of 2009, only one county participated in this fund.[140] The Felony Defense Fund was seeded with a one time appropriation from the legislature, and the Aggravated Defense Fund receives an annual appropriation from the legislature. The Post Conviction Indigent Defense Fund provides financial assistance for post-conviction appeals of indigents who have received a death sentence. Litigation and other expenses are paid for out of state funds without county financial involvement.[141] At its inception, this fund was overseen by the Attorney General, but it was subsequently moved into the Division of Finance because of the conflict of interest in having the state's head prosecutor fund defense representation.[142]

Virginia

The Virginia Indigent Defense Commission (VAIDC) was established within the judicial branch in 2004.[143] The VAIDC oversees and supports indigent defense services, including certification of qualified attorneys, provided by PDs and the private bar. According to the NACDL, the fees paid to court-appointed attorneys for the indigent are among the lowest in the country. Entry-level PDs received $38,000, while entry-level prosecutors received $50,000.[144] In 2004, NACDL reported a long history of the barely functioning IDS in Virginia, including anecdotes from court-appointed attorneys who admitted to providing inadequate defense and PDs who reported that cutting corners to stay within their budgets is standard procedure taught to all new PDs. Several defenders reported struggles with obsolete equipment.[145]

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[138] Utah Code §§ 77-32-601—77-32-604.
[139] Utah Code §§ 77-32-701—77-32-704.
[140] Utah Office of the Legislative Fiscal Analyst, Capital Facilities and Government Operations, "Summary, Budget Brief—Post Conviction Indigent Defense Fund," Jan. 9, 2007, http://le.state.ut.us/interim/2007/pdf/00000513.pdf.
[141] Utah State Legislature, Compendium of Budget Information for the 2009 General Session, Capital Facilities & Government Operations, Appropriations Subcommittee, accessed Dec. 6, 2010, http://www.le.state.ut.us/lfa/reports/cobi2009/LI_FKA.htm.
[142] "Summary, Budget Brief – Post Conviction Indigent Defense Fund."
[143] Spangenberg Group, "Statewide Indigent Defense Systems: 2006," 20.
[144] NACDL, "Virginia's Indigent Defense System," http://www.nacdl.org/public.nsf/defenseupdates/Virginia028 (accessed May 17, 2010).
[145] NACDL, "Virginia's Indigent Defense System Still Failing," http://www.nacdl.org/public.nsf/DefenseUpdates/Virginia025 (accessed May 17, 2010). These accounts were excerpted from the Spangenberg Group, "A Comprehensive Review of Indigent Defense in Virginia (February 2004)."

In 2007, the NACDL threatened a lawsuit over caps imposed on the funding of indigent defense that were the lowest in the country.[146] To forestall the lawsuit, the Virginia legislature approved two bills that allowed judges to lift the caps on fees paid to court-appointed defense attorneys. Under the caps, the limit paid for a defendant facing a felony conviction of life imprisonment capital case was $1,235, while cases carrying sentences of up to 20 years were reimbursed at $445. The legislation allowed judges to reimburse an additional $850 for the most serious felony cases and an additional $120 for lesser cases. Capital murder case reimbursements were, and remained, uncapped. The expected budget for the reimbursements was $8.2 million, which contributed to the total $58 million Virginia paid for court-appointed indigent defense work.[147]

It was reported in March 2010 that the caps may be reinstituted because of budget pressures faced by the Commonwealth of Virginia, which faced a $4 billion shortfall.[148] Observers feared that the IDS would fail to provide adequate services if the budget was reduced and that attorneys would refuse to take court-appointed cases. However, in subsequent reporting of the budget difficulties, it appears that waivers of the caps will be available.[149]

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[146] Larry O'Dell, "Va. Lawmakers May Again Impose Strict Fee Caps," HamptonRoads.com, March 4, 2010, http://hamptonroads.com/2010/03/va-lawmakers-may-again-impose-strict-fee-caps.
[147] Nolan, Jim, "Bills Lift Fee Caps for Defense Attorneys: Court-Appointed Attorneys' Low Pay Can Hurt Cases, Legal Experts Say," *Richmond-Times Dispatch*, February 27, 2007.
[148] O'Dell, "Va. Lawmakers May Again Impose Strict Fee Caps."
[149] VLW Blog, "Fee Cap Waivers Survive Budget Crunch," *Virginia Lawyers Weekly*, March 16, 2010. http://valawyersweekly.com/vlwblog/2010/03/16/fee-cap-waivers-survive-budget-crunch/.

CHAPTER FOUR
DATA COLLECTION

DEFICIENCIES IN INDIGENT DEFENSE DATA

Lack of systematic and complete data hampers analysis and evaluation of our IDS, as it did when the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System Report issued its report in 2003:

> Policymakers need complete and accurate data if they are to make informed decisions about improving public legal defense systems. One of the biggest challenges [The Spangenberg Group][150] encountered . . . was the lack of systematic data reporting, collection, and maintenance. In particular, information concerning caseloads was woefully inadequate. Many of the smaller counties could not even estimate their caseloads; other counties collected certain data, but could not break down the data into types of cases.[151]

This study was equally frustrated by the lack of adequate data about the system. The advisory committee directed Commission staff to gather data on county PD offices and court-appointed counsel statewide. This proved impossible because complete data is not collected on court-appointed counsel or PD offices on such basic factors as staffing levels, budgets, and caseloads. Without adequate recent data, it is impossible for the public to make a quantitative evaluation of the system's performance.

Because each county is responsible for collecting its own data and substantive policies differ from county to county, there are numerous inconsistencies in the available data. PD offices and AOPC define "case" differently, and this makes it difficult to reconcile AOPC and PD office data.

The advisory committee emphasizes that the lack of available statistical data should not be taken as an excuse for failure to address the deficiencies of the Commonwealth's IDS that are detailed in this report. Most of the shortcomings were pointed out in the *Racial and Gender Bias Report* published in 2003. Such factors as excessive caseloads, inadequate resources, inappropriate interference from other

[150] The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System commissioned the Spangenberg Group to review Pennsylvania's indigent defense system.
[151] *Racial and Gender Bias Report*, 184.

governmental bodies, and lack of statewide management guidance and assistance are regularly and personally experienced by members of the advisory committee, especially the chief PDs on the committee.

DATA COLLECTION FOR THIS STUDY

The advisory committee determined that this study should attempt to collect data from each county relevant to the issues facing the Commonwealth's local indigent defense systems. Key issues where data collection would assist analysis of the IDS include the following:

- Staff (full and part-time attorneys, investigators, social workers, and clerical workers)
- Caseloads (total number of cases handled and cases per attorney)
- Representation (PD, court-appointed, contract)
- Expenditures

Several preexisting data sources were consulted. Data is routinely collected by the Administrative Office of Pennsylvania Courts (AOPC) in a database called the Common Pleas Court Management System (CPCMS) from information collected by the county clerks. This database contains the total number of felony, misdemeanor, and ungraded offenses, probation, forfeiture and habeas corpus cases. PD offices handle other cases including mental health commitments, protection from abuse hearings, juvenile delinquency and dependency, paternity, guardianship, and civil contempt arising from support decrees.[152] The database provides some detail about each case, including whether the defendant in the case was represented by a PD, court-appointed counsel, other, or unknown.

Data is collected by the Juvenile Court Judges' Commission (JCJC) on juvenile delinquency cases. JCJC provided juvenile delinquency data by county including the number of court dispositions per county and the number of formal juvenile delinquency hearings represented by PDs, court-appointed attorneys, and private attorneys, and hearings in which the defendant waived their right to counsel or the representation was unreported. One court disposition can have multiple cases that are disposed of together.

[152] These were detailed in the survey performed by the Public Defender Association of Pennsylvania (PDAPA) in 2005.

The number of formal juvenile delinquency hearings is actually a count of the number of court dispositions that had at least one formal hearing; if one court disposition had three formal hearings, it would only be counted once in the JCJC data.

The Public Defender Association of Pennsylvania (PDAPA) performed a survey in 2005 that collected data from 41 counties. This survey covered cases, personnel, support staff, budget, computer utilization, eligibility standards and procedures, continuing legal education (CLE), and the county criminal justice system.

The advisory committee concluded that the available statewide data was insufficient and directed Commission staff to survey all the counties. In February 2009 Commission staff sent a survey to the PD, DA and court administrator offices of all counties. The survey was sent to the County Commissioners Association of Pennsylvania (CCAP) for distribution to the county commissioners. The survey comprised three separate sections including sections to be completed by the PD, the DA, and the court administrator, respectively. The original deadline for the survey was March 15, 2009.

The section submitted to the PD offices covered personnel (numbers and salaries), caseloads, budget, CLE, computers, and eligibility for appointment of counsel. The section submitted to the DAs covered personnel (numbers and salaries), caseloads, budgets, computers, and CLE. The section submitted to the court administrators covered caseloads, judicial resources, and outside counsel. Space was provided for comments on the PD system in Pennsylvania. Data was collected for the years 2007, 2008, and 2009.

On March 4, 2009, AOPC advised Commission staff that some information requested on the survey was included in the CPCMS database and would be made available to the staff. Specifically, the AOPC provided the Commission with data for 2007 and 2008 for the following categories of cases: all adult criminal, capital murder, other murder, other felony, misdemeanor, probation and parole revocation, forfeiture, and habeas corpus. In addition to the numbers of total cases, this data included the number of cases assigned to the PD offices and the number of cases assigned to court-appointed counsel.

While the CPCMS data was helpful and uniform across all counties, there were several problems with it. Many counties recorded up to 40 percent of their cases as having “undefined counsel” meaning that the county clerk did not record or did not know what type of representation the defendant had. Non-criminal cases that were processed by PDs were not reflected in this database, including mental health commitments, protection from abuse hearings, juvenile delinquency and dependency hearings, paternity, guardianship, and non-support civil contempt. Finally, discrepancies existed between AOPC and county data because of inconsistent methods of counting cases; some PD offices indicated they had many more (or in a few counties fewer) cases than AOPC reported.

On March 11, 2009, Commission staff requested CCAP to remind members of the impending survey deadline, and CCAP placed a reminder in its monthly newsletter. After the original survey deadline of March 15 passed, staff continued to collect surveys as the response rate on the survey was still very low.

On April 3, 2009, Commission staff contacted JCJC for data on juvenile delinquency and dependency proceedings handled by the PD. JCJC data on delinquency cases uses court dispositions rather than individuals as the unit of count. JCJC provided this information to Commission staff for 2007 and 2008.

On April 24, 2009, the Commission's project director for SR 42 spoke to PDAPA members at its annual meeting to explain the SR 42 study and the importance of the survey to encourage the counties to complete their responses. It was discovered that many PDs did not received their part of the survey from the county commissioners. PDAPA sent out the PD section of the survey to non-responding PDs. The Pennsylvania Association of Criminal Defense Lawyers (PACDL) also followed up with the PDs to encourage their participation.

Only six counties had completed all three parts of the survey, which is not a sufficient response to enable a comprehensive analysis. Twenty-seven counties had completed the PD part of the survey, a response sufficient to enable a tentative analysis. Seven DAs and 15 court administrators also responded. The spotty response to the survey may be because the counties do not routinely collect the information requested by the survey.

At its meeting of September 15, 2009, the advisory committee noted the disappointing response rate to the survey and directed Commission staff to gather information from a few select counties through direct phone interviews and a new survey asking more open-ended questions. The advisory committee selected eight counties (which make up seven judicial districts), viz., Erie, Tioga, Montgomery, Beaver, Elk, Cameron, Monroe, and York.[153] The PDs and DAs of these counties were sent the questions before the phone interviews, and the offices were given the option of either returning a written response or arranging a phone interview with Commission staff. Unfortunately after multiple attempts to contact all of these DA offices, staff was able to gather responses from only five DA offices and two PD offices.[154]

Despite these assiduous efforts to collect it, the data relating to the determination of caseloads was so inconsistent and incomplete that the advisory committee directed staff to withdraw it from this report. In March 2011, advisory committee member Nathan Schenker, then-president of the PDAPA, did an informal e-mail survey of the PDs to assist the staff in gathering basic data about caseloads. The survey requested data as of 2010 on overall caseload; caseload by category (capital murder, homicide, felonies,

[153] Elk and Cameron counties make up one judicial district and share a PD, but have separate DAs for each county.

[154] The five responding DA offices were Beaver, Elk, Cameron, Montgomery, and Tioga Counties. The two PD offices responding were Tioga and York Counties.

misdemeanors, and other); caseload by attorney; number of attorneys in the office broken down by full and part time; support staff (investigators, secretaries, social workers, paralegals, etc.); and other information pertinent to workload and resources in narrative form.[155] This data is used in the section of Chapter Five entitled "Excessive Caseloads."

The lack of consistent, regularly collected data, and the formidable difficulty even official observers meet in collecting comprehensive and usable information support this report's recommendation that a statewide agency establish a uniform and usable system of data collection for criminal and juvenile delinquency cases handled by the IDS. The draft statute included in this report provides for an administrative structure that can determine what data will be most useful for administering the system and can oversee the collection, dissemination, and analysis of that data.

[155] E-mail from Nathan Schenker to chief public defenders, March 10, 2010.

CHAPTER FIVE
EVALUATION OF PENNSYLVANIA'S INDIGENT DEFENSE SYSTEM

INTRODUCTION

This chapter evaluates the Pennsylvania IDS. In accordance with the direction of the advisory committee, the criteria for evaluation are supplied by the ABA's "Ten Principles of a Public Defense Delivery System,"[156] which have gained wide acceptance as "an excellent blueprint for the fundamental criteria necessary to construct an effective public defense system."[157] They are solidly grounded in U.S. Supreme Court precedent and have come to constitute "the most widely accepted and used version of national standards for public defense systems."[158] The Ten Principles have been endorsed by the Philadelphia Bar Association[159] and the Wilkes-Barre Law and Library Association, which is the bar association of Luzerne County.[160] The reforms in the states that have changed their systems since the Ten Principles were promulgated have taken their bearings from them, as evidenced by the trend toward centralized administration and full state funding that characterizes most of such reforms.[161] The U.S. Supreme Court has looked to other ABA standards as evidence of "prevailing norms of practice" that are "guides to determining what is reasonable," although they are "only guides and not inexorable commands."[162]

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[156] American Bar Association, "Ten Principles of a Public Defense Delivery System," (ABA, February 2002), http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf.

[157] *Justice Denied*, 33; Mary Sue Backus and Paul Marcus, "The Right to Counsel in Criminal Cases, A National Crisis," 57 Hastings L.J. 1031, 1123.

[158] David Carroll, Phyllis Mann, and Jon Mosher, "The Judicial Underpinnings of the American Bar Association's *Ten Principles of a Public Defense Delivery System* and Their Use in Defining Non-Representation under *United States v. Cronic*, 466 U.S. 648 (1984)" (NLADA, October 26, 2011), 4, 5-10 http://nlada.net/sites/default/files/na_judicialunderpinningsofabatenprinciples_10262011.pdf.

[159] "Resolution of the Philadelphia Bar Association Adopting and Endorsing the American Bar Association's Ten Principles of a Public Defense Delivery System," June 30, 2011, http://www.philadelphiabar.org/page/ResJune11_2?appNum=4.

[160] "Resolution of the Wilkes-Barre Law and Library Association Endorsing the American Bar Association's Ten Principles of a Public Defense Delivery System," http://www.pabarcrc.org/pdf/Wilkes-Barre%20association%20resolution.pdf. The resolution was adopted on June 11, 2011.

[161] See *Justice Denied*, 54 and 151. One exception is Georgia, which restricted the authority of the state commission and retained predominantly county funding. These policy choices may have contributed to the partial failure of reform in that state. See this report, 27-30.

[162] *Padilla v. Kentucky*, 559 U.S. ___, 130 S. Ct. 1473, 1482 (2010), citing *inter alia Strickland v. Washington*, 466 U.S. 668 (1984); *Wiggins v. Smith*, 539 U.S. 510, 534 (2003); and *Bobby v. Van Hook*, 558 U.S. ___, 130 S. Ct. 13 (2009).

The Ten Principles describe the standards that the system as a whole should meet. They are not intended to be used as performance standards to apply to individual lawyers or particular cases; for instance, it would be a misapplication of these standards to seek to overturn a conviction solely on the grounds that the defense attorney was appointed by a judge, even though such an appointment would be contrary to the Ten Principles.

The SR 42 advisory committee observed that the goal of IDS reform is representation of the indigent so as to enable the accused to receive a fair disposition under the applicable law. This principle does not require every case to go to trial. Nontrial resolutions following informed negotiations between prosecution and defense, (including guilty pleas, plea bargains, or alternative dispositions) save resources for both the prosecution and defense (and thus for the taxpayer), yet are perfectly compatible with a fair adversary system, when the IDS is structured and supported so that it can meet the prosecution on a level playing field. However, it is essential that any waivers by the client be knowing, intelligent and voluntary, and that the validity of the waiver be verified by the court on the record.

PROFESSIONAL INDEPENDENCE

Principle 1 of the ABA's Ten Principles addresses the need for the IDS to maintain the professional independence of the attorneys who serve in it:

> **The public defense function, including the selection, funding and payment of defense counsel, is independent.** The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.[163]

The board or agency overseeing the IDS should be structured so that it is independent from both judicial and political control. The advisory committee stresses the central importance of this standard, as indigent defense can be severely compromised when it is ignored:

[163] ABA Ten Principles, 2.

> When the defense function lacks [professional and political] independence, the integrity of the indigent defense system is compromised. To ensure that the defense function is protected, the establishment of an independent policy board to provide oversight is strongly recommended. Such boards now exist in some states, but there still are parts of the country where indigent defense is plagued by the oversight and interference of governmental funding sources and the courts. This influence, which may be rooted in a desire to control costs, or a preference for certain attorneys known to resolve cases without litigation, often runs contrary to the duties of the defense provider and the interests of defendants. In short, the lack of independence of the defense function threatens the right to counsel.[164]

Judicial interference may lead to real or perceived favoritism and the intrusion of extraneous considerations that may hamper professional representation. A report on Michigan's IDS elaborates on how this can affect the right to counsel:

> By statute, Michigan's elected judges are authorized to pass out assignments and have discretion to set fee schedules in their jurisdiction. Having judges maintain a key role in the supervision of indigent defense services can create the appearance of partiality—thereby undermining confidence in the bedrock principle that every judge be a scrupulously fair arbitrator. Policy-makers should guarantee to the public that critical decisions regarding whether a case should go to trial, whether motions should be filed on a defendant's behalf, or whether certain witnesses should be cross-examined are based solely on the factual merits of the case and *not* on a PD's desire to please the judge in order to maintain his job.[165]

In Pennsylvania, lack of guidelines or oversight permits local judges free reign over the appointment of counsel and the selection of contract counsel. Such judicial authority may result in some cases in the selection of counsel on the basis of political or personal favoritism rather than professional quality. As such counsel owe their positions to the judge, they have an incentive to avoid displeasing him or her, which discourages zealous advocacy. Lack of standards impedes accountability of counsel for quality representation. At the same time, judges fail to monitor for manageable caseloads or provide additional resources when caseload limits are exceeded.[166]

"Probably the greatest risk to independence of the defense function is the pressure defenders receive from their funding sources."[167] Since Pennsylvania's system is funded by the counties, the county commissioners constitute the predominant threat in this regard, as "chief PDs in all counties except Philadelphia are appointed by the county commissioners, and may therefore have obtained their positions through political

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[164] *Justice Denied*, 80.
[165] NLADA, *A Race to the Bottom*, 35-36.
[166] *Racial and Gender Bias Report*, 190.
[167] *Justice Denied*, 80.

connections." The power to appoint and fund the PD allows the county commissioners "to control the PDs' budgets and sometimes interfere in the operations of their offices."[168] This is especially troubling because the political incentive at the county level favors the DA as against the PD.[169]

INVOLVEMENT OF PRIVATE BAR

Principle 2 identifies the respective roles of the private bar and the PD in the provision of indigent defense services:

> **Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.** The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services. The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.[170]

AOPC has compiled data on the types of defense counsel that handle criminal cases. Table 1 shows the different kinds of counsel handling all criminal cases in the respective counties. Table 2 shows the kinds of counsel handling different kinds of criminal cases statewide.

The data indicate that Pennsylvania probably does meaningfully involve the private bar in the provision of indigent defense, as the "court-appointed" and "other" counsel are private attorneys and an unknown proportion of the "undefined" category is also private. However, few counties systematically select attorneys in a manner assuring that the attorney is genuinely qualified to try the assigned criminal case.[171]

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[168] *Racial and Gender Bias Report*, 190.
[169] Ibid., 191.
[170] ABA Ten Principles, 2.
[171] See segment on Selection of Counsel in this report, 78-80.

Table 1

NUMBER OF CRIMINAL CASES HANDLED BY EACH COUNTY BY DEFENSE COUNSEL TYPE (2008)

County	Public defender		Court-appointed counsel		Undefined counsel		Other counsel		Total
	Number of cases	Percentage of total cases	Number of cases	Percentage of total cases	Number of cases	Percentage of total cases	Number of cases	Percentage of total cases	Number of cases
Adams	482	36.2%	71	5.3%	299	22.5%	478	35.9%	1,330
Allegheny	6,195	32.0	727	3.8	7,365	38.1	5,060	26.2	19,347
Armstrong	304	34.9	44	5.1	179	20.6	344	39.5	871
Beaver	1,527	54.2	141	5.0	306	10.9	845	30.0	2,819
Bedford	284	54.4	36	6.9	42	8.0	160	30.7	522
Berks	2,961	50.4	478	8.1	385	6.6	2,051	34.9	5,875
Blair	1,293	45.3	409	14.3	281	9.8	871	30.5	2,854
Bradford	247	39.3	47	7.5	31	4.9	303	48.2	628
Bucks	2,656	29.3	541	6.0	1,545	17.1	4,308	47.6	9,050
Butler	1,017	38.2	166	6.2	888	33.4	590	22.2	2,661
Cambria	1,540	55.9	186	6.7	228	8.3	802	29.1	2,756
Cameron	68	72.3	0	0.0	4	4.3	22	23.4	94
Carbon	280	34.1	87	10.6	208	25.3	247	30.0	822
Centre	909	38.1	141	5.9	277	11.6	1,061	44.4	2,388
Chester	1,911	37.5	271	5.3	497	9.7	2,423	47.5	5,102
Clarion	220	26.8	45	5.5	262	31.9	295	35.9	822
Clearfield	396	38.4	37	3.6	280	27.2	318	30.8	1,031
Clinton	336	62.9	1	0.2	41	7.7	156	29.2	534
Columbia	395	45.8	37	4.3	113	13.1	317	36.8	862
Crawford	224	25.3	35	3.9	317	35.7	311	35.1	887
Cumberland	1,701	53.2	202	6.3	112	3.5	1,184	37.0	3,199
Dauphin	3,095	53.2	218	3.7	546	9.4	1,959	33.7	5,818
Delaware	3,235	37.6	281	3.3	877	10.2	4,205	48.9	8,598
Elk	261	57.4	31	6.8	55	12.1	108	23.7	455
Erie	1,413	46.9	168	5.6	340	11.3	1,093	36.3	3,014
Fayette	869	41.0	80	3.8	309	14.6	860	40.6	2,118
Forest	36	46.2	2	2.6	19	24.4	21	26.9	78
Franklin	1,231	50.8	332	13.7	372	15.4	488	20.1	2,423
Fulton	58	30.7	26	13.8	56	29.6	49	25.9	189
Greene	209	41.8	70	14.0	54	10.8	167	33.4	500
Huntingdon	252	42.2	146	24.5	50	8.4	149	25.0	597
Indiana	478	47.5	13	1.3	94	9.3	421	41.8	1,006
Jefferson	98	14.1	1	0.1	373	53.8	221	31.9	693
Juniata	207	59.7	10	2.9	25	7.2	105	30.3	347
Lackawanna	1,166	40.0	142	4.9	298	10.2	1,310	44.9	2,916
Lancaster	2,050	41.5	414	8.4	370	7.5	2,111	42.7	4,945
Lawrence	746	50.1	140	9.4	175	11.8	428	28.7	1,489
Lebanon	912	41.8	142	6.5	480	22.0	647	29.7	2,181
Lehigh	1,628	33.0	134	2.7	1,580	32.0	1,588	32.2	4,930
Luzerne	542	12.3	42	0.9	2,208	49.9	1,632	36.9	4,424
Lycoming	1,152	57.9	41	2.1	230	11.6	565	28.4	1,988
McKean	222	29.4	48	6.4	315	41.8	169	22.4	754
Mercer	658	49.7	142	10.7	108	8.2	415	31.4	1,323
Mifflin	438	60.9	47	6.5	41	5.7	193	26.8	719
Monroe	735	41.2	69	3.9	288	16.2	690	38.7	1,782
Montgomery	3,745	36.4	84	0.8	1,725	16.8	4,733	46.0	10,287
Montour	5	2.6	2	1.0	178	90.8	11	5.6	196
Northampton	1,047	24.6	137	3.2	1,725	40.6	1,343	31.6	4,252
Northumberland	560	38.6	146	10.1	305	21.0	438	30.2	1,449
Perry	301	54.3	0	0.0	63	11.4	190	34.3	554
Philadelphia	8,624	51.5	3,270	19.5	135	0.8	4,701	28.1	16,730
Philadelphia MC*	43,450	68.7	5,358	8.5	6,975	11.0	7,506	11.9	63,289
Pike	240	47.9	9	1.8	20	4.0	232	46.3	501
Potter	90	38.0	10	4.2	52	21.9	85	35.9	237
Schuylkill	1,022	46.8	157	7.2	312	14.3	691	31.7	2,182
Snyder	130	29.8	29	6.7	90	20.6	187	42.9	436
Somerset	385	45.1	109	12.8	91	10.7	269	31.5	854
Sullivan	34	50.0	11	16.2	8	11.8	15	22.1	68
Susquehanna	211	45.0	55	11.7	21	4.5	182	38.8	469
Tioga	196	47.6	15	3.6	7	1.7	194	47.1	412
Union	121	28.5	45	10.6	80	18.8	179	42.1	425
Venango	369	45.8	36	4.5	74	9.2	327	40.6	806
Warren	276	51.2	55	10.2	54	10.0	154	28.6	539
Washington	849	29.3	80	2.8	1,053	36.3	920	31.7	2,902
Wayne	315	50.2	0	0.0	66	10.5	247	39.3	628
Westmoreland	1,539	29.0	241	4.5	1,626	30.7	1,897	35.8	5,303
Wyoming	189	45.2	59	14.1	44	10.5	126	30.1	418
York	3,188	39.3	743	9.2	1,024	12.6	3,163	39.0	8,118
Statewide total	113,523	47.5	17,092	7.2	38,651	16.2	69,530	29.1	238,796

*Municipal court.

NOTE: The "undefined counsel" category includes records where the representation type was not recorded. This field is not required in reporting data to AOPC because sometimes clerk staff members do not know the representation type. The "other" category includes the following values: cocounsel, conflict counsel, migrated, PCRA counsel, and private counsel. E-mail from Ralph W. Hunsicker, senior projects director, Judicial Automation, AOPC, to Commission staff, Jan. 12, 2011.

SOURCE: CPCMS database, 2008, e-mail from AOPC to JSGC staff, March 13, 2009.

Table 2

NUMBER OF CRIMINAL CASES IN PENNSYLVANIA
BY TYPE OF CASE AND DEFENSE COUNSEL TYPE (2008)

County	Public defender		Court-appointed counsel		Undefined counsel		Other counsel		Total
	Number of cases	Percentage of total cases	Number of cases	Percentage of total cases	Number of cases	Percentage of total cases	Number of cases	Percentage of total cases	Number of cases
Capital murder	267	28.3%	337	35.7%	20	2.1%	319	33.8%	943
Other murder	1,001	39.5	526	20.8	167	6.6	838	33.1	2,532
Other felony	51,947	53.7	11,922	12.3	8,902	9.2	24,038	24.8	96,809
Misdemeanor	58,356	43.6	4,052	3.0	27,944	20.9	43,530	32.5	133,882
Ungraded	839	37.5	140	6.3	852	38.1	404	18.1	2,235
County probation	1,103	60.9	111	6.1	247	13.6	349	19.3	1,810
Forfeiture	4	1.0	1	0.3	346	87.4	45	11.4	396
Habeas corpus	6	3.2	3	1.6	173	91.5	7	3.7	189
Statewide total	113,523	47.5	17,092	7.2	38,651	16.2	69,530	29.1	238,796

SOURCE: CPCMS database, 2008, e-mail from AOPC to JSGC staff, March 13, 2009.

STATEWIDE SUPERVISION AND FUNDING

Somewhat hidden in the last sentence of Principle 2 are two of the most essential structural elements of an effective IDS: **"Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide."**[172] This topic has unmistakably assumed greater salience in the thinking of observers who wish to reform the nation's IDSs. As recently as 1992, the ABA's official standards went only so far as to suggest that "[c]onditions may make it preferable to create a statewide system of defense."[173] And statewide organization was not included in the black letter statement of any of the ABA principles, but was included in what appears to be the commentary to the Principle 2, which is more conspicuously about the role of the private bar. However, the comment to the ABA Standard hints that statewide organization has grown in importance:

> [Standard 5-1.2(c)] acknowledges the continuing national trend toward the organization of defense services at the state level. Such programs have generally fared better than locally funded programs in resource allocation and quality of service in recent years.[174]

Since 2000, eleven states have established a statewide authority over their IDSs, although three of these state bodies have only partial authority.[175]

[172] Emphasis added.
[173] ABA Standards for Criminal Justice: Providing Defense Services, 3 (Standard 5-1.2(c)).
[174] Ibid., 5.
[175] *Justice Denied*, 151. The eleven states referred to are Georgia, Louisiana, Montana, North Carolina, North Dakota, Oregon, South Carolina, Texas, Virginia, Washington, and West Virginia. The states whose central structure has partial authority are Georgia, Texas, and Washington.

Statewide Funding

Pennsylvania is the only state that does not provide for any funding for indigent defense. As of 2008, 28 states fund the IDS entirely or almost entirely at the state level. In another three states, the majority of the funding is borne by the state. In eighteen states the county bears most but not all of the cost.[176] The shift toward state funding reflects a consensus among commentators that a predominance of state funding is necessary to a successful system.

> As numerous statewide indigent defense studies have shown, when counties primarily fund indigent defense, there are certain to be inequities among the locally funded systems. Inevitably, urban counties have far more cases than rural counties and are often overburdened. At the same time, a rural county, with fewer resources, may be financially crippled by the need to fund the defense of a single serious homicide case.[177]

State funding is superior to local funding "because the financial obligation is more easily borne by the state and central funding avoids inconsistencies in funding levels among counties or other subdivisions."[178] In these respects, the rationale for a significant contribution from the state for indigent defense is similar to that for state support for public education. As the counties and municipalities are creatures of the Commonwealth and have no independent sovereignty,[179] the responsibility for establishing and overseeing the IDS falls primarily on the state. It is consistent with the U.S. and Pennsylvania Constitutions for the Commonwealth to delegate some of this responsibility to counties, but the Commonwealth must ensure that the service is adequately provided throughout Pennsylvania.[180]

Counties that face the double burden of a high crime rate and a poor economy cannot be expected to maintain a viable system. Per capita income by county ranges from $62,086 in Montgomery County to $20,097 in Forest County.[181] National experience shows that the greater the demand for indigent defense funding, the less county funding is available, because counties with the greatest need for indigent defense commonly face falling property values, increasing unemployment, poor schools, and poor social services.

> Nationally, counties with fewer sources of revenue may have to dedicate a far greater portion of their limited budget to defender services than would counties in better economic standing.

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[176] Spangenberg Project, "State County and Local Expenditures for Indigent Defense Services Fiscal Year 2008" (ABA, 2010), 5.
[177] *Justice Denied*, 54-55.
[178] ABA/SCLAID, "*Gideon's* Broken Promise," 8.
[179] Pa. Const. art. IX, § 1; *Cali v. City of Philadelphia*, 177 A.2d 824 (Pa. 1962).
[180] See NLADA, Race to the Bottom, v.
[181] U.S. Census Bureau, USA Counties, General Profile, Per Capita Personal Income 2007 http://censtats.census.gov/cgi-bin/usac/usacomp.pl (accessed Nov. 15, 2010).

> For instance, crime rates tend to increase when there is a high level of unemployment. Thus, at a time when tax revenues may be down due to depressed real estate prices and people leaving the community, the criminal justice system is often expected to increase its workload. A county's revenue base may also be strained during economic downturns because of the need for increased social services, such as indigent medical costs. In addition, counties also must provide the citizenry with other important services, such as public education. The need to balance these responsibilities while maintaining fiscal accountability often leaves county officials in the unenviable position of having to choose between funding needed services and upholding the constitutional commitment to guarantee adequate indigent defense services.[182]

In counties heavily impacted by depressed economies, the safety net that would otherwise support people tempted to turn to crime is ineffective.[183] In systems that depend primarily on county funding there is often justice by geography: "the measure of justice received by an indigent defendant may depend more on location than the actual merits of the case."[184]

Statewide Oversight

Besides more equitable funding, a statewide public defense agency will help assure that PDs face greater accountability to our citizens and taxpayers. A statewide office can develop performance standards and implement them through training and supervision.

> National standards have long acknowledged the need for a statewide structure to oversee indigent defense services, ensure uniformity in the quality of services, and provide system accountability. . . . [A] lack of statewide oversight and structure results in a hodgepodge of local indigent defense systems that are unsupervised and vary greatly in their effectiveness. The result is a system in which justice for the poor is unpredictable and subject to local political and budget pressures.[185]

For instance, had the system in Luzerne County been required to report regularly on its activities to a statewide office, the county system might have been forced to explain the high proportion of juvenile clients appearing without counsel, which may have brought the Luzerne County "kids for cash" scheme into the open earlier.

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[182] David Carroll, "Pennsylvania's Continuing Struggles to Meet *Gideon's* Promise" (NLADA, April 8, 2011) http://www.nlada.net/jseri/blog/pennsylvania%E2%80%99s-continuing-struggles-meet-gideon%E2%80%99s-promise.
[183] Presentation of David J. Carroll, director of Research and Evaluation, Defender Legal Services, National Legal Aid and Defender Association (NLADA).
[184] ABA/SCLAID, "*Gideon's* Broken Promise," 9.
[185] Ibid., 21.

Justice Denied, a study that reflects the consensus of indigent defense reform advocates, recommends a high degree of control for the statewide agency:

> While it is always hazardous to generalize, usually, the greater the responsibility of the oversight body for the management of the state's indigent defense services, the better and more consistent is the representation throughout the state.
>
> Oversight bodies with full authority and clear independence are best equipped to have a positive impact on indigent defense. This is especially true when the commission controls most or all of the state's funds for indigent defense. The relationship between state funding and an indigent defense oversight body's level of authority is inextricable and, for the most part, directly proportionate. Without adequate funding, even a well-designed and empowered commission will struggle to keep the indigent defense system afloat.[186]

Consistent with a more centralized system with clear accountability, the advisory committee recommends that the statewide agency be granted the authority to promulgate standards through regulation that would govern the provision of services in all the counties except Philadelphia.[187] These standards should apply to all the key elements of service provision, including:

- performance evaluation
- qualifications for attorneys and professional staff
- compensation of attorneys and professional staff
- supervision and training
- attorney caseload and workload
- eligibility of defendants for public counsel
- time of commencement of representation
- data collection

While there should continue to be local PDs, those appointed after the effective date of the legislation instituting the reformed system should be selected by the statewide agency and be subject to dismissal by that office if their performance fails to meet the applicable

[186] *Justice Denied*, 166.
[187] See this report, 64.

standards or for other good cause. (PDs in office at the time the new system is instituted could to retain their positions, but would be subject to dismissal for good cause by the agency.)

DEFENDER ASSOCIATION OF PHILADELPHIA

Indigent defense cases arising in Philadelphia have been assigned to the Defender Association of Philadelphia (DAP) under a long-standing contractual arrangement between DAP and the city government. Because of DAP's unique and outstanding accomplishments, the advisory committee recommends that it should be autonomous in most respects from the statewide office.

Description of Defender Association of Philadelphia

DAP is nationally recognized as one of the best PD offices in the country. It has been honored by the NLADA for its excellence, and it has received other awards for its training programs, its dedication to quality representation of delinquent juveniles and children in abuse and neglect proceedings, its commitment to zealous capital case representation, and its leadership within the Philadelphia, Pennsylvania, and national PD, criminal, and delinquency justice communities.

DAP is guided by the best practices set forth in the Ten Principles and makes every effort to fully comply with them. It is structured to assure independence in its management and law practice and has maintained high standards of ethical, competent, and effective assistance of counsel. These standards of quality legal practice are communicated throughout its supervision process, training programs, and training materials.

Originally founded in 1934, DAP formally became the only PD office for Philadelphia through a perpetual contract originally signed in 1969. The contract provides that DAP is governed by a board of thirty directors representing the city administration as well as DAP itself. The board appoints the chief PD and the first assistant defender and provides policy guidance and oversight. The board fully supports the independence of DAP from political and judicial influences, but does not interfere with the representation of individual clients.

DAP provides state court representation for adults facing criminal prosecutions, and it files and staffs appeals to the Pennsylvania appellate courts and, when appropriate, the U.S. Supreme Court. It represents clients at probation review and parole violation hearings. All representation services are fully supported by staff investigators, social workers, mitigation specialists, administrators, technology staff, and support staff. DAP

attorneys, professional and support staff are full-time employees. Staff comprises approximately 600 full-time employees who work in its state and federal court divisions, units, and administration.

DAP's Juvenile Court Unit (JCU) has received national and state attention for its excellence. JCU represents juveniles in the delinquency court system at adjudication and disposition hearings, probation and other review hearings, habeas corpus filings, civil mental health review proceedings regarding sex offenders, and appellate representation. It participates in formulating policy regarding the delinquency system and in the rule-making process for juvenile court. JCU founded the Juvenile Defenders Association of Pennsylvania, which has become an important voice for juvenile PDs and for the children whom they represent. Members of the unit have contributed to the writing and publication of performance guidelines and other practice materials.

DAP was one of the nation's first defender offices to provide legal representation for children involved in the dependency court system through its Child Advocate Unit. The teams of attorneys and social workers comprising this unit seek to protect infants, children, and youth who have been physically and psychologically harmed. Many of these children may remain clients of CAU until they age out of the foster care system as young adults. The dedication of the CAU's attorney and social worker teams has saved the lives of many clients.

Among DAP's foremost priorities is the training, education, and development of its attorneys. DAP was one of the first PD offices in the country to establish a full-time attorney director of training responsible for the recruitment of outstanding law graduates and the training and supervision of interns and new attorneys. When the Pennsylvania Supreme Court instituted mandatory CLE requirements for all attorneys, DAP was recognized as one of the first accredited CLE providers, based upon its history of quality training programs.

DAP also provides specialized representation for adults and juveniles who have mental retardation or serious mental health conditions. This group of attorneys and social workers provides legal services for civil and criminal mental health hearings and commitment proceedings. They have also been active in discussions pertaining to the establishment of a Philadelphia mental health treatment court and in state and county policy impacting the mentally ill involved in the criminal and delinquency systems.

Finally, DAP serves as the federal community defender office for the Eastern District of Pennsylvania, providing trial and appellate representation in the federal courts. The federal office includes a large capital habeas unit that specializes in representing Pennsylvania inmates who face the death penalty. This unit's litigation has identified ineffective assistance of counsel issues in the training and funding of Pennsylvania's capital litigators, particularly the lack of financial support from the Commonwealth. Litigation by this unit has resulted in rulings in its favor by the Third Circuit and by the U.S. Supreme Court.[188]

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[188] See *Rompilla v. Beard*, 545 U.S. 374, 125 S.Ct. 2456 (2005).

Role of DAP in Proposed System

The advisory committee recommends that DAP continue to handle indigent defense representation for cases arising in Philadelphia. Because of the excellent record of DAP in maintaining professional standards, it should not be subject to the professional supervision of the statewide office and should be responsible for formulating and enforcing its own professional standards.

To afford Philadelphia some benefit from the statewide system, the statewide Office of Indigent Defense Services should contract with DAP to remunerate the latter for its handling of appeals (including appeals from capital cases). With respect to capital trials, the statewide office would pay DAP to handle 20% of those cases, as Philadelphia does currently through its contract with the City. The First Judicial District (which comprises the Pennsylvania Unified Judicial System in Philadelphia) should continue to assign the other 80% of the capital cases in Philadelphia to counsel qualified under court rules to represent capital defendants. While it might be fairer for DAP to handle all Philadelphia indigent capital cases, the advisory committee recognizes that the cost of doing so would be overly burdensome to the Commonwealth. Locally assigned counsel would also handle all postconviction litigation. The statute is drafted so as to implement this plan.

The advisory committee urges the City administration and the First Judicial District to adequately fund assigned counsel representing capital defendants.

TIMELY ASSIGNMENT OF COUNSEL

Principle 3 deals with the initiation of the attorney-client relationship:

> **Clients are screened for eligibility, and defense counsel are assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.** Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.[189]

For the most part, the PDs that responded to the Commission staff's initial SR 42 Survey reported that they do begin representation of indigent defendants as soon as possible, normally before the preliminary hearing. Several counties reported that they sometimes represent clients as early as the preliminary arraignment. A few PD offices responded that while they technically begin representation before the preliminary hearing, that hearing is often the first time the defendant and counsel actually meet

[189] ABA Ten Principles, 2.

face-to-face. The advisory committee believes that the time of commencement of representation should be governed by statewide standards which should generally direct that defense counsel meet with the defendant prior to the preliminary hearing.

Eligibility Determinations

The SR 42 Survey found that the majority of counties use the Federal Poverty Guidelines (FPG)[190] to determine eligibility for indigent defense services, but the eligibility cutoff varied among the counties. Of the responding counties, 21 either use FPG or guidelines that mirror them for income eligibility. Most of those use a percentage of FPG ranging from 120 to 185 percent. For example, a defendant with a family size of four who is charged with a crime in Cambria County (eligibility standard of 120 percent of FPG) would be eligible for indigent defense services up to an income of $26,460. In Franklin County (eligibility standard of 185 percent of FPG), a defendant would be eligible for those services up to an income of $40,793. In several counties eligibility is affected by factors in addition to FPG, such as the grading of the offense, the defendant's assets, and whether the defendant is incarcerated at the time of the application.

The consensus of the advisory committee is that whether a juvenile is represented by counsel in delinquency proceedings should not depend on whether his or her family or guardian has sufficient means to pay for private counsel. The advisory committee therefore applauds the Pennsylvania Supreme Court's amendment to the Rules of Juvenile Court Procedure, which establishes a presumption of indigency for juveniles and requires the court to appoint counsel before the commencement of a hearing if the juvenile appears at the hearing without counsel. The Comment to the Rule further states that the resources of the juvenile's guardian[191] are not to be considered in determining the juvenile's indigency.

The advisory committee recommends that the powers of the statewide agency include setting eligibility standards, in order to minimize the "justice by geography" anomalies that arise when each county sets its own, but eligibility standards should be flexible enough to accommodate local variations in the cost of living.

Collection of Fees from Defendants

Some of the indigent defense statutes of other states include various provisions that require persons who have received indigent defense services to make payments to

[190] For FPG amounts, see U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services. 2010 Poverty Guidelines: All States (except Alaska and Hawaii) and D.C. http://www.cms.gov/MedicaidEligibility/Downloads/POV10Combo.pdf (updated January 23, 2009).
[191] Pa. R.J.C.P. 151. The term "guardian" includes parents. Pa.R.J.C.P. 120.

reimburse the state for all or part of the cost of their representation.[192] These provisions apply to persons whom a judge determines are capable of paying for representation without undue hardship or those whose financial situation improves within a stated period of time after free counsel is provided. If the client fails to pay the fee, the remedy is usually a civil action against the defendant, with amounts collected payable either to the state's general fund or a fund set aside for indigent defense.

The advisory committee advises against adopting such provisions. A recent report[193] on the unfairness of user fees charged to defendants by the criminal justice systems in the fifteen states that have the highest number of prisoners[194] recommends that "[p]ublic defender fees should be eliminated, to reduce pressures that can lead to conviction of the innocent, over-incarceration, and violations of the Constitution." These detriments arise mainly because fees for indigent counsel may discourage the exercise of the right to counsel.[195] Defender and other user fees can accumulate to a debt of hundreds or thousands of dollars and lead to a cycle of debt that indigent defendants cannot extricate themselves from, especially when their cases are referred to private collection agencies, and their fees are added to the underlying debt. Failure to pay may lead to reimprisonment and can hinder the defendant's reentry into society, as when the unpaid debt becomes grounds for suspending driving privileges. Fee collection also diverts probation and parole officers from their functions of promoting public safety and rehabilitation.[196] The PD or other segments of the criminal justice system may become dependent on fees and fines on indigent defendants to maintain their operations, leading to "improper incentives for judges to impose and aggressively collect fines and fees."[197] More fundamentally, collecting from defendants who have used free counsel undermines the core principle that the accused is entitled to counsel when he or she is unable to afford it. At the same time, applications for free counsel should be subject to criminal penalties for false statements on the same basis as other applications to state authorities.[198]

FACILITATING THE ATTORNEY-CLIENT RELATIONSHIP

Principle 4 addresses the facilities necessary to assure open and confidential exchange of information between attorney and client:

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[192] See, e.g., Colo. Rev. Stat. §§ 21-1-106, 21-2-106; Conn. Rev. Stat. §§ 51-297, 51-298; Ind. Code §§ 33-40-3-6 — 33-40-3-9; Ky. Rev. Stat. Ann. § 31.211; Mass. Gen. Laws ch. 211D, § 21/2; Minn. Stat. § 611.35; N.M. Stat. § 31-16-7; Or. Rev. Stat. §§ 151.485, 151.487; Va. Code § 19.2-163.4:1; W. Va. Code § 29-21-16; Wis. Stat. §§ 977.06, 977.07, 977.075, 977.076, 977.077. All statutes were retrieved through FindLaw in 2010.

[193] Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, "Criminal Justice Debt: A Barrier to Reentry" (New York: New York University School of Law, Brennan Center for Justice, 2001).

[194] Pennsylvania and New York do not currently charge public defender fees, but the other thirteen states do. Ibid., 12.

[195] Ibid.

[196] Ibid., 1, 2.

[197] Ibid., 25-28.

[198] See 18 Pa.C.S. §§ 4903 and 4904.

> **Defense counsel are provided sufficient time and a confidential space within which to meet with the client.** Counsel should interview the client as soon as practical before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.[199]

Confidentiality between attorney and client is among the most basic principles of legal practice, as noted in the Pennsylvania Rules of Professional Conduct:

> A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. . . . This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.[200]

Conditions that facilitate consultation between attorney and client assist the American legal system by enabling the attorney to fully understand the client's view of the underlying facts, thereby enabling the attorney to prepare the most responsive possible defense. The attorney can more readily determine whether the client's guilt is clear or contestable and whether appropriate legal defenses (such as self-defense, diminished capacity, or insanity) may apply, or procedural defects that implicate fundamental rights (such as illegal search and seizure) may render evidence against the client inadmissible. Once a person has been determined eligible for indigent representation, the attorney or other interviewer should obtain the critical information from the client about the facts of the case, any defenses, the names of the witnesses, and all other relevant circumstances. This intake process should be completed before critical proceedings against the defendant take place.

While the SR 42 Survey of PDs did not focus on questions pertaining to private space to talk to clients, advisory committee members expressed concern that adequate space was often not available for PDs and court-appointed counsel. *The Racial and Gender Bias Report* noted problems in this regard:

> [The Spangenberg Group] observed that defense attorneys had a difficult time meeting professional standards of confidentiality because of a shortage of private spaces in jails, prisons, and courthouses where they

[199] ABA Ten Principles, 2.
[200] Pa.R.P.C. 1.6, cmt. [2].

met with clients. In some courthouses, for example, defense attorneys were forced to meet clients in areas where their conversations were fully audible to prosecutors and law enforcement officers.[201]

EXCESSIVE CASELOADS

Principle 5 addresses the key issue of limits on attorney workloads:

> **Defense counsel's workload is controlled to permit the rendering of quality representation.** Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.[202]

Caseloads for PDs and other defenders should be low enough to allow for a quality defense. No lawyer can provide an accused with adequate representation without the time and resources needed to devote to his or her cases.

Principle 5 follows from binding ethical standards for legal practice. Rule 1.3 of the Pennsylvania Rules of Professional Conduct states: "A lawyer shall act with reasonable diligence and promptness in representing a client." Comment [2] adds: "A lawyer's work must be controlled so that each matter can be handled competently." A lawyer who takes so many cases that he or she cannot handle all of them with "reasonable diligence and promptness" commits an ethical violation.[203]

A thorough preparation of a criminal defense requires activities well beyond the perusal of a police report. Counsel must participate in the arraignment and the preliminary hearing, because important rights can be lost if they are not asserted early. Counsel must interview the defendant and any witnesses who may know about the circumstances of the alleged offense. The attorney or an investigator on his or her behalf may need to inspect the crime scene and collect and evaluate physical evidence. If the investigation may have violated the constitutional rights of the accused, the defense must move to exclude the evidence produced in consequence of the violation. In complex cases, a competent defense may require consultation with forensic or psychological experts and development of their testimony. In cases that raise novel legal issues, these

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[201] *Racial and Gender Bias Report*, 186.
[202] ABA Ten Principles, 2.
[203] See also Pa. R.P.C. 1.1 (requiring and defining competent representation) and 5.1 (defining the responsibility of a supervisory lawyer to ensure that a subordinate lawyer observes ethical practice).

must be researched, briefed, and argued. A trial requires meticulous preparation and makes great demands on the attorney while it is taking place and afterwards, when the attorney is called upon to preserve rights for appeal. How much work is required depends heavily on the facts of each case, but an attorney who attempts to juggle too many cases will be unable to meet the requirements of competent, zealous, and ethical representation in many of those cases.

National Standards

It is impossible to determine with mathematical precision how many cases an individual PD can handle, since cases vary greatly in the time they require to complete. The only study to suggest national maximum caseload numbers for use by defenders was a 1973 study done by the National Advisory Commission (NAC) on Criminal Justice Standards and Goals. In its report, the NAC recommended a maximum annual caseload per attorney in a PD office of 150 felonies, 400 misdemeanors, 200 juvenile court cases, 200 mental health cases, or 25 appeals.[204] An ABA Committee studying the criminal justice system proposed reducing the standard for misdemeanors to 300 cases in view of case law extending the right to free counsel to misdemeanors punishable by imprisonment.[205] Another ABA report observed that the NAC standards "have proven resilient over time, and provide a rough measure of caseloads."[206]

The NLADA-affiliated American Council of Chief Defenders (ACCD) commented that the PD and assigned counsel caseloads should not exceed the NAC recommended levels, but cautioned that the standards should not be applied mechanically.

> [NAC] caseload limits reflect the maximum caseloads for full-time defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified.
>
> Notwithstanding their general suitability, the NAC standards should be carefully evaluated by individual public defense organizations, and consideration should be given to adjusting the caseload limits to account for the many variables which can affect local practice. The NAC standards, for example, weight all felonies the same, regardless of seriousness. . . . Similarly, the NAC standards do not account for

[204] *Justice Denied*, 66. "The standards are disjunctive, so if a PD is assigned to more than one category, the percentage of the maximum caseload for each category should be assessed and the combined total should not exceed 100%." Ibid., n. 102.
[205] ABA Standards for Criminal Justice: Providing Defense Services, 3rd ed. (Washington, D.C.: ABA, 1992), 72; *Argersinger v. Hamlin*, 407 U.S. 25 (1972).
[206] ABA Standards: Providing Defense Services, 72.

> differences in urban and rural jurisdictions, and instances where attorneys must travel significant distances to and between courts, confinement facilities and clients.[207]

The ACCD further observed that "in many jurisdictions, maximum caseload levels should be lower than those suggested by the NAC."[208] In agreement with other indigent defense advocates, ACCD noted that criminal defense has become more complicated and cases often take longer to process than in 1973.[209]

Justice Denied further elaborates on the increasing demands of contemporary criminal practice as they affect attorney workloads:

> As a result of the "tough on crime" policy decisions, criminal cases have become more time-consuming and costly to defend. The greater the potential consequences of a conviction, the more time and effort a criminal defense attorney needs to expend to avoid a conviction or to mitigate its consequences. A recent empirical workload study of the Colorado state PD found a significant increase in just the past six years in the time it takes PDs to handle their caseloads due to a variety of factors, such as the creation of new crimes, enhanced penalties, and additional collateral consequences applicable upon conviction.[210]
>
> With the emergence of science and technology and new criminal laws, many cases have become more complex, requiring specialized training and greater time to defend. Consider, for instance, the use of DNA and other forensic evidence, computer- or internet-based crimes, and the creation of sexually violent predator laws. . . . Such complex cases are a significant burden on a defender's time, requiring not only specialized knowledge but often also the review of thousands of pages of discovery and the use of experts.[211]

Leading indigent defense expert Norman Lefstein cites these considerations to argue that the NAC guidelines should not be taken as definitive, particularly emphasizing the lack of empirical support for them and their "troubling" failure to distinguish between different kinds of felonies. Professor Lefstein concluded that the NAC standards were useful only as "an absolutely outer limit on caseloads that defense lawyers for the indigent should be permitted to handle."[212] On the other hand, Timothy Clawges, the PD of Cumberland County characterized the NAC guidelines as "about right."[213] As will be

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[207] American Council of Chief Defenders Statement on Caseloads and Workloads Resolution. (n.p.: NLADA, Aug. 24, 2007), 1, 5 http://www.nlada.org/DMS/Documents/1189179200.71/EDITEDFINALVERSIONACCDCASELOADSTATEMENTsept6.pdf.
[208] Ibid., 6.
[209] Ibid., 6-12; *Justice Denied*, 66.
[210] *Justice Denied*, 71.
[211] Ibid., 76.
[212] Norman Lefstein, e-mail to Commission staff, November 30, 2010.
[213] Telephone conversation with Commission staff, March 18, 2011.

detailed below, in some counties attorney staff is numerically insufficient to handle caseloads under NAC standards, plus the office must handle a substantial number of cases for which recommended workloads have not been formulated, usually because they are types of cases that did not exist when the NAC study was done.

Obligation to Refuse Work

As Principle 5 states, attorneys have an obligation to decline to take additional cases where acceptance of the work "interfere with the rendering of quality representation or lead to the breach of ethical obligations." The ethical obligations of PDs faced with excessive caseloads were addressed in ABA Formal Opinion 06-441, which has received a great deal of attention in the PD community.[214] In this opinion, the committee emphasizes that attorneys defending indigent clients are under the same duties of professional ethics that apply to other attorneys. Along with such professional obligations as those mandating that lawyers "keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; communicate effectively on behalf of and with clients; . . . and, if a lawyer is not experienced with or knowledgeable about a specific area of law, either associate with counsel who is knowledgeable in the area or educate herself about the area," there is also a duty to "control workload so each matter can be handled competently."[215]

In a PD office setting, the determination of whether an attorney's workload is reasonable is to be determined in the context of such factors as "case complexity, the availability of support services, the lawyer's experience and ability, and the lawyer's nonrepresentational duties" and is to be made, in the first instance, by the supervisor and then by the chief PD. If a PD or other indigent defense attorney is faced with an excessive workload, his or her first recourse is to attempt to get relief or assistance through the attorney's immediate supervisors until relief or assistance is obtained. This may include transferring the attorney's cases or nonrepresentational responsibilities to other staff, supporting his or her petition to the court to withdraw from cases, and supplying any available resources to assist him or her. If no relief is forthcoming from within the office's chain of command or it is not sufficient to bring the caseload down to a level that the lawyer considers reasonable in his or her independent professional judgment, the attorney should petition the court to withdraw from cases, whereupon the court must determine whether the request for reduced workload is reasonable. If the court denies the petition to withdraw, the attorney must obey the order, while taking all reasonable steps to ensure that every "client receives competent and diligent representation." The supervisor is under a corresponding duty to ensure that the caseload of each lawyer in the staff is reasonable under this standard, and "[i]f the supervisor knows that a subordinate's workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action . . . , the

[214] ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441 (2006).
[215] Ibid., 3, 4, 6.

supervisor himself is responsible for the subordinate's violation of the Rules of Professional Conduct."[216] The ABA has adopted guidelines that further elaborate on the duties limned in Formal Opinion 06-441.[217]

In *State ex rel. Missouri Public Defender Commission v. Pratte*,[218] the Missouri Supreme Court outlined some of the responses that could be used to address a crisis brought about by excessive caseloads. The Missouri statute authorizes a county PD to declare "limited availability" of the system if predetermined caseload limits are exceeded for three consecutive months. At that point, the presiding judge of the court, the PD, and the prosecutor must take measures to respond. The court outlined the following measures available under Missouri law:

- The prosecutor's agreement to limit the cases in which the state seeks incarceration
- Determining cases or categories of cases in which private attorneys are to be appointed
- A determination by the judges not to appoint any counsel in certain cases (which would result in the cases not being available for trial or disposition)
- Absent a resolution through an agreement by prosecutors and the judge, the PD may make the office unavailable for any appointments until the caseload falls below the state commission's standard[219]

The court discussed the possibility of appointing counsel and requiring them to work without pay, but deferred as premature any ruling on whether that remedy could be mandated. A New Hampshire case has held that the state Supreme Court could require the legislature to provide reasonable compensation for court-appointed counsel.[220]

Capital Cases

Special burdens are placed on defense attorneys by cases where the death penalty is sought. Defense of capital cases has become a specialized area within criminal practice, and additional experience and training qualifications are required in Pennsylvania[221] and other states. The ABA has developed a 136-page set of standards

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[216] Ibid., 4-8.
[217] ABA/SCLAID, "Eight Guidelines of Public Defense Related to Excessive Workloads" (ABA, August 2009) http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/defender/downloads/eight_guidelines_of_public_defense.authcheckdam.pdf. These guidelines were adopted by the House of Delegates of the ABA on August 3, 2009, and therefore constitute formal ABA policy.
[218] 298 S.W. 3d 870 (Mo. 2009).
[219] Ibid., 29, 30. Failure to timely commence the proceeding may result in dismissal of the case due to the defendant's right to a speedy trial. Ibid., n. 36.
[220] *Justice Denied*, 134, citing *Smith v. State of New Hampshire*, 394 A.2d 834 (N.H. 1978).
[221] Pa. R.C.P. 801.

governing capital defense that claims to "embody the current consensus about what is required to provide effective defense representation in capital cases."[222] They embody a stringent view of the responsibilities inherent in capital defense. "[B]ecause of the extraordinary complexity and demands of capital cases, a significantly greater degree of skill and experience on the part of defense counsel is required than in a noncapital case."[223] "Due to the extraordinary and irrevocable nature of the penalty, at every stage of the proceedings counsel must make extraordinary efforts on behalf of the accused."[224] The guidelines reflect the concern that has been expressed by the U.S. Supreme Court and elsewhere in the legal community regarding the poor quality of capital representation and the dramatic effect the quality of representation has on the probability that the defendant will actually be executed, as well as recognition of the instances of wrongful conviction in capital cases.[225]

The ABA Standards require a capital case to be handled by at least two attorneys, an investigator and a mitigation specialist. (The mitigation specialist gathers and presents evidence that is relevant to determining whether the death penalty is warranted, particularly the accused's upbringing and his or her mental condition.) A single capital case exhausted the annual budget of the Venango County PD in three months.

Public Defender Caseloads in Pennsylvania

Pennsylvania's IDS is unable to generate complete and reliable data, and this failure hampers policy analysis of the system's overall performance. The determination of caseload is simple in principle: count the number of cases and divide that number by the number of attorneys that handle the cases. But there are problems affecting both the numerator and the denominator.

There are wide differences in how PD offices count cases. Different cases require widely different time requirements; a capital murder case may require thousands of hours of attorney time, while a summary offense may be resolved in less than an hour. It is therefore necessary to enumerate cases in different categories. Where a given offense gives rise to felony and misdemeanor charges, different offices categorize the case in different ways. In Pennsylvania, first degree misdemeanors can carry a sentence of up to five years and second degree misdemeanors up to two. Imprisonment for one year is the line of differentiation between felonies and misdemeanors in most states and the federal government.[226] Some offices therefore count first and second degree misdemeanors as

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[222] ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (revised February 2003), 2. ABA guidelines are "evidence of what reasonably diligent attorneys would do," but are not "inexorable commands with which all defense attorneys must fully comply." *Bobby v. Van Hook*, 558 U.S. ___, 130 S.Ct. 13, 17 (2009) (internal quotations omitted).
[223] ABA Death Penalty Guidelines, 2.
[224] Ibid., 4.
[225] Ibid., 8, 9, 13. The Death Penalty Information Center claims that since 1971, 138 American defendants who were sentenced to death were later exonerated. DPIC, The Innocence List http://www.deathpenalty info.org/innocence-list-those-freed-death-row (last modified October 28, 2010).
[226] E-mail from Wieslaw Niemoczynski to Nathan Schenker, March 15, 2011.

felonies. A juvenile delinquency case may involve a series of different hearings and incidents relating to one minor. If there is a major incident perpetrated by a minor already adjudicated delinquent, does that give rise to a new case or is it added to the minor's existing case? Does a probation or parole violation by a convicted person begin a new case or is it the same case as the underlying offense?

There are also substantial problems with arriving at a count of the denominator, the number of attorneys. Those responsible for forwarding caseload statistics may not know whether the attorney in a given matter is a PD, an assigned counsel, or a private attorney, especially when a part-time PD represents the defendant. There is no consistent way of counting part-time attorneys. Some attorneys are counted as part-time even though they put in 40 hours per week on PD work. The office may count all part-time attorneys at 0.5 FTE, while others may attempt a more exact enumeration based on hours worked. Some offices attempt to break down the proportion of attorney time devoted to different kinds of cases, while others do not.

Many county PD offices across Pennsylvania have caseloads high enough that even experienced defense lawyers would have difficulty in providing an adequate and ethically compliant defense for all clients.

> Defense counsel for indigents in Pennsylvania struggle with heavy caseloads, partly because county criminal case filings have increased without commensurate increases in staffing. In Bucks County, for example, the PD's caseload in 1980 was 4,173 cases. In 2000, the same number of attorneys handled an estimated 8,000 cases. Similarly, in Monroe County, [Michael] Muth [(then chief PD of Monroe County)] testified at the Wilkes-Barre public hearing that the PD office's caseload rose from 1,984 cases in 1998 to 2,782 in 2000, a 39 percent increase in three years. During that period, the staff size remained the same. [227]

These staggering caseloads create numerous difficulties for counsel, which can lead to inadequate representation of some clients. The *Racial and Gender Bias Report* notes that such overcommitment may result in:

- Poor attorney-client contact, as attorneys fail to meet personally with their clients to receive and communicate vital information;

- Inadequate preparation, as attorneys, for example, fail to conduct interviews or investigations, file no motions or file the same boilerplate motions in every case, fail to act in a timely manner on important information, fail to pursue issues, or "cut corners" in their work . . .[228]

The advisory committee notes that these difficulties may increase the number of meritorious claims of ineffectiveness of counsel.

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[227] *Racial and Gender Bias Report*, 188.
[228] Ibid.

Excessive Caseloads in Particular Counties

Commission staff performed two surveys to determine caseloads in the reporting counties. However, much of the data proved unusable because of the many kinds of cases that are not reported, varying definitions of what constitutes a case, and lack of standardization for differentiating full- from part-time attorneys. As Chapter Four recounts, the advisory committee and staff did a basic caseload survey in March 2011, which provided the data used in this section.

The numerical data from the various responses indicated that some PD offices throughout the Commonwealth struggle with clearly excessive workloads. Table 3 applies the NAC caseload caps to reported cases from the county to determine the number of attorneys needed to handle the cases in those categories where caseload caps have been formulated. The right hand column lists the cases in categories where NAC caps do not apply. In the counties listed in Table 3, the data indicate that the number of attorneys is not sufficient to provide adequate representation for NAC cases, plus the workload includes hundreds or thousands of other cases, and the responsibility for representing defendants in those cases must be considered in determining a reasonable complement.

Echoing the view expressed by Michael Muth above, Timothy L. Clawges, the PD of Cumberland County, observed that over the last 20 years, "there has been an unrelenting and consistent trend toward increasing the day to day workload of PDs" and that the system seems oblivious to this trend. He cited the following examples:

- Increased volume and complexity of legislation. For instance, Megan's Law cases require attorneys to deal with new issues ranging from residency to the psychiatric condition of the client.

- Increasing alternative outcomes of cases. A DUI defendant may qualify for disposition under ARD, treatment court, recidivism risk reduction incentive, or other intermediate treatment alternatives, which requires attorneys to master the prerequisites for each alternative and to counsel clients about which alternative they wish to pursue.

- Collateral consequences counseling. Since the U.S. Supreme Court held in *Padilla v. Kentucky*[229] that failure to counsel a client on the effect of a guilty plea on the client's immigration status may constitute ineffective assistance, attorneys have had to familiarize themselves with immigration law and

[229] __ U.S. __, 130 S. Ct. 1473 (2010). The reach of an attorney's professional obligations under *Padilla* is unclear. Collateral consequences that may require disclosure may include adoption and child custody rights, eligibility for a professional license or a driver's license, and voting rights. Thomas Esparza, "Defense Counsel's Duty to Warn about . . . Everything? 'Padilla' Ruling by U.S. Supreme Court Extending Far beyond Deportation," Lawyer's Weekly USA, Nov. 8, 2010, available at http://www.tomesparza.com/2010/11/15/defense-counsels-duty-to-warn-about-everything-padilla-rulingby-u-s-supreme-court-extending-far-beyond-deportation-cases/.

Table 3

CASES AND ATTORNEY WORKFORCE IN SELECTED COUNTIES (2010)

County	Number of staff attorneys (FTE equivalent)	Attorneys required for cases under NAC standards[1]	Number of homicides	Number of cases not covered by NAC standards
Centre	7	10.1		532: county probation and parole (287); state parole (57); child support (35); child custody or guardian (62); protection from abuse (PFA) (29); other contempt (51); extradition (11)
Clinton	1.5	1.8		581: domestic relations contempt (225); probation and parole (278); summary offenses (78)
Cumberland	7	13.3	3 capital	1191: child support (799); state parole (128); county probation or parole (264)
Dauphin	23	28.9	3 capital; 20 non-capital	1260: county probation and parole (1000); state parole (100); PFA contempt (100); dependency (60)
Lancaster	23.5	29.7	1 non-capital[2]	2577: probation or parole (1718); PFA (259); other summary, bench warrant, extradition, fugitive, fines and costs (600)
Luzerne	16.5	25.0	2 capital, 1 non-capital	1308: contempt (34); extradition (41); PFA (102); probation (1070); state parole (26); summary appeal (6); termination of parental rights (19); Megan's Law (3); misc. (7)
Monroe	7.5	9.7	2	1517: juvenile dependency (389); fugitive (41); summary (47); support contempt (258); PFA (782)
Montgomery	29.5	36.1	8 non-capital	5377: county probation and parole (4238); state parole (802); indirect criminal contempt (85); non-support contempt (252)

1. The standards recommend a cap of 150 cases per year per attorney for felonies, 300 for misdemeanors, 200 for juvenile matters, 200 for mental health cases, and 25 for appeals. There are no NAC standards for other cases. Thus an office with a caseload of 600 felony cases, 900 misdemeanors, 600 juvenile cases, 400 mental health cases, and 100 appeals would require an FTE of 16 attorneys (viz., 4 + 3 + 3 + 2 + 4).

2. The 2010 number was unusually low from 2004 through 2010, the Lancaster County PD represented homicide defendants in 33 cases of which 15 were capital. E-mail from James Karl, Chief PD, Lancaster County, to Commission staff, June 9, 2011.

SOURCE: March 2011 Basic Caseload Survey.

determine the citizenship status of their clients. Other "collateral consequences" that give rise to similar obligations include eligibility for public housing and other public assistance and firearm privileges.

- Increase in forms required of PDs. The guilty plea colloquy form in Cumberland County is two pages long, and the attorney must review it with each client line by line. This takes between five and ten minutes for each client, and up to 25 clients may be pled in a given day.

- Police officers are hired at a greater rate than PDs, prosecutors or other legal professionals (including probation officers and support staff). Since arrests seem to be proportional to the number of police, the caseload for professionals rises.

The problem is not that these requirements are undesirable in themselves, but that they are simply piled on top of the existing workload with no provision for increasing staff and other resources to meet them.[230]

Pennsylvania caseloads may be more demanding than those of other states because of the heavy punishments prescribed for misdemeanors. Traditionally, a misdemeanor was defined as an offense that carried a term of imprisonment of one year or less.[231] Under this terminology, the grading system prescribed by 18 Pa.C.S. § 1104 properly labels only misdemeanors of the third degree; misdemeanors of the first and second degree are then actually felonies, and some PDs classify them as such.

NAC standards further assume that PD offices have adequate staff support.[232] Some PD offices operate with minimal assistance. Another stress on the PD office is the requirement for attorneys to appear at different hearings. In Monroe County, PDs appear before six trial judges, ten magisterial district judges, two juvenile masters, a children and youth master, and mental health hearing officers. The county's chief PD reports that "at any given time, the PD office is overrun with obligations due to the caseload. Triage is more often the norm than the exception."[233]

Two chief PDs said they disposed of high caseloads through a cooperative arrangement with the DA. While such a system assures rapid disposition of cases and minimal immediate costs, there is a high risk that factually innocent defendants will be convicted, legally established defenses will be ignored, and substantive constitutional rights will be violated. At the same time, it seems unfair to blame county PDs for failure to provide zealous representation when resources and staff are only sufficient to support a practice of plea bargaining almost every case.

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[230] Timothy L. Clawges, telephone conversation with Commission staff, March 24, 2011.
[231] Bryan A. Garner, ed., *Black's Law Dictionary*, 8th ed., s.v., "Misdemeanor."
[232] Staff support would include staff in positions such as investigators, social workers, administrators, secretaries, paralegals, law clerks, etc.
[233] Wieslaw T. Niemoczynski, e-mail to Commission staff, March 15, 2011.

Court-Appointed Counsel Caseloads

Ethical standards require the use of conflict counsel when the PD office has a conflict, as when there are two or more codefendants, each of whom is likely to mitigate his or her punishment by implicating another codefendant. Since an attorney who would attempt to represent more than one codefendant would likely have to argue inconsistent accounts of the underlying events and would be pressured into preferring one client at the expense of others, representing multiple codefendants constitutes a conflict of interest. For this reason such representation is prohibited by Rule 1.7 of the Pennsylvania Rules of Professional Conduct.[234] Counsel may also be appointed for highly specialized cases or when the PD office does not have sufficient resources to handle the case. Several counties rely heavily on court-appointed counsel in juvenile delinquency cases, capital murder, and other cases requiring special expertise.

Staff also attempted to collect data on the numbers of cases handled by court-appointed counsel, but abandoned the attempt because the data was unreliable. Court clerks responsible for entering data from the counties did not know what kind of attorney handled a particular case. This is especially difficult where a part-time PD represents a client, because the clerk will often be unaware of whether the attorney is appearing in his or her capacity as a PD or a private attorney. Staff was unable to find data on the number of court-appointed and conflict counsel handling those cases. Neither is there any data currently available on the number of private cases court-appointed and conflict counsel handle in addition to their indigent defense cases.

SELECTION OF COUNSEL

Principle 6 defines the standard for assigning defenders to cases:

> **Defense counsel's ability, training, and experience match the complexity of the case.** Counsel should never be assigned a case that

[234] Pa.R.P.C. 1.7 (a) provides as follows:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Paragraph (b), which provides for client waivers of conflicts of interest, does not apply because waiver is prohibited when the representation involves "the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal." Pa.R.P.C. 1.7 (b)(3). Pa.R.P.C. 1.7, cmt. [23] notes that "the potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant."

> counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.[235]

This principle echoes the ABA Criminal Justice Standards:

> Lawyers licensed to practice law in the jurisdiction, experienced and active in trial practice, and familiar with the practice and procedure of the criminal courts should be encouraged to submit their names for inclusion on the roster of attorneys from which assignments are made. Each jurisdiction should adopt specific qualification standards for attorney eligibility, and the private bar should be encouraged to become qualified pursuant to such standards.[236]

In view of the complexity of criminal law, its practice requires skills beyond those required for licensure as an attorney, including "familiarity with the practice and procedure of the criminal courts and knowledge of the art of criminal defense."[237] Inexperienced attorneys wishing to become assigned counsel can become qualified to represent clients by participating in a structured program that may include serving an apprenticeship with experienced criminal attorneys, observing a variety of proceedings, conducting proceedings under the mentor's supervision, attending training sessions, and beginning full participation with minor misdemeanor cases.[238] Highly professional PD offices conduct similarly structured programs to develop the professional skills of the attorneys they employ. More stringent eligibility standards apply to representing the accused in a capital case. Attorneys who are assigned cases that they are not qualified to handle have "an absolute duty to decline" the appointment.[239]

In Pennsylvania counsel are often not matched by competence to cases, and the structure of the assignment systems creates perverse incentives that undermine effective representation.

> [The Spangenberg Group (TSG)] found that all counties except Philadelphia lacked a formal screening process for making court appointments. In most of the counties visited by TSG, appointments were made through an informal word-of-mouth network among judges and court administrators. TSG observed other problems that compounded this deficiency, including the absence of minimum standards of experience and performance; allegations of favoritism in the appointment process; and inadequate supervision and training of assigned counsel. Most counties pay assigned counsel a flat fee (per year in most counties and per case in

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[235] ABA Ten Principles, 3.
[236] ABA Standards for Criminal Justice: Providing Defense Services, 3rd ed. (Washington, D.C.: ABA, 1992), Standard 5-2.2 (Eligibility to serve), 32.
[237] Ibid., 34.
[238] Ibid., 35.
[239] Ibid.

> Philadelphia), creating a disincentive for counsel to devote time to a particular case. As a result, attorneys are not taking the time to visit clients in jail, file motions, conduct effective investigations, or respond to mail from clients.[240]

The SR 42 Survey shows that Pennsylvania counties use a variety of systems for appointing counsel. The 13 counties responding to the relevant questions in the survey reported that the responsibility for appointing counsel is spread among judges, court administrators and the PD. In five counties, a judge is solely responsible for appointing counsel; in four counties a judge appoints counsel upon the recommendation of the court administrator; in three the court administrator appoints counsel; and in one the appointment process is handled by the PD office. With varying systems of appointing counsel, it is difficult to ensure that adequate, let alone effective, assistance of counsel is being provided to all indigent defendants. The appointment of counsel by judges does not follow Standard 5-1.3 of the ABA's *Criminal Justice Standards*, which directs that "[t]he selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by administrators or the defender or assigned counsel programs."[241] This aspect of a proper IDS structure is thus closely related to the principle of independence from improper outside influence (Principle 1).

The survey revealed some problematic responses from counties with regard to the training and other eligibility requirements for selection as assigned counsel. Most counties responded that the attorney need only hold a license to practice law or membership in the local bar. Some mentioned the need for experience without specifying more, and some stated they require qualification under Pa. R. Crim. P. 801 for capital cases. One county reported having no such requirements. In counties without such requirements or with minimal requirements, there is no assurance that the attorney has any substantial background in criminal law and practice. Even an experienced and skilled attorney whose practice has consisted almost entirely of conveying real property or minimizing the tax consequences of business transactions may be of limited assistance in a criminal trial.

CONTINUITY OF REPRESENTATION

Principle 7 prescribes that only one attorney should represent a client in any one matter:

> **The same attorney continuously represents the client until completion of the case.** Often referred to as "vertical representation," [sic] the same attorney should continuously represent the client from

[240] *Racial and Gender Bias Report*, 189.
[241] Spangenberg Group, "A Statewide Evaluation of Public Defender Services in Pennsylvania," 62.

> initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.[242]

This principle reflects the importance to effective representation that clients be represented by the same PD through the entire proceeding, from arraignment through trial and sentencing. (The principle is similar to continuity of care in the medical setting.) Otherwise, the client and attorney will fail to develop a "close and confidential attorney client relationship" that is characteristic of privately retained clients.[243] Trust between client and attorney, so vitally important in criminal representation, is impeded when a client is passed along from one attorney to another. Because appellate practice requires a significantly different skill set from trial practice, it is generally not detrimental to the client's interests if a lawyer other than the trial counsel handles the appeal.

The principle of continuity is widely ignored in Pennsylvania:

> In many counties that [the Spangenberg Group] visited, PDs employ a horizontal or zone representation system for cases other than homicides. Under this system, attorneys are assigned to courtrooms first and clients second. Therefore, an individual client may be represented by several different PDs before a case is resolved. This system has several disadvantages, all of which adversely affect the quality of representation: it hinders the development of attorney-client rapport; it creates gaps in representation that could leave a client without assistance of counsel at critical stages in a case; it allows attorneys to avoid responsibility for case preparation and planning; it creates the potential for important information to be lost as a case passes from one attorney to the next; it results in the loss of investigation time; and it undermines clients' respect for and trust in both the attorneys and the system as their cases are rotated among different counsel at various stages.[244]

Despite these disadvantages, horizontal representation is still widely used by PD offices in Pennsylvania. A statewide office could mandate, or at least encourage, the use of vertical representation, depending on its feasibility.

RESOURCES

Principle 8 of the ABA Principles deals with the resources available to the IDS, both absolutely and in comparison to prosecutors:

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[242] ABA Ten Principles, 3.
[243] "*Gideon's* Broken Promise," 18.
[244] *Racial and Gender Bias Report*, 189.

> **There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative, and other litigation support services. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.[245]

Pennsylvania's IDS fails to meet this standard:

> In Pennsylvania . . . the rapidly increasing caseload for PDs has not been accompanied by a corresponding increase in resources for indigent defense. As a result, PDs have had neither the material resources nor the time to prepare cases adequately with the assistance of support services. Although many PDs are zealous advocates for their clients, there is a wide disparity from county to county in the resources they have available to them. Significantly, there is a marked difference between the resources available to the prosecution and to indigent defense attorneys in terms of salaries, technology, support staff, investigators, and other critical resources.[246]

Statewide Resources

The Pennsylvania District Attorneys Association (PDAA) has vastly greater resources than PDAPA, its counterpart for the PDs. For its fiscal year July 1, 2009 through June 30, 2010, PDAPA had revenues of $35,728 and ended the FY with assets valued at $31,054. For calendar year 2008, the PDAA reported revenues of $446,253 and net assets valued at $908,279, including a stately headquarters building on Front Street in

[245] ABA Ten Principles, 3.
[246] *Racial and Gender Bias Report*,185.

Harrisburg.[247] (The "headquarters" of PDAPA is the post office box of its current president.) The greater resources of the DAs permit them to lobby for their interests with the General Assembly more effectively than the PDs can.[248]

Current Spending Levels

Again, as there is no statewide office charged with the ongoing responsibility of collecting comprehensive information, data on current spending for indigent defense is incomplete. The only numbers that are somewhat reliable are those for the expenditures by PD offices; there is virtually no data on spending for indigent representation outside the PD offices.[249] Consequently, no reliable estimate can be made for the total amount local taxpayers across the Commonwealth pay for indigent representation.

Virtually all indigent defense outlays[250] take place at the county level, making the task of determining overall indigent defense spending in the Commonwealth exceedingly difficult. To make matters more complicated, not all indigent defense expenses within each county come from a single office budget such as county PD offices. Indigent defense spending is comprised of two primary segments: county PD office and assigned counsel expenditures.[251] The latter usually falls within the county court administrator budget, but in several counties, some of the assigned counsel expenditures are included in the PD office budget.[252] The SR 42 Survey did not ask for overall expenses for assigned counsel, and AOPC does not collect information on the compensation paid to them.[253] The only data readily available to this study was expenditures by the various PD offices in 23 responding counties for 2008. Table 4 shows the county populations, PD actual expenditures and expenses per capita for those counties.

Per capita spending for PD offices expenditures ranges from $2.74 in Columbia County to $24.63 in Philadelphia. On average, counties with larger population tend to spend more per capita on indigent defense than smaller counties. For purposes of this cost

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[247] In addition, the educational arm of the PDAA, the Pennsylvania District Attorneys Institute, is a tax exempt § 501(c)(3) organization that received $1,767,117 in contributions and grants in calendar year 2009. The PDAPA spent $62,124 from its own funds for educational expenses in FY 2009-10 and suffered a loss of $27,844 over that period.

[248] Remarks by Harry J. Cancelmi and Wieslaw T. Niemoczynski at SR 42 advisory committee meeting, October 12, 2011. Monetary amounts are from Federal income tax forms of the respective organizations supplied by Mr. Niemoczynski.

[249] See Table 1, 57, which shows that many indigent defense cases are handled outside the PD offices.

[250] Of the 23 counties that provided budget data for 2008, twelve reported that all funding originated from the county. Another nine reported that over 95 percent of their funding was county based with the remaining funds originating from other sources such as state grants, state DPW reimbursements (since terminated), federal grants, or other funding. The remaining two counties reported 92.5 percent and 93.3 percent of their funding from the county, with the remaining amount from unspecified other sources.

[251] Assigned counsel includes court appointed and conflict counsel.

[252] Counties where some assigned counsel expenditures are included in the PD budget include Columbia, Dauphin, Elk, Huntingdon, Jefferson, Lawrence, Pike, Potter, and Tioga. This may be true of other counties as well.

[253] Phone call with Richard Pierce, Judicial Programs Administrator, AOPC, January 4, 2011.

Table 4

AVAILABLE COUNTY PD BUDGET AND
SPENDING-PER-CAPITA IN PENNSYLVANIA (2008)

County	County population[1]	PD expenditures (in thousands of dollars)	PD expenses per capita (dollars)
Philadelphia	1,447,395	$35,654	$24.63
Large counties (population greater than 200,000) not including Philadelphia:			
Allegheny	1,215,103	7,204	5.93
Berks	403,595	2,801	6.94
Chester	491,489	3,219	6.55
Cumberland	229,361	897	3.91
Dauphin	256,562	2,996	11.68
Erie	279,175	1,286	4.61
Lancaster	502,370	3,089	6.15
Lehigh	339,989	1,360	4.00
York	424,583	1,599	3.77
Washington	206,407	681	3.30
Average large counties	434,863	2,513	5.78
Small counties (population less than or equal to 200,000)			
Cambria	144,319	480	3.32
Columbia	65,004	178	2.74
Elk	32,268	119	3.40
Franklin	143,495	648	4.51
Huntingdon	45,543	293	6.43
Jefferson	45,105	250	5.54
Lawrence	90,272	506	5.60
Lycoming	116,670	523	4.48
Pike	59,664	410	6.87
Potter	16,720	145	8.67
Somerset	77,454	240	3.10
Tioga	40,574	155	3.82
Average small counties	73,091	328	4.49

1. Population data is from the United State Census Bureau's 2008 population estimate.

SOURCE: SR 42 Survey, 2009 and United States Census Bureau, QuickFacts from the US Census Bureau, http://quickfacts.census.gov/qfd/states/42000.html (accessed April 19, 2010).

estimate, the counties were divided into those with populations greater than 200,000 (large counties) and those with less (small counties). Since Philadelphia's per capita spending was over twice as much as that of the next highest spending county (Dauphin), it was treated as a separate class. Not including Philadelphia, the average per capita spending for large counties was $5.78 for the large counties and $4.49 for the small counties.

To approximate the PD expenditures in the 44 counties that did not provide budget data, those counties were also divided into large counties and small counties. The estimated 2008 total population of the seven large non-reporting counties (3,131,077) was multiplied by $5.78 and the population of the 37 small non-reporting counties (2,643,085) was multiplied by $4.49. The two resulting products, $18.1 million and $11.9 million, respectively, were added to obtain an estimated cost of $30.0 million for PD services in the 44 non-reporting counties. Adding this amount to the expenditures reported by the 23 reporting counties in Table 4, Pennsylvania PD offices spent about $94.7 million for PD services in 2008.

Since no recent statewide expenditure data on assigned counsel exists, this report uses the figures in the *Racial and Gender Bias Report*,[254] adjusted for inflation, to estimate assigned counsel expenditures for 2008. According to that report, in 2000 Pennsylvania spent about $16.9 million on assigned counsel at an estimated cost of $0.85 per person in the counties other than Philadelphia, and $5.15 in Philadelphia.[255] Adjusting for inflation, in 2009 Pennsylvania spent about $21.7 million on assigned counsel with an estimated cost of $1.06 per person in counties other than Philadelphia, and $6.42 in Philadelphia.[256] The per capita cost for assigned counsel outside Philadelphia may be low, perhaps drastically so. Given the lack of collected data, it is not possible to determine to what extent the assigned counsel cost is below the PD amount because assigned counsel may perform a relatively small proportion of indigent defense services,[257] or because amounts paid to non-PD counsel are not reported, or because some of these legal services are donated.

Table 5 summarizes the estimated cost of indigent defense in Pennsylvania in 2008, arriving at a total of $115.9 million (or $117.4 million in 2010 dollars).

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[254] *Racial and Gender Bias Report*, 173, 178-79. The figures in that report are as of 2000.

[255] It is assumed that all assigned counsel expenses utilized in the *Racial and Gender Bias Report* for its estimation of statewide assigned counsel expenditures occurred outside of the county PD budgets. Several of the JGSC surveys noted that some court appointed, conflict or outside counsel compensation was included within the county PD budget.

[256] Between 2000 and 2008, the Consumer Price Index, a common measure of inflation, increased roughly 25.0 percent. SOURCE: United States Department of Labor. Bureau of Labor Statistics. "Inflation Calculator." http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=100&year1=2002&year2=2009 (accessed January 5, 2011).

[257] But see Table 1, which indicates that the proportion of indigent defense service provided by PDs may be as low as 47.5%.

Table 5

ESTIMATED COST OF INDIGENT DEFENSE IN PENNSYLVANIA 2008[1]

	County PD offices	Assigned counsel	Total
	Expenditures (millions of dollars)		
All counties (except Philadelphia)	$59.1	$11.7	$70.5
Philadelphia	35.6	9.9	45.4
All counties	94.7	21.6	115.9
	Cost-per-capita		
All counties (excluding Philadelphia)	5.37	1.06	6.43
Philadelphia	24.63	6.42	31.05
All counties	7.61	1.72	9.33

1. All figures within this table are estimates. The PD office figures are approximated using only SR 42 Survey data from 23 of the 67 counties. The assigned counsel data are inflation adjusted estimated values found in the *Racial and Gender Bias Report*, 173, 181. That Report's estimates of assigned counsel expenditures were based on 2000 data from 30 counties.

SOURCE: SR 42 Survey, 2009; United States Census Bureau, QuickFacts from the US Census Bureau, accessed April 19, 2010, http://quickfacts.census.gov/qfd/states/42000.html; and United States Department of Labor, Bureau of Labor Statistics, Inflation Calculator, accessed January 5, 2011, http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=100&year1=2002&year2=2009.

The *Racial and Gender Bias Report* estimated total indigent defense expenditures in 2000 at over $79 million, or $6.44 per person.[258] Adjusting the per capita amount for population and inflation, the latter amount is roughly equivalent to $103.5 million as of 2010.[259] The Spangenberg Group estimated Pennsylvania's total spending on indigent defense as of 2008 at slightly over $95.4 million, or $7.66 per person as of 2008 corresponding to $98.5 million as of 2010.[260] (TSG's expenditure report for 2005 estimated indigent defense expenditures for Pennsylvania at over $100.7 million, or $8.12 per person.)[261]

The Spangenberg Group estimated the national expenditure at $5.337 billion as of 2008.[262] Adjusted for inflation and using the 2010 total U.S. Census enumeration (308.7 million) the national per capita expenditure is $17.51 per person, which would correspond to $222.4 million for Pennsylvania.

Comparison of PD and DA Budgets

Comparing the budget of prosecutors against that of PDs is plainly a necessary step in determining the resource allocation between them. A representative of the DAs on the advisory committee cautioned that the two offices have such different objectives that a simple equivalence is misleading. The majority of the advisory committee agreed that the goal should not be to increase the PD's budget so that it is as large as the DA's, because the DA has responsibility for the entire criminal docket. The DA handles cases that do not affect the PD, such as those where no defendant is charged or the defendant retains private counsel. On the other hand, PDs handle civil matters outside the DA's purview, but the DA will normally have a larger caseload than the PD. Furthermore, the disclosure of investigative material mandated by *Brady v. Maryland* assures that the PD will have access to much of the important product of the DA's investigation. But if the DA's budget is disproportionately larger than the PD's, the PD office may not have sufficient resources to fairly negotiate dispositions with the DA or confront the DA in court.

Due to the way each PD and DA submitted budget data to Commission staff, it was very difficult to directly compare budgets within a particular county. In the few counties where a direct comparison could be made, most DA office budgets were roughly

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[258] *Racial and Gender Bias Report*, 182.

[259] The current population of Pennsylvania is 12.7 million, and $6.44 in 2000 is equivalent to $8.15 in 2010, applying the CPI Inflation Calculator provided by the Bureau of Labor Statistics. See http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=100.00&year1=2008&year2=2009.

[260] Spangenberg Project, "State, County and Local Expenditures for Indigent Defense Services, Fiscal Year 2008" (ABA, Nov. 2010). $7.66 (2008) ≈ $7.76 (2010) x 12.7 million.

[261] Spangenberg Group, "State and County Expenditures for Indigent Defense Services in Fiscal Year 2005" (SG, Dec. 2006), 27, [36]. This paper extrapolated the 2005 estimate from the 2000 estimated expenditure (published in 2002) by assuming an annual increase of 5%. Ibid., [38].

[262] Spangenberg Project, "Expenditures FY 2008," 7.

two to three times greater than the PD office budgets in the county. Advisory committee members believe that the PD budget should be more nearly equivalent to the DA budget to provide resource equality between defense counsel and the prosecution.

Nationally, funding and resources for indigent defense "lags well behind that provided for prosecutors." A survey of comparative resources in Tennessee conducted by The Spangenberg Group found that prosecutors received well over twice as much funding as indigent defense. A commission in California found that indigent defense was underfunded by $300 million in that state, and the disparity between prosecution and indigent defense increased by over 20% between FY 2003-04 and FY 2006-07.[263]

Access to Research

Defense attorneys must have access to legal research resources, especially information on changes to the law, to enable them to provide their clients with quality representation.

> Every defender office should be located in a place convenient to the courts and be furnished in a manner appropriate to the dignity of the legal profession. A library of sufficient size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment should be provided.[264]

The *Racial and Gender Bias Report* noted serious deficiencies in this regard:

> Most counties in the sample suffer from inadequate legal research facilities. Not surprisingly, PDs in those counties engage in very little or no legal research. Few PD offices have their own law libraries; if there is a library, its holdings are generally meager and outdated. Except in Philadelphia, PDs and assigned counsel generally have no access to new developments in the law. The lack of adequate computer resources exacerbates difficulties in conducting research.[265]

Salaries

Public Defenders

In order to attract and retain quality defense attorneys, PD offices must be able to offer salaries competitive with those earned by prosecutors. While there was vigorous debate in the advisory committee over how comparable the prosecutorial and the public

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[263] *Justice Denied,* 61.
[264] ABA Standards: Providing Defense Services (Standard 5-4.3), 58.
[265] *Racial and Gender Bias Report*, 187.

defense functions are, both positions require broadly similar skills. Both must have familiarity with court procedures and practice, a solid grasp of Pennsylvania and federal statutes and precedents, and skills in advocacy and negotiation.

Nationally, prosecutors receive considerably more pay than indigent defense lawyers.

> [T]hroughout the country, PD salaries are often significantly below those of prosecutors. For instance, when salaries were frozen in Virginia in 2006, over 27% of the attorneys in the PD system resigned, and many turned to higher paying jobs at prosecutor offices or to private law practice. . . . In Westchester County, New York, . . . DAs' salaries were approximately $6,000 to $21,000 higher than PDs' salaries. In Missouri, the salaries of PD trial attorneys in 2005 ranged between approximately $34,000 and $54,000. In contrast, prosecutors' salaries were reported to range from $40,000 to up to $100,000 or more. PD salaries are so low that some attorneys are forced to work second jobs, and the cumulative turnover of PDs between 2001 and 2005 was an astounding 100%! Although Missouri's assistant PDs have since received a four percent salary increase, most have large law school debts and are still struggling. As one PD put it, "[i]f you want to raise a family, buy a house and a car, that's not going to happen."[266]

The situation in Pennsylvania is similar.

> Salaries for PDs are seriously inadequate, especially when contrasted with the salaries of lawyers in DA's offices. In Centre County, for example, the DA makes $116,000 per year and the chief PD makes $57,000. Even in counties where starting attorneys in the two offices begin at the same salary, severe salary disparities are evident as DAs and PDs move into more senior ranks. PDs find it difficult to pay back their student loans; that fact, coupled with the general inadequacy of resources, has a demoralizing effect upon many young PDs. They leave their jobs as a result, creating a serious attrition problem for most PD offices, including Philadelphia's.[267]

Chief DA salaries are set by The County Code at $1,000 below that of a judge of the court of common pleas in the same judicial district. As of 2008, a full-time chief DA earns between $150,000 and $160,000 in 2008 under this provision.[268] Of the PDs who responded to the survey, 16 were full-time and earned an average salary of $77,676

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[266] *Justice Denied*, 63.
[267] *Racial and Gender Bias Report*, 187.
[268] The act of August 9, 1955 (P.L. 323, No 130), (The County Code), § 1401(j); 16 P.S. § 1401(j). This provision was amended by the act of July 14, 2005 (P.L. 312, No. 57). According the data provided via e-mail on May 17, 2010, to the Commission by the AOPC, judges of the Court of Common Pleas across the state earned between $161,850 and $165,105 in 2009.

annually with a salary range of $54,000 to $117,000. Ten of the eleven part-time chief PDs made an average of $57,300 with a range of $37,940 to $85,761. The average full-time chief DA earns roughly 40% more than a full-time PD.

The salary differences do not end with the chief PDs and DAs. Of the nine counties[269] for which DA salary data was reported, four had one or more supervisory DAs. These counties had 22 supervisory DAs earning an average of $82,767, with a range of $69,800 to $92,279. Comparing the PD salaries for the same nine counties, four of the counties reported they had a total of 15 supervisory PDs, earning an average of $69,215, with a range of $51,997 to $102,234. Supervisory DAs in this survey on average earn about 19.7 percent more than supervisory PDs.[270] However, assistant PD and assistant DA salaries were similar in these nine counties.[271]

The limited data comparing DA and PD salaries indicates that chief and supervisory PDs have significantly lower salaries than prosecutors at corresponding grades. This discrepancy can hinder county PD offices from retaining qualified, experienced upper level PDs.

Contract and Court-Appointed Counsel

Of the 15 court administrators who responded to the relevant portion the SR 42 Survey, five reported that they have contract counsel on salary to handle cases the PD cannot handle, mostly due to conflicts of interest. The salaries for these positions ranged from $20,000 to around $35,000. Only one county indicated that it provided these attorneys with a stipend for other staff.[272]

Most of the responding court administrators reported that court-appointed counsel are generally paid at a rate of $50 to $100 per hour. Some responders reported that the rate of pay depends on the type of case, while others use a single rate. This pay includes money to help defray overhead expenses, but in some counties, the rates paid may not adequately cover such expenses.

Because of the low response rate to the court administrator surveys, it is not possible to ascertain if these salaries and hourly rates are representative of all counties that use contract counsel.

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[269] Chester, Dauphin, Elk, Erie, Lawrence, McKean, Potter, Tioga, and York.
[270] SR 42 Survey.
[271] It was difficult to compare part-time assistant PD and part-time assistant DA salaries in the nine counties because most counties did not provide estimates on annual salaries of part-time attorneys, so no such comparison was completed. For the nine counties that reported DA salaries, there were 49 full-time assistant DAs earning an average of $49,892 versus 57 full-time assistant PDs making an average of $50,889, which indicates a salary difference of $997 in favor of the PDs. This may reflect a real salary differential, but could arise from factors not included in the survey results, such as experience.
[272] The Berks County court administrator stated that conflict counsel and independent contractors are paid $30,900 annually (without health benefits) and receive a secretarial stipend of $583.33 per month.

Support

Comprehensive preparation for criminal defense requires access to social workers, independent investigators, and secretarial staff. Both nationally and in Pennsylvania, many indigent defense lawyers must make do without sufficient—or in some cases any—assistance from such staff. Only 14 of the 27 PDs responding to the SR 42 Survey had any investigators in 2008, only three had any social workers, and only 11 had a paralegal, law clerk or both.[273] Three of the counties did not have any staff besides chief and assistant PDs.[274]

Investigators

Among the most important requisites for a professional criminal defense is investigative staff to assist defense counsel in gathering the facts about the alleged crime. "Adequate investigation is the most basic of criminal defense requirements, and often the key to effective representation."[275]

> Indigent defense attorneys often do not have the time or ability to track down witnesses, travel to distant locations, interview difficult witnesses, or survey crime scenes. Further, if attorneys perform their own investigations, they risk needing to become witnesses in their clients' cases in order to either introduce evidence or impeach the testimony of others.[276]

In Pennsylvania, indigent defense is hampered by the lack of adequate investigative assistance.

> Most court-assigned lawyers and many PDs do not make use of investigators and therefore do not conduct independent investigations of cases. In counties that do employ investigators, they may spend most of their time on such matters as indigency screening and serving subpoenas. Exacerbating the defense attorney's inability to prepare an adequate defense without independent investigation is the ability of DAs to draw upon such resources.[277]

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[273] Of the three counties reporting a social worker on the PD's staff, Philadelphia had 70 social workers, and Allegheny and Franklin each had one social worker.

[274] Columbia County indicated that it only had a chief PD and two assistant PDs on staff; Huntingdon County reported one chief PD and one assistant PD; and Elk County had only one PD, who worked part-time.

[275] Backus and Marcus, "Right to Counsel," 1097.

[276] *Justice Denied*, 93-94. The roles of witness and advocate are generally incompatible. For instance, a jury would be understandably skeptical of the impartiality of the testimony of a witness who is simultaneously representing a party to the case, and the client's interests may be injured if the attorney's truthful testimony is rejected by the jury for that reason. See Pa.R.P.C. 3.8 and Comments thereto.

[277] *Racial and Gender Bias Report*, 185-186.

Fourteen of the 27 responding PD offices have at least one investigator on staff, but many counties with investigators reported that their investigative staff is not sufficient. For counties reporting investigators on staff, the average annual caseload per investigator was 1,731, of which 1,144 consisted of felonies, misdemeanors, and juvenile delinquency cases. Such highly excessive caseloads preclude the investigators from offering meaningful assistance in a majority of the cases.

Experts

Access to experts can be essential to effective legal representation of the accused. "National standards also have long recognized that indigent defense counsel must be provided with necessary resources such as . . . forensic services and experts."[278] "The outcome of a criminal case can hinge on retaining an appropriate expert or conducting a thorough fact investigation."[279]

> Defenders who seek the assistance of experts in defending their clients face many of the same hurdles they do in securing help with investigation. While the prosecution frequently has at its disposal an assortment of government personnel such as crime investigation and laboratory professionals, psychiatrists, scientists, and doctors, defenders must rely on the state's witnesses or seek funds to compensate an independent expert of their own. Reliance on the state's expert witnesses raises questions of independence.[280]

In some Pennsylvania counties, indigent defenders may forego the use of experts due to budgetary pressures:

> The lack of resources also prevents defense counsel from hiring experts. [The Spangenberg Group] cited cases illustrating the dearth of expert assistance: 'In Warren County, an attorney could recall only one case in which he had an expert witness. A lawyer in one county told us that as a pharmacist's son he felt competent to testify on pathology. In Erie County we were informed that a case that might require a psychologist and forensic expert might exhaust the whole budget. . . . In Clarion County, in the prior six months, a total of one expert had been used.'[281]

Social Workers and Administrative Staff

Secretaries and social workers required for effective performance of PD functions are often not afforded PDs in Pennsylvania, due to inadequate funding:

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[278] "*Gideon's* Broken Promise," 10.
[279] *Justice Denied*, 93.
[280] Backus and Marcus, "Right to Counsel," 1099.
[281] *Racial and Gender Bias Report*, 185.

> Aside from Philadelphia, PD offices in the sample counties suffered from inadequate support services from social workers and secretarial staff. Some rural counties did not have access to even a part-time social worker. The lack of sufficient secretarial assistance is a serious impediment to legal representation, because attorneys must devote their time to administrative and clerical tasks rather than legal work, and they may also "cut corners" by, for example, cutting down on motion practice.[282]

Only three of the PDs responding to the SR 42 Survey reported social workers on staff.[283]

Technology

Technology assists PD offices in such important functions as communication, legal research, and case management, including determination of conflicts of interest. PD offices are generally found to be trailing prosecutors' offices in the use, knowledge, and upgrading of technologies.[284]

Inadequacy of technology in defender offices is a national problem.

> Some PD offices . . . do not have sufficient management information systems and technical support, leaving them unable to compile relevant statistical data regarding their caseloads. While the inability to collect and report on caseloads and cost data is undoubtedly due to underfunding, it also becomes a cause of under-funding. Without accurate empirical data, the programs cannot demonstrate to governmental funding sources its [sic] cost-efficiency and need for additional appropriations.[285]

As recently as 2003, widespread use of information technology had yet to become the norm across much of our Commonwealth:

> Technological shortcomings plagued PD offices in all of the sample counties except Centre County. Nearly all the counties reported having no computers, or few computers; PDs in the remaining counties often had out-of-date computers that in some cases had been donated by DA's offices. Most counties did not have computerized case management or tracking systems, despite having unwieldy caseloads and using

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[282] Ibid., 186.
[283] The counties that indicated they had PD social workers include Philadelphia with 70 social workers, and Allegheny and Franklin Counties having one social worker each.
[284] Backus and Marcus, "Right to Counsel," 1101-02.
[285] *Justice Denied*, 97-98.

> horizontal representation systems that make proper file tracking and management critical. PDs had to rely on paper filing systems that were both labor-intensive and difficult to maintain.[286]

There is a "lack of systematic methods for reporting, collecting, and maintaining data on indigent defense systems. Information on caseloads is particularly inadequate; many smaller counties do not even estimate PD caseloads, and other counties are not able to categorize the data that is gathered according to the type of case."[287]

Of the counties that responded to the SR 42 Survey, only 44 percent use a computer for scheduling, 56 percent for accounting, 59 percent for caseload management, 74 percent for case tracking, and 78 percent to record client information. A PD on the advisory committee reported that his office computers were hand-me-downs from the DA's office.

Overuse of Plea Bargaining

In Pennsylvania, as elsewhere in the United States, many cases are pled out before they reach the trial stage. When the prosecution and defense agree on the facts in the case, a full trial is usually unnecessary, and even where the facts may be less clear cut, a plea bargain may be mutually advantageous. The defendant benefits by receiving a lesser sentence than if the case had gone to trial, while the public sees at least rough justice done without the heavy expense of a trial. Where defenders have competent and well-supported attorneys, investigators, and forensic experts to investigate the facts surrounding the real or alleged offense, plea bargaining can thus comport with the adversary system and yield just results. However, when the plea bargain is entered into largely because the defender lacks the staff or other resources to mount a defense, despite inconsistent evidence regarding the commission of the offense, the applicability of possibly meritorious defenses, or evidence tainted by unconstitutional police practices, the avoidance of a trial may be contrary to sound public policy and substantial justice.

Staff spoke with both the DA and PD in one rural county in separate phone calls. The PD office's only staff is a part-time chief PD and one part-time assistant (who doubles as paralegal and secretary). The PD office is run out of the chief PD's private office, and the paralegal is the only staff person for the private practice and the PD office. According to AOPC data for 2008, this PD office handled 196 criminal cases including 64 non-murder felonies, 131 misdemeanors, and one ungraded case. The response to the SR 42 Survey from the county for that year reported an additional estimated 30 probation and parole revocation cases, five protection from abuse hearings, five appeals, and 140 other cases. In total, this part-time PD handled about 376 cases in 2008 with help from only a part-time assistant.

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[286] *Racial and Gender Bias Report*, 186.

[287] "*Gideon's* Broken Promise," 28 (citing testimony by SR 42 advisory committee member Lisette McCormick).

In that county, both the DA and PD have been in their positions for many years and each spoke highly of the other. The PD and DA said that they both perform their jobs adequately and are committed to seeking justice for the accused and the victims. They arrive at plea arrangements for virtually every indigent defense case. The PD observed that he could not remember the last time he had a case go to trial. All plea bargains had to be approved by the president judge, whose entire legal career had taken place within the county.

The major cause of the overuse of plea bargains is generally the unavailability of the resources and support structure needed to implement an adequate criminal defense system, not the shortcomings of individual lawyers. While a collaborative system assures rapid disposition of cases and minimal immediate costs, there is a high risk that factually innocent defendants will be convicted, legally established defenses will be ignored, and substantive constitutional rights will be violated.

TRAINING

The legal profession, like other professional fields, requires that practitioners attend continuing education classes in order to maintain their licenses. While state bar associations recognize the importance of continual training and require members to attend classes, training for PDs is often neglected in Pennsylvania counties. The advisory committee discussed several instances where newly hired assistant PDs were not adequately prepared to provide criminal defense. Experienced general practice attorneys who are court-appointed to represent indigent defendants, but lack criminal defense training or experience, are likewise at a loss when faced with a criminal case.

Without proper training, indigent defense lawyers cannot provide effective defense. "Criminal justice is not a static field; it continually evolves and requires continual training."[288] The effects of lack of training can be most acute in rural PD offices where relatively few lawyers have criminal defense experience.

Accordingly, Principle 9 deals with training requirements:

> **Defense counsel are provided with and required to attend continuing legal education.** Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.[289]

[288] David Carroll, director of research and evaluation, NLADA, presentation to SR 42 advisory committee, September 15, 2009.
[289] ABA Ten Principles, 3.

Training is another area where the Pennsylvania IDS has been sorely lacking:

> Few offices . . . offered significant legal training opportunities to attorneys. Aside from Philadelphia, which has a rigorous training program for new attorneys and provides regular training to senior attorneys, none of the county PD offices visited by the Spangenberg Group has a formal training or mentoring program. Further, most offices other than Philadelphia also lack formal evaluation and supervision procedures. Aside from mandatory CLE requirements, indigent defense counsel generally do not participate in professional development courses, and when they do they often must pay all or part of the cost themselves. Given the lack of training and supervision, attorneys often perform inadequately or "burn out" and move on to other, more lucrative practices.[290]

Instituting a permanent training program in a PD office as a core function is only the first part of the task. Training programs must transmit management's policies, so that the PD office can serve its function effectively and efficiently. It is through a consistent and well developed training system that the leadership of a PD office can change its culture to instill the values and practices needed to conduct effective indigent defense. Training provides the support and the development to enable the staff to produce genuinely professional representation.[291]

SUPERVISION AND ACCOUNTABILITY

Supervision and accountability are essential to the successful functioning of a PD office. Attorneys need to know how well their job performance meets courtroom expectations and also how effectively they are meeting professional standards. Principle 10 prescribes practices to institutionalize accountability:

> **Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.** The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.[292]

Accountability infrastructure is especially necessary given all of the pressures that push the system toward laxity in professional standards.

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[290] *Racial and Gender Bias Report*, 186.
[291] Phyllis Subin, presentation to SR 42 advisory committee, September 15, 2009.
[292] ABA Ten Principles, 4.

> The challenges facing defenders, including overwhelming caseloads, lack of supervision and training, inadequate compensation and resources, and political pressure, all raise significant ethical issues for defense attorneys, prosecutors, and judges. Although professional standards for defenders are clear, systemic deficiencies push defenders to compromise their efforts on behalf of clients. These questionable compromises undermine ethical standards and, in turn, contribute to the denigration of the legal profession and the criminal justice system. Judges, prosecutors, lawyer disciplinary bodies, and defenders themselves are loathe to call attention to these ethical failings.[293]

Supervision and accountability are the first defense against lapses in ethics, and they also are the first bulwarks of effective assistance. Phyllis Subin pointed out how accountability procedures can clarify expectations and contribute to employee morale. "To those who are doing top-notch work, you're saying, 'That's top-notch work and we're recognizing it by putting it into standards.' To those who aren't doing top-notch work, 'You've got to step up to the table because we're changing the culture and the expectations.'"[294] Even when attorney qualifications are matched to case assignments, monitoring and evaluation are necessary to ensure a high quality of representation.[295]

In Pennsylvania the system's inability to provide supervision and accountability "has resulted in a deterioration of professional standards for indigent representation."[296]

> Pennsylvania's indigent defense system is characterized by a lack of state standards, supervision, and accountability. The Commonwealth maintains no binding workload standards for indigent defense providers; no uniform standards for representation of indigent defendants; no written indigency guidelines; no standards for eligibility and compensation of assigned counsel; and no guidelines for approving requests for investigators and psychologists.[297]

In a number of Pennsylvania counties, the PD office is staffed by a single attorney who has no direct supervisor and no accountability to standards. For those offices, only a statewide accountability structure can give genuine assurance that professional standards will be maintained.

The problems that can arise from inadequate supervision and accountability are known to attorneys working in indigent defense. Conflict attorneys interviewed for an evaluation report "universally" complained about the number of ineffective assistance of counsel claims. Complaints noted by conflict attorneys were that:

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[293] Backus and Marcus, "Right to Counsel," 1080.
[294] Phyllis Subin, presentation to SR42 advisory committee, September 15, 2009.
[295] Backus and Marcus, "Right to Counsel," 1091.
[296] *Racial and Gender Bias Report*, 184
[297] Ibid.

- Two-thirds of one attorney's caseload was in the area of ineffective assistance of counsel
- Many PD offices did little to no pretrial litigation
- Potential alibi witnesses were not contacted
- There was little trial preparation
- No jail contact was made with incarcerated clients.[298]

PART-TIME PUBLIC DEFENDERS

The Ten Principles do not address whether PD offices should employ part-time attorneys, but in its standards relating to PDs and other defender organizations, the ABA has advocated an entirely full-time attorney staff.

Standard 5-4.2. Restrictions on Private Practice

> Defense organizations should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of law.[299]
>
> The work of defenders is exceedingly demanding, normally requiring that they devote as much effort to their cases as time permits. Where part-time law practice is permitted, defenders are tempted to increase their total income by devoting their energies to private practice at the expense of their nonpaying clients. Even more important, the expertise required of defense counsel is less likely to be developed if an attorney maintains a private practice involving civil cases. A prohibition of private practice by full-time personnel also assists in countering any tendency for those responsible for financing to maintain low salary structures on the assumption that defenders can supplement their salaries through private practice. Where part-time defenders continue to be used, clear and uniform standards should exist for the scope and performance of duties, limits on private practice, and the avoidance of conflicts of interest.[300]

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[298] Spangenberg Group, A Statewide Evaluation of Public Defender Services in Pennsylvania, 61.
[299] ABA Standards for Criminal Justice: Providing Defense Services, 3d ed. 1992, 56.
[300] Ibid., 57. The National Right to Counsel Committee recommends employing full-time staff "whenever practicable." *Justice Denied*, 194-95.

These standards further recommend regionalization of defense services in rural areas with low caseloads, since that is preferable to using part-time attorneys.[301] "The trend in recent years, particularly in jurisdictions with statewide defender systems, has been toward requiring full-time attorneys who are precluded from the private practice of law."[302]

In Pennsylvania, the use of part-time PDs continues outside the large metropolitan areas.

> [I]n several mid-sized and rural counties, both the chief PD and some assistant PDs work part-time while maintaining private law practices. This situation, at a minimum, creates the appearance that the part-time defenders attend more closely to paying, private cases than to the cases of indigent defendants.[303]

Because part-time attorneys are tempted to devote their time and energy to paying clients, the advisory committee recommends that the IDS employ full-time attorneys to the greatest practicable extent. The executive director and the attorneys employed by the office of indigent defense should be required to be full-time employees. Chief PDs should also be required to be full-time employees, unless the statewide office determines that it is not feasible to require a full-time commitment in the particular county. Assistant PDs should be full-time to the maximum extent feasible as determined by the statewide office. Full-time PDs should be prohibited from engaging in private practice, but that restriction should not apply to assigned counsel and contract counsel.

FAILURE OF THE LUZERNE COUNTY JUDICIAL SYSTEM

Nowhere is the lack of resources, personnel, and funding available to meet the needs of indigent defense felt more keenly than in juvenile justice. Like other indigent defense, the defense of indigent juveniles receives no funding from the Commonwealth. The Luzerne County judicial scandal, popularly known as "Kids for Cash.," brought the deficiencies of the juvenile justice system of that county into sharp relief, and some of those shortcomings actually or potentially affect indigent defense more generally.

Most obviously, the scandal illustrated the baneful effects of judicial interference in indigent defense. Luzerne County President Judge Michael Conahan, one of the perpetrators of the criminal scheme, "ran the courthouse as a personal sovereignty" and

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[301] ABA Standards, 57-58. "[I]n some jurisdictions, there may be especially rural areas in which full-time defenders may not make much sense." *Justice Denied*, 195.
[302] Ibid., 58.
[303] *Racial and Gender Bias Report*, 190.

"personally assign[ed] cases."[304] As the Interbranch Commission formed to report on the scandal observed, "Where judges appoint counsel that appear before them on a specific case there is an inherent potential conflict between the financial interests of the attorney in obtaining future appointments and the zealous representation of the juvenile."[305] (Of course, the same consideration applies to counsel representing an adult defendant.)

In September 2009, Luzerne County President Judge Mark A. Ciarvarella, Jr. and Senior Judge Michael T. Conahan were indicted as a result of what could be the most egregious case of judicial misconduct in Pennsylvania history. The 48-count indictment filed by the U.S. Attorney stemmed from an investigation into the judges' actions over five years. The indictment included charges of racketeering, fraud, money laundering, extortion, bribery, and federal tax violations.

Judge Ciavarella was accused of sentencing hundreds of juvenile defendants to two privately owned residential detention facilities, Pennsylvania Child Care and Western Pennsylvania Child Care, in exchange for payments to Judge Conahan and Judge Ciavarella from the operators of the facilities. Former President Judge Conahan was accused of using his budget power as president judge to stifle investment in the county owned juvenile center to benefit the development of the two facilities. The indictment stated that the scheme resulted in more than $2.8 million paid to the judges as kickbacks from the operators of the juvenile detention centers.[306] In exchange for these kickbacks, Conahan signed an agreement in January 2002 for the county to pay $1.3 million annually to the detention centers and to guarantee that juveniles would be assigned to placement there. The county detention center was closed, while a contract worth $58 million was awarded to Pennsylvania Child Care in 2004.[307]

Children and youth with no history of criminal violations were churned through Ciavarella's courtroom with frightening speed. His "zero-tolerance" policy toward juvenile delinquency was expressed through harsh penalties doled out with seeming disregard for the seriousness of the crime the youths were charged with.[308] A youth who posted a fake MySpace page about a school principal was sentenced to 90 days of out-of-home placement. The detention centers served as a "Dickensian debtors' prison" when an eleven year old boy was sentenced to placement for failing to pay several hundred dollars in fines and restitution.[309] Judge Ciavarella's strict sentencing policy was lauded by community leaders, school officials, and some parents.[310]

The scheme came to light because the Juvenile Law Center (JLC) investigated allegations of judicial misconduct in 2007. Data uncovered by JLC showed that between

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[304] Interbranch Commission on Juvenile Justice, Report (Interbranch Commission Report) (ICJJ: Philadelphia, May 2010), 13.
[305] Ibid., 51.
[306] United States v. Conahan, Indictment (M.D. Pa. Case No. 09-CR-272, filed Sept. 9, 2009) http://media.theweekender.com/documents/INDICTMENT.pdf.
[307] Interbranch Commission Report, 9.
[308] Ibid., 33.
[309] Ibid., 37.
[310] Ibid., 35.

2005 and 2008, approximately 50 percent of juveniles appearing before Judge Ciavarella did so without legal representation, and 60 percent of these youths were remanded to out-of-home placements. In 2005 and 2006, approximately 500 youths appeared without counsel and 250 were sent to out-of-home placements.[311] At 24.5 percent, the Luzerne County rate of juveniles remanded to placement was more than double the corresponding rate for the Commonwealth. Based in part on this discrepancy, in April 2008 JLC petitioned the Pennsylvania Supreme Court on behalf of 2,500 youths who had been adjudicated before Judge Ciavarella.[312] The petition alleged that Judge Ciavarella failed to advise the juvenile defendants of their right to legal representation and allowed them to waive legal representation without a colloquy to establish on the record that the waiver was "knowing, intelligent, and voluntary."[313]

Sixteen days after the filing of the federal indictment, the Pennsylvania Supreme Court granted JLC's petition and assumed jurisdiction over the matter under its King's Bench power.[314] The Court appointed Senior Judge Arthur E. Grim of Berks County as special master to review all of Ciavarella's cases where unrepresented juveniles had been committed to the two juvenile detention facilities, in order to "determine whether the alleged travesty of juvenile justice in Luzerne County occurred, and if it did, to identify the affected juveniles and rectify the situation as fairly and swiftly as possible."[315] Judge Grim's investigation, concluded 120 days after his appointment, identified 1,866 cases in which juveniles appeared without counsel before Ciavarella between 2003 and 2008.[316] On October 29, 2009, the Supreme Court accepted Judge Grim's recommendations and directed that the charges against all juveniles appearing before Ciavarella while the kickback scheme was in operation be vacated and their records expunged.[317]

Judge Ciavarella was found guilty in U.S. District Court of racketeering and conspiracy charges on February 19, 2011.[318] On August 12, 2011, he was sentenced by Judge Edwin Kosik to 28 years in prison.[319] Judge Conahan plead guilty to racketeering charges on April 30, 2011, and was sentenced to 17½ years in Federal prison.[320]

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[311] Terrie Morgan-Besecker, "How Juvie Scandal Was Uncovered," *Times Leader* (Wilkes-Barre/ Scranton), October 31, 2009, http://www.timesleader.com/news/How_juvie_scandal_was_uncovered_10-31-2009.html, accessed through Juvenile Law Center, "Luzerne County 'Kids for Cash' Scandal: News Center," Feb. 11, 2011, http://jlc.org/luzerne_news_center/.
[312] http://jlc.org/news/25/luzernelawsuit/
[313] Interbranch Commission Report, 8.
[314] Ibid., 10.
[315] Ibid.
[316] Ibid.
[317] Ibid., 12.
[318] Dave Janoski and Michael R. Sisak, "Ciavarella Guilty of Racketeering," *Citizensvoice.com*, February 19, 2011, http://citizensvoice.com/news/ciavarella-guilty-of-racketeering-1.1107236? localLinksEnabled= false#axzz1bQ2oWLoo.
[319] "Ciavarella Sentenced to 28 Years in Prison," *Times-Leader* (Wilkes-Barre/Scranton), August 12, 2011, http://www.timesleader.com/news/Ciavarella-sentencing-long-line-long-wait.html
[320] Jennifer Learn-Andes, "Officials, Victims Are at Ease over Conahan's Guilty Plea," *Times Leader* (Wilkes-Barre/Scranton), April 30, 2011, http://www.timesleader.com/news/Officials__victims_are_at_ ease_over_Conahan_rsquo_s_guilty_plea_04-29-2010.html.

The JLC described the full nature and extent of the scandal:

> The conspiracy lasted from 2003 to 2008, involving as many as 6,500 juvenile cases and as many as 4,000 individual children. Over 50% of the children who appeared before Ciavarella did not have an attorney and 50 to 60% of these unrepresented children were placed outside their homes. Many of these children were sent to one or both of the two facilities involved in the alleged kickback scheme. The vast majority of children were charged with low-level misdemeanor offenses.[321]

In the wake of these developments, Act 32 of 2009 established the Interbranch Commission on Juvenile Justice and mandated that it conduct a non-criminal review of the juvenile justice system in Luzerne County. Through a series of meetings and public hearings, the Commission investigated and analyzed the practices, procedures, and rules regarding the judges, attorneys, and public officials involved with the county's juvenile justice system, including the appointment of defense counsel representing juvenile defendants. The Commission issued its report on May 27, 2010.

The Interbranch Commission found that the acquiescence to Judge Ciavarella's unconstitutional courtroom practices evidenced a broad institutional failure:

> Whether because of intimidation, incompetence, inexperience, indifference, or corruption, every source of check and balance on this abuse of power failed to one degree or another, some more than others: the Board of Judges, prosecutors and defense attorneys, probation officers, police, school officials, the Judicial Conduct Board, the Disciplinary Board, community leadership, the electoral process, court administration, county government, the procedural protections afforded by statute and rules of court, and appellate review.[322]

Examples of this institutional failure were that two assistant district attorneys testified that they and other assistant prosecutors assumed that Judge Ciavarella's use of written, pre-signed waiver forms in lieu of on-the-record colloquies was "acceptable."[323] (The failure to hold a colloquy was a clear violation of Pennsylvania Rule of Juvenile Court Procedure 152.) On the public defender's side, the retired chief PD said that because of lack of time and resources, he deemphasized representation of juvenile defendants. He added that when Judge Ciavarella was hearing juvenile delinquency cases, it took "approximately no more than four hours a week" of one assistant public defender's time to cover juvenile court.[324]

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[321] Juvenile Law Center, "Luzerne County 'Kids-for-Cash' Juvenile Court Scandal," http://jlc.org/luzerne/ (accessed Feb. 8, 2011).
[322] Interbranch Commission Report, 60.
[323] Ibid., 32.
[324] Ibid., 34.

The Commission found that excessive caseloads and inadequate funding, training, and supervision of assistant PDs allowed the scandal to continue. PDs, and court-appointed and private counsel ignored their ethical obligation to report violations of children's rights. One assistant PD voiced concern, but no further action was taken by the chief PD until after the scandal became public. Even after Ciarvarella and Conahan were replaced in juvenile courts and early attempts at reform were made, a full time attorney assigned to juvenile cases in Luzerne County was responsible for 800 to 1,000 cases per year, far in excess of the American Council of Chief Defenders' standard of 200, or indeed of any reasonable amount.[325]

The report made 43 recommendations in 20 different policy areas that cover the scope of the juvenile justice system across the Commonwealth, including six affecting juvenile defense practice. The Commission recommended a state-based funding stream for juvenile indigent defense. The Commission also supported a training and resource unit to be known as the Pennsylvania Center for Juvenile Defense Excellence to support appellate services for juveniles, training, and the development of clinical programs. Finally, the report suggested four reforms to ensure access by juveniles to defense counsel: deeming all juveniles as indigent for purposes of appointment of counsel; restricting the right of juveniles to waive counsel and requiring stand-by counsel in cases of valid waiver; implementing an appointment system that avoids the appearance of impropriety; and establishing performance guidelines that encourage competent and effective representation of juveniles.[326]

Many of the factors uncovered by the Interbranch Commission apply to indigent defense in general, especially where the two systems overlap and the PD is called upon to defend the children of needy families. While the culture of corruption that developed under Judge Conahan and Judge Ciavarella is not at all representative of Pennsylvania's courts of common pleas or its juvenile justice system,[327] the Kids for Cash scandal showed how failure to maintain professional independence of defense attorneys from interference by the judiciary can create systemic injustice. It also showed that Pennsylvania's overly localized IDS can lead to inadequate supervision and training, which in turn can lead to a shocking deterioration in professional standards.

[325] Ibid., 48, 49.
[326] Ibid., 48-51.
[327] Ibid., 7.

CHAPTER SIX
CONCLUSION

The experience of the advisory committee members with responsibility for providing indigent defense, the data from the surveys done pursuant to this study and data on Pennsylvania's IDS gathered in the course of national studies indicate that the Pennsylvania IDS fails to meet most of the criteria defined in the Ten Principles. Little has changed in that regard since the Supreme Court's *Racial and Gender Bias Report* made similar findings in 2003.

> . . . *Pennsylvania is generally not fulfilling its obligation to provide adequate, independent defense counsel to indigent persons.* Contributing factors include the Commonwealth's failure to provide sufficient funding and other resources, along with a lack of statewide professional standards and oversight. In addition, efforts to improve the indigent defense system have been impeded by the lack of reliable, uniform statewide data collection.[328] [Emphasis added]

The research director of the NLADA agrees that many of Pennsylvania's county IDSs suffer from a wide range of deficiencies:

> Across much of [Pennsylvania], defendants count themselves among one of several hundred who are all vying for the attention of a single lawyer—a lawyer who lacks the time or resources to adequately advocate on their behalf. Pennsylvania neglects to provide any type of meaningful supervision or accountability for the work of these public defense lawyers and refuse [sic] to make available on-going training to keep attorneys abreast of ever-evolving criminal justice sciences. And, public attorneys are often beholden to the trial judge and/or the county administration for their pay check, creating a direct conflict between the lawyer's own personal financial well-being and his ethical duty to advocate solely on behalf of his client.
>
> People in need of defender services have little ability to redress such constitutional violations alone. Often in Pennsylvania, it is the same overwhelmed, untrained, unqualified and financially-conflicted lawyer who failed to adequately advocate for a client at trial who is also appointed to represent that same client on direct appeal (the court procedure to review the fairness of the trial and raise issue with—among other things—whether or not the trial lawyer did a good job). Chances are

[328] *Racial and Gender Bias Report*, 164-65.

> low that such lawyers will raise concerns about the quality of their own lax work or conflicted financial interests. Unfortunately, the next opportunity to question the attorney's effectiveness occurs during what is known as a post-conviction proceeding—a court procedure in which a defendant no longer has a constitutional right to the assistance of counsel.[329]

Measured Pennsylvania's IDS against the Ten Principles, the advisory committee for this study reaches the following evaluation:

ABA PRINCIPLE	PENNSYLVANIA IDS PERFORMANCE
1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.	In many counties, the IDS is subject to interference from the judiciary, the county commissioners, or both.
2A. Where the caseload is sufficiently high, the IDS consists of both a defender office and the active participation of the public bar.	The private bar is meaningfully involved in the provision of indigent defense, but the quality of representation is not monitored and attorneys are significantly underpaid.
2B. There should be state funding and a statewide structure responsible for ensuring uniform quality statewide.	There is no direct state funding, nor is there a statewide administrative structure for ensuring uniform quality of representation or reasonably consistent eligibility standards.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.	In some counties, representation begins before the preliminary hearing (as it should), but in other counties, that hearing is the first time the attorney meets with the client.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.	Compliance unknown, due to lack of data. However, in some counties problems with providing adequate space have been identified.

[329] David Carroll, et al. "Judicial Underpinnings," 1, 2.

ABA PRINCIPLE	PENNSYLVANIA IDS PERFORMANCE
5. Defense counsel's workload is controlled to permit rendering of quality representation.	In many if not most counties, attorney workloads substantially exceed recommended limits, which do not include several types of cases that did not exist when those limits were formulated.
6. Defense counsel's ability, training, and experience match the complexity of the case.	Counties use a variety of systems for assigning counsel to cases. In many counties, an attorney license and membership in the county bar are the only requirements for a noncapital case.
7. The same attorney continuously represents the client until the completion of the case.	In many counties, PDs are assigned to courtrooms rather than clients, and it is common for several attorneys to handle a case throughout the entire criminal process.
8. There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.	In most counties, the resources available to the DA are much greater than those of the PD and the DA has more political influence than the defense bar.
9. Defense counsel is provided with and required to attend continuing legal education.	Aside from mandatory CLE requirements, indigent defense counsel generally do not participate in professional development courses, and when they do they often must pay all or part of the cost themselves.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.	The system's inability to provide supervision and accountability has resulted in a deterioration of professional standards.

In general, the Defender Association of Philadelphia measures up to these standards much better than IDSs elsewhere in the Commonwealth. There is a considerable variation in the performance of the other county IDSs in Pennsylvania, but the Commonwealth as a whole meets only one of these principles in part: meaningful involvement of the private bar (Principle 2). (Continuing legal education (Principle 9) is "required," but often is "provided" only at the attorney's expense.) The advisory committee therefore is constrained to conclude that Pennsylvania still fails to fulfill its obligation to provide adequate, independent defense counsel to indigent persons.

The SR 42 advisory committee emphasizes that the responsibility for providing an adequate indigent criminal defense system is not discretionary, but is mandated by the U.S. Constitution and the Constitution of Pennsylvania. It is also mandated by the norms of civilization itself. No polity can consider itself truly compassionate and respectful of human rights if it casually allows its citizens to suffer lengthy prison sentences based largely on the poverty of the accused as measured by his or her inability to afford a private attorney. But that is what Pennsylvania does by its failure to provide any state support to indigent defense. An accused defendant or juvenile delinquent who is either not provided with counsel at all or with a lawyer who is too overburdened by a high caseload to pay significant attention to a particular case will be unable to establish innocence or a legally valid defense to the charges. Not only does our unbalanced criminal justice system increase the likelihood that the indigent defendant or alleged delinquent will be penalized despite his or her innocence, but there is a greater risk that the actual perpetrator will be free to commit other offenses.

The consequence of a more balanced adversary system will be dispositions that more accurately reflect the facts of the incident in question and the law applicable to those facts. This is likely to result in a net reduction in jail time, but even if the need for harsh sentences is granted, society does not benefit if the disposition is based on an account of the facts and the law that may be distorted by shortchanging the resources available to the defense. The Commonwealth pays for this, both in the enormous costs of inappropriately excessive prison sentences and in the consequences to the families of defendants serving unjust or excessive jail sentences.

The advisory committee is fully mindful of the dire fiscal situation facing the Commonwealth. But every other state in the Nation has funded some support for its IDS, and it would appear that Pennsylvania can find a way to do likewise.

DRAFT INDIGENT DEFENSE STATUTE

FEATURES OF PROPOSAL

The draft statute presented here represents what the advisory committee considers the most advanced ideas on structuring a state indigent defense system, adapted to longstanding Pennsylvania practice. This proposal establishes a central Office of Indigent Defense with broad powers to establish standards that county PD offices are required to follow and which will help assure that Pennsylvania's indigent defense system meets professional standards. This office, through its executive director, carries out policies established by a State Board of Indigent Defense that includes a diverse representation of the affected stakeholders. The Office of Indigent Defense is an independent agency within the executive branch. The day to day operations of the office are managed by an executive director appointed by the board.

To ensure adequate compensation, the statewide office is empowered to set compensation standards for county PDs. The office is also tasked with developing workload standards to assure that indigent defense staff can provide effective representation. Several divisions and officers within the Office of Indigent Defense are mandated in order to ensure that the most vital functions are carried out efficiently: a capital case division, under a director; an appellate and postconviction review division, under a director; a director of juvenile defense services; an information management and technology officer; and a director of training and professional development.

County PDs retain many of their local responsibilities, as under the current system. In order to ensure maximum independence from local political pressure, the chief PD is appointed by the statewide office and paid by the Commonwealth. The rest of the PD staff remain county employees. Besides the cost of the chief PD, the cost of appeals, PCRA proceedings, and capital cases is shifted from the counties to the Commonwealth. The proposed statute provides for participation by contract counsel and assigned counsel and the assignment of such counsel to cases by the PD under state guidelines. Representation for Philadelphia cases is provided for in accordance with the plan described on page 64.

OFFICE STRUCTURE

The draft statute provides for an independent board to provide broad policy advice (like a non-profit board of directors) and an executive director to manage the operations of the Office of Indigent Defense. The office will establish a statewide communications system to work with and supervise the chief county defenders, and resource and information centers and libraries to support the office's execution of its duties relating to legal representation, training, and policy advocacy.

The office's statutorily mandated structure establishes clear areas of representation and office work responsibilities through the following divisions, which will operate under the executive director's management authority:

- Capital case division, under a director
- Appellate and postconviction review division, under a director
- Director of juvenile defense services
- Information management and technology officer
- Director of training and professional development

Across the country division director positions that are not mandated by statute are disappearing under the impact of severe budget cuts, prohibitions against filling empty positions, mandatory furloughs, and low bid contracts that contract out operations to moneymaking, unsupervised, contract law firms providing low quality legal representation on the cheap. Mandating these positions in the statute, as they have under reform legislation in Louisiana and Montana,[330] will to some degree insulate these positions from such threats.

The divisions so established need well qualified, efficient leadership to manage and supervise their responsibilities. As this report argues, capital case and appellate representation require skills somewhat different from regular trial practice, and postconviction representation can be better administered from the central office to avoid potential conflicts of interest. The proposed director of juvenile defense services follows the Louisiana reform statute[331] and the joint recommendation of NLADA and the National Juvenile Defender Center (NJDC) in recognizing the representation of children as a specialized area of law "different from, but equally as important as, the

[330] La. Rev. Stat. §§ 15:153 (director of training), 15:154 (director of juvenile defender services), and 15:156 (information management and technology officer); Mont. Code § 47-1-201(3).
[331] La. Rev. Stat. § 15:154.

representation of adults in criminal proceedings."[332] In addition, the IDS must have effective technological support for its statewide data collection, communications operations, and resource and information centers. Technology support is particularly important because of the severe and fundamental shortcomings Pennsylvania's IDS faces in data collection. Finally, the position of director of training and professional development is mandated because it is these functions that build the foundation for effective representation.

COSTS AND IMPLEMENTATION PLAN

To forecast the impact of the institution of a statewide Office of Indigent Defense Services, it will be necessary to distinguish new costs, costs presently borne by the counties that will be assumed by the state, and those that will remain with the counties. Under this plan, the Commonwealth will pay for the meeting expenses of a volunteer board, the staff of the OIDS, the salaries of the chief PD in all counties except Philadelphia, capital representation, and appellate representation for criminal cases.

Because of the severe fiscal situation facing the Commonwealth, it not be feasible to institute the Office of Indigent Defense all at once, but rather in stages over four or more fiscal years. The list of the operational budget categories attendant on a possible implementation plan is included as Appendix B. Preparation of a budget proved to be beyond the abilities and expertise of the staff and the advisory committee, but it is hoped that Appendix B would serve as a foundation upon which the Office's budget could be developed. Presumably the board and the executive director will exercise their managerial authority to tailor the program to fit within the resources available to them.

[332] NJDC and NLADA, "Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems" (2nd ed.) (Washington, D.C.: NJDC and NLADA, July 2008).

DRAFT INDIGENT DEFENSE STATUTE

TITLE 42: JUDICIARY AND JUDICIAL PROCEDURE

CHAPTER 88
DEFENSE OF THE INDIGENT

SUBCHAPTER A
GENERAL PROVISIONS

§ 8801. Short title of chapter.

This subchapter shall be known and may be cited as the Indigent Defense Act.

§ 8802. Purposes of chapter.

The purposes of this chapter are as follows:

(1) To provide a statewide administrative structure that will enable provision of effective assistance of counsel to indigent criminal defendants and children charged with delinquent conduct who are entitled to assistance of counsel at public expense under the Sixth or Fourteenth Amendments to the United States Constitution and section 9 of Article I of the Constitution of Pennsylvania.

(2) To ensure that the indigent defense system is free from undue political interference and conflicts of interest.

(3) To provide that indigent defense services are delivered by qualified and competent attorneys in a manner that meets constitutional standards for representation and is consistent throughout this Commonwealth.

(4) To maintain the operational independence of the provider of indigent defense services in a city of the first class.

§ 8803. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them by this section unless the context clearly indicates otherwise:

"Assigned counsel." An attorney who provides indigent defense services by appointment to represent a particular defendant or child. The term does not include a public defender or other employee of the office of indigent defense or a county public defender office.

"Assistant public defender." A public defender other than the chief public defender.

"**Board."** The state board of indigent defense established by section 8812 (relating to state board of indigent defense).

"Chief public defender." The public defender who is responsible for supervising a county public defender office.

"Conflict counsel." Assigned counsel or contract counsel who are retained to provide indigent defense to avoid a conflict of interest.

"Contract counsel." An attorney who provides indigent defense services under a periodic contract other than an employment contract. The term does not include a public defender.

"County." For a county in a judicial district comprising two counties using the same public defender, the term refers to the judicial district.

"County public defender office." A county office established to provide indigent defense.

"Eligible matter." Any of the following:

(1) A proceeding under a criminal charge which may result in incarceration.

(2) A juvenile delinquency proceeding.

(3) A state habeas corpus proceeding.

(4) A criminal extradition proceeding.

(5) A probation or parole proceeding, including a revocation proceeding.

(6) A commitment proceeding under the act of October 20, 1966 (3rd Sp. Sess., P.L.96, No.6), known as the Mental Health and Mental Retardation Act of 1966.

(7) A civil or criminal contempt proceeding which may result in the deprivation of liberty.

(8) Any proceeding where indigent defense is required under the United States Constitution, the Pennsylvania Constitution or other law.

"Executive director." The executive director of the office of indigent defense.

"Guideline." A rule established by the office of indigent defense with the approval of the board.

"Indigent." Unable to afford a private attorney without undue hardship.

"Indigent defendant." An individual against whom an eligible matter has been commenced who appears without an attorney in the eligible matter and is determined under section 8834 (relating to determination of eligibility) to be indigent.

"Indigent defense." Legal representation of an indigent individual at the public expense under this chapter.

"Indigent defense attorney." An attorney who provides or manages the provision of indigent defense. The term includes all of the following:

(1) Attorneys employed by the office of indigent defense.

(2) Public defenders.

(3) Assigned counsel.

(4) Contract counsel.

"Indigent defense services." Indigent defense provided pursuant to a contract or other agreement between an attorney and the office of indigent defense, a county government, the county public defender office or a person or entity other than an indigent individual.

"Indigent defense system." The system for providing indigent defense in this Commonwealth as implemented by the office of indigent defense, the county public defender offices, and attorneys and staff who provide indigent defense services.

"Office of indigent defense" or **"office."** The office of indigent defense established by section 8813 (relating to office of indigent defense).

"Postconviction proceedings." Proceedings under 42 Pa.C.S. Ch. 95, Subch. B, (relating to post conviction relief) and appeals from such proceedings.

"Private indigent defense attorney." An indigent defense attorney who is not under an employment contract with the office of indigent defense or the public defender.

"Public defender." An attorney who provides indigent defense or manages the provision of indigent defense as the chief public defender or an employee of a county public defender office.

"Regulation." A regulation promulgated by the office of indigent defense under the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, and the act of June 25, 1982, (P.L.633, No.181), known as the Regulatory Review Act.

§ 8804. Rights and remedies.

This chapter does not affect rights or remedies otherwise available to persons other than the indigent defendant and the attorney representing the indigent defendant.

SUBCHAPTER B
ADMINISTRATION OF INDIGENT DEFENSE

§ 8811. Administrative structure.

(a) Office of indigent defense.—The office of indigent defense is established as an independent agency within the executive branch.

(b) State board of indigent defense.—The state board of indigent defense is established and shall have the powers and duties provided in section 8812(d) (relating to state board of indigent defense).

Comment: Subsection (a)—"Independent agency" is defined in 42 Pa.C.S. § 102.

§ 8812. State board of indigent defense.

(a) Structure and membership.—There shall be a state board of indigent defense. The board shall consist of thirteen members selected as follows:

(1) The Chief Justice of the Pennsylvania Supreme Court shall appoint three members, at least one of whom must be a former member of the judiciary of this Commonwealth.

(2) The Governor shall appoint three members, comprising the following:

(i) one representative of the public defenders, appointed from a list of three qualified individuals recommended by the Public Defenders Association of Pennsylvania.

(ii) one advocate for current and former prison inmates, appointed from a list of three qualified individuals recommended by the Pennsylvania Prison Society.

(iii) one representative of county government, appointed from a list of three qualified individuals recommended by the County Commissioners Association of Pennsylvania.

(3) The President Pro Tempore of the Senate shall appoint three members, including the following:

(i) one criminal defense attorney, appointed from a list of three qualified individuals recommended by the Pennsylvania Association of Criminal Defense Lawyers.

(ii) one attorney with experience defending juveniles in delinquency proceedings, appointed from a list of three qualified individuals recommended by the Juvenile Defender Association of Pennsylvania.

(4) The Speaker of the House of Representatives shall appoint three members, including the following:

(i) one representative of the public defenders, appointed from a list of three qualified individuals recommended by the Public Defenders Association of Pennsylvania.

(ii) one criminal defense attorney, appointed from a list of three qualified individuals recommended by the Pennsylvania Association of Criminal Defense Lawyers.

(5) The members appointed under this subsection shall select a member as the chair.

(b) Qualifications.—Members of the board must be residents of this Commonwealth and must have demonstrated an interest in maintaining a high quality, independent indigent defense system. The composition of the board must include representation from both genders and reflect the racial and ethnic diversity of the Commonwealth. A member of the board must not be any of the following:

(1) an active member of the judiciary or a member of the judiciary on senior status;

(2) the Attorney General or an employee of the Office of the Attorney General;

(3) a district attorney or an employee of the office of a district attorney.

(c) Term of service.—

(1) Members shall serve for a term of four years, except that the initial members shall serve terms of two, three, or four years as designated by their respective appointing authorities, unless designated as chair under subsection (a)(6), in which case the member shall serve a term of four years. The appointing authority may reappoint a member but not more than once.

(2) If any member fails to complete his or her term, the appointing authority for that member shall, as soon as possible, appoint a replacement to complete that member's term. Appointees under this paragraph may be reappointed, but not more than once.

(d) Powers and duties.—The board shall direct the office of indigent defense in the performance of its powers and duties under this chapter. Standards, procedures, rules and regulations must be approved by the board in order to become effective. The board shall appoint an executive director, who shall exercise the powers and duties provided by section 8814(c) (relating to executive director).

Comment: Subsection (a)—Patterned after section 4(b) of the Health Care Cost Containment Act (July 8, 1986 (P.L.408, No.89); 35 P.S. § 449.4(b).

Subsection (b)—The prohibitions on appointing active members of the judiciary and prosecutors and their staffs are intended to ensure that members of the board will not have a conflict of interests.

§ 8813. Office of indigent defense.

(a) Powers and duties.—Except as provided in section 8821 (relating to cities of the first class), the office of indigent defense shall have the following powers and duties, in addition to any other powers and duties provided by this chapter or other law:

(1) To ensure the delivery of competent and effective indigent defense in accordance with the established principles for administering an effective indigent defense system and to receive funds from the Commonwealth for that purpose.

(2) To contract with county public defender offices, non-profit defender agencies, and private indigent defense attorneys for local indigent defense. Contracts between contract counsel and a public defender for indigent defense services must comply with guidelines established by the office.

(3) To set and implement statewide performance standards and procedures for indigent defense attorneys.

(4) To set qualification standards for indigent defense attorneys and their professional staffs and for their supervision and training. The board shall establish qualifications that require indigent defense attorneys to receive the necessary legal training, and that require that the experience level of attorneys match the cases assigned to them.

(5) To establish caseload and workload standards for public defenders and standards limiting the number of cases delegated to assigned counsel or contract counsel. The office shall draft the standards so as to be consistent with the provision of ethical services as defined by the Rules of Professional Conduct and to take into account administrative responsibilities as well as direct client representation.

(6) To monitor professional and managerial performance and to enforce compliance by indigent defense attorneys with the standards and requirements adopted under this section.

(7) To investigate county public defender offices that are suspected of deficient performance, to assist such offices to improve their performance, and, if necessary, to issue a public report including the findings and recommendations arising from the investigation.

(8) To establish standards requiring that sufficient support services and resources for indigent defense be provided, including access to independent experts, investigators, social workers, paralegals, secretaries, technology, research resources and training.

(9) To establish standards for eligibility for indigent defense and for prompt assignment of indigent defense attorneys to indigent defendants. However, the office, the board and the executive director are not required to determine the eligibility of any applicant for indigent defense.

(10) To establish and implement standards and procedures ensuring the independent, competent and efficient representation of clients whose cases present conflicts of interest, in both trial and appellate courts.

(11) To establish a uniform and usable system of data collection to effectively and accurately track and manage criminal and juvenile delinquency proceedings.

(12) To develop statewide courses of instruction and practical training programs for indigent defense attorneys, including preservice training for newly hired indigent defense attorneys.

(13) To collect and disseminate resources for improving legal and administrative practices for county public defender offices.

(14) To provide indigent defense for appeals and for postconviction proceedings through the review division established under section 8816 (relating to appellate and postconviction review division).

(15) To provide indigent defense in trials, appeals and postconviction proceedings for capital cases.

(16) To review research and perform studies regarding improvements in the operation of the indigent defense system and to implement or encourage improvements based on the findings of the research and studies.

(17) To encourage and facilitate sustained media attention to the advantages of a well-functioning indigent defense system and to recognize effective local indigent defense attorneys and offices.

(18) To advocate for improvements in indigent defense to the public and the General Assembly, including adult criminal and juvenile defense representation and to advocate for adequate funding for the indigent defense system.

(19) To actively seek and receive gifts, grants and donations that may be available through the federal government or other sources to help fund the indigent defense system.

(20) To maintain records and statistical data that reflect the operation and administration of the office.

(21) To submit an annual report covering the operation of the office together with recommendations to the Governor, the Attorney General and the General Assembly for improvement of the indigent defense system in this Commonwealth, including statistics regarding the delivery of indigent defense.

(22) To submit the office's annual budget request for appropriations from the Commonwealth. The request must be approved by the board

(23) To adopt rules and regulations and establish guidelines as necessary to carry out the purposes of this chapter.

(b) Individual cases.—The office may not interfere with the discretion, judgment or advocacy of a public defender or any other attorney in their handling of an individual case, except as necessary to enforce compliance with qualification and caseload standards.

§ 8814. Executive director.

(a) Appointment.—The board shall appoint the executive director of the office of indigent defense. The executive director shall serve at the pleasure of the board.

(b) Qualifications.—The individual appointed as executive director must be an attorney licensed to practice law in the United States with at least ten years experience as

a criminal defense attorney. If the individual is licensed as an attorney in a state other than this Commonwealth, the individual must become licensed as an attorney in this Commonwealth within one year of being employed by the board.

(c) Powers and duties.—The executive director shall be the head of the office, hire the staff of the office and manage and oversee its day-to-day operations so as to carry out the purposes of this chapter.

§ 8815. Capital case division.

(a) Establishment.—The executive director shall establish a capital case division within the office and appoint the director of the division.

(b) Duties of division.—The capital case division shall have the following powers and duties:

(1) To provide representation or assign counsel for indigent individuals accepted for representation by a public defender office for pretrial proceedings, trials, appeals, and postconviction proceedings for cases where the individual may be subject to the death penalty.

(2) To assist the office in performing its powers and duties under this chapter as they pertain to cases where an indigent individual may be subject to the death penalty.

(c) Qualifications.—The director of the capital case division must meet the qualifications required by general rules of court for serving as retained counsel on a capital case.

(d) Duties of director.—The director of the capital case division shall oversee and manage the capital case division under the executive director in the performance of its duties and shall perform such other duties as are assigned by the executive director.

§ 8816. Appellate and postconviction review division.

(a) Establishment.—The executive director shall establish an appellate and postconviction review division within the office and appoint the director of the division.

(b) Duties of division.—The appellate and postconviction review division shall have the following powers and duties:

(1) To provide representation or assign counsel for indigent individuals in appeals and postconviction proceedings.

(2) To assist the office in performing its powers and duties under this chapter as they pertain to appeals and postconviction proceedings.

(c) Duties of director.—The director of the appellate division shall oversee and manage the capital case division under the executive director in the performance of its duties and shall perform such other duties as are assigned by the executive director.

§ 8817. Director of juvenile defense services.

(a) Appointment.—The executive director shall appoint a director of juvenile defense services.

(b) Duties of director.—The director of juvenile defense services shall have the following powers and duties:

(1) To collect and disseminate materials and provide and participate in training programs relating to the defense of juvenile delinquency proceedings.

(2) To assist the office in performing its powers and duties under this chapter as they pertain to the defense of juvenile delinquency proceedings.

(3) To perform such other duties as are assigned by the executive director.

§ 8818. Information management and technology officer.

(a) Appointment.—The executive director shall appoint an information management and technology officer.

(b) Duties of officer.—The information management and technology officer shall have the following powers and duties:

(1) To oversee and manage the office of indigent defense, under the executive director, with respect to information management and the use of technology.

(2) To assist the executive director in establishing and supervising data collection for the indigent defense system.

(3) To perform such other duties as are assigned by the executive director.

§ 8819. Director of training and professional development.

(a) Appointment.—The executive director shall appoint a director of training and professional development.

(b) Duties of director.—The director of training and professional development shall have the following powers and duties:

(1) To oversee and manage, under the executive director, the provision of such training and professional development to indigent defense attorneys, the staff of the office of indigent defense and such other persons as will assist them in providing indigent defense services or in otherwise advancing the purposes of this chapter.

(2) To perform such other duties as are assigned by the executive director.

§ 8820. Public defenders.

(a) Chief public defender.—The chief public defender shall administer the operation of the county public defender office within the county where he or she resides, under the supervision and control of the office of indigent defense and in compliance with this chapter.

(b) Appointment and tenure.—A chief public defender commencing service after the effective date of this chapter must be selected by the board. The board may remove the chief public defender, but only for cause.

(c) Duties.—For cases adjudicated in the courts of the county, the county public defender office shall represent or provide for the representation of individuals entitled to indigent defense under subchapter C (relating to indigent defense), with such exceptions and under such procedures as the office of indigent defense may establish. The duties of the county public defender office with respect to contract counsel shall be performed under guidelines established by the office of indigent defense.

§ 8821. Cities of the first class.

(a) Representation.—For cases arising in a city of the first class, the provider shall represent or provide for the representation of individuals entitled to indigent defense under subchapter C (relating to indigent defense). Notwithstanding any other provision in this chapter, the standards governing the professional and managerial performance of the provider shall be established by the provider in accordance with its indigent defense service contract with the city.

(b) Capital cases.—The provider shall provide indigent defense services for not more than 20 percent of the cases arising in the city of the first class in which the individual is charged with murder of the first degree and the prosecution has demanded that the sentence of death be imposed.

(c) Powers of office.—The provider shall have the following powers and duties, with respect to the office of indigent defense:

(1) To enter into a contract with the office authorizing the office to pay the provider to provide appellate representation for indigent defendants in cases arising in the city of the first class.

(2) To establish standards for eligibility for indigent defense and for prompt assignment of indigent defense attorneys to indigent defendants. However, the office, the board and the executive director are not required to determine the eligibility of any applicant for indigent defense.

(3) To assist the office in developing courses of instruction and practical training programs for indigent defense attorneys, including preservice training for newly hired indigent defense attorneys and to avail itself of such training and programs developed by the office or developed jointly by the provider and the office.

(4) To cooperate with and assist the office in furthering the purposes of this chapter.

(5) To provide indigent defense for postconviction proceedings through the appellate and postconviction review division established under section 8816 (relating to appellate and postconviction review division).

(6) To review research and perform studies regarding improvements in the operation of the indigent defense system and to implement or encourage improvements based on the findings of the research and studies.

(7) To advocate for improvements in indigent defense to the public and the General Assembly, including adult criminal and juvenile defense representation and to advocate for adequate funding for the indigent defense system.

(8) To actively seek and receive gifts, grants and donations that may be available through the federal government or other sources to help fund the indigent defense system.

(9) To maintain records and statistical data that reflect the operation and administration of the office.

(10) To submit an annual report covering the operation of the provider together with recommendations to the Governor, the Attorney General and the General Assembly for improvement of the indigent defense system in this Commonwealth, including statistics regarding the delivery of indigent defense in the city of the first class.

(11) To submit the provider's annual budget request for appropriations from the Commonwealth. The request must be approved by the board.

(d) Definition.—As used in this section, the term "provider" means the person with whom the governing authority of a city of the first class contracts to provide indigent defense services to indigent defendants for cases arising in a city of the first class.

§ 8822. Compensation and full-time status.

(a) Compensation.—An indigent defense attorneys shall receive compensation in accordance with standards established by the office of indigent defense or in accordance with a contract made either between the attorney and the office of indigent defense, or between the attorney and the county public defender office. A contract under this section must provide for compensation in accordance with professional experience and equivalent to the compensation paid to prosecuting attorneys. The office of indigent defense shall pay the salaries of the chief public defenders.

(b) Full-time employees.—

(1) The executive director and the attorneys employed by the office of indigent defense shall be full-time employees and may not engage in the private practice of law.

(2) Chief public defenders shall be full-time employees, unless the office of indigent defense determines that it is not feasible to require a full-time commitment in the county. Assistant public defenders shall be hired on a full-time basis to the maximum extent feasible as determined by the office of indigent defense. A full-time public defender may not engage in the private practice of law.

(3) Assigned counsel and contract counsel may engage in the private practice of law.

SUBCHAPTER C
INDIGENT DEFENSE

§ 8831. Right to representation.

(a) General rule—An indigent defendant who appears without an attorney is entitled to be represented by an attorney to the same extent as an individual having his or her own attorney.

(b) Services.—An indigent defendant is entitled to the following services with respect to an eligible matter:

(1) Legal advice and defense beginning at the earliest time when an individual providing his or her own attorney would be entitled to be represented by an attorney, and no later than the time of his or her initial appearance before a court.

(2) Legal advice and defense continuing throughout all critical stages, including all of the following:

(i) A pretrial identification procedure.

(ii) Preliminary hearing.

(iii) Proceedings on a plea of guilty or nolo contendere.

(iv) Any other proceeding where absence of legal representation might derogate from an indigent defendant's right to a fair trial.

(v) Trial, including a hearing on a pretrial or posttrial motion.

(vi) An appellate proceeding before the Pennsylvania Supreme Court or the Superior Court.

(3) The necessary services and facilities for effective representation, including a confidential space where the indigent defendant can meet with the indigent defense attorney.

(4) Defrayal of the costs associated with criminal defense litigation.

(c) Postconviction proceedings.—An indigent defendant shall be represented in a postconviction proceeding that the indigent defendant considers appropriate, unless the court permits the public defender to withdraw from representing him or her on the grounds that the claim for postconviction relief is without merit.

(d) Prior conduct.—An indigent defendant's rights under this section are not affected by having obtained similar services at his or her own expense, or by having waived them, at an earlier stage of a proceeding.

(e) Duty of public defender.—The county public defender office shall represent every indigent individual entitled to representation under this subchapter who is otherwise not represented by an attorney. If the county public defender office cannot provide effective representation due to excessive workload, as defined by the caseload standards established by the office of indigent defense under section 8813(b)(5) (relating to office of indigent defense), or due to a conflict of interest, the county public defender office may designate cases to be handled by private indigent defense attorneys pursuant to guidelines established by the office of indigent defense.

§ 8832. Representation before charge.

(a) Felonies.—The chief public defender or his or her designee may authorize the representation of an indigent individual who is without an attorney if he or she is under investigation for murder or a felony.

(b) Detainees.—A public defender may confer with any individual who is not represented by an attorney and who is detained by a law enforcement officer.

§ 8833. Waiver of right to counsel.

An individual who has been informed of his or her right to indigent defense may waive that right only in a transcribed proceeding. In order for the waiver to be valid, the court must find that the waiver is intelligent, knowing and voluntary. In considering the validity of the waiver, the court shall consider the individual's age, education and familiarity with English, the complexity of the crime, potential collateral consequences of the waiver and any other relevant circumstances.

§ 8834. Determination of eligibility.

(a) Application.—An individual who claims to be entitled to indigent defense must apply to the county public defender office.

(b) Responsibility.—Eligibility for indigent defense shall be determined by the county public defender office or by another designated agency, with the approval of and under standards set by the office of indigent defense.

(c) Time of determination.—The determination of whether an individual covered by section 8831 (relating to right to representation) is indigent shall take place as soon as possible after he or she is detained by a law enforcement officer or is formally charged with having committed a serious crime.

(d) Factors considered.—In determining whether an individual is indigent, the county public defender office shall consider his or her income, property owned, the cost of defending the charge, outstanding obligations and the number and ages of dependents, and any other relevant factors. Release on bail does not necessarily prevent an individual from qualifying as indigent. In each case, the individual shall, subject to the penalties for perjury, certify in writing or by other record material factors relating to his or her ability to pay, in such manner as the board shall prescribe.

(e) Minors.—A minor who is charged with an eligible matter is eligible for indigent defense, regardless of whether the minor or any relative of the minor is indigent.

§ 8835. Payment of costs, expenses and attorney fees.

(a) Expenses of the office.—Expenses incurred by the office of indigent defense under this subchapter shall be defrayed from funds appropriated for this purpose from the general fund, including expenses incurred under section 8815 (relating to capital case division), section 8816 (relating to appellate and postconviction review division) and the salaries of the chief public defenders.

(b) Attorney fees.—Except as otherwise provided under subsection (a), the expenses of indigent defense services shall be defrayed by the county governments.

(c) Regulations.—The office of indigent defense shall establish standards prescribing the allocation of expenses under this section.

GLOSSARY OF ACRONYMS

The following is a list of acronyms or initialisms that appear at various places in this report. Those that appear in only a limited segment of the report are omitted.

ABA	American Bar Association
ACLU	American Civil Liberties Union
AOPC	Administrative Office of Pennsylvania Courts
CCAP	County Commissioners Association of Pennsylvania
CPCMS	Common Pleas Court Management System
DA	District attorney
DAP	Defender Association of Philadelphia
FTE	Full-time equivalent
IDS	Indigent defense system
JCJC	Juvenile Court Judges' Commission
NAC	National Advisory Commission on Criminal Justice Standards and Goals
NACDL	National Association of Criminal Defense Lawyers
NLADA	National Legal Aid and Defender Association
PACDL	Pennsylvania Association of Criminal Defense Lawyers
PCRA	Post Conviction Relief Act
PD	Public defender
PDAA	Pennsylvania District Attorneys Association
PDAPA	Public Defender Association of Pennsylvania
SCLAID	Standing Committee on Legal Aid and Indigent Defense (ABA)

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APPENDIX A
SENATE RESOLUTION NO. 42 OF 2007
(PRINTER'S NO. 150)

PRINTER'S NO. 150

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 42 Session of 2007

INTRODUCED BY BROWNE, BOSCOLA, FONTANA, ERICKSON, FERLO, EARLL, COSTA AND O'PAKE, MARCH 5, 2007

REFERRED TO JUDICIARY, MARCH 5, 2007

A RESOLUTION

1 Establishing a task force to study the current system for
2 providing services to indigent criminal defendants, to review
3 how other states provide these services and to make
4 recommendations to the Senate.

5 WHEREAS, In 1963 the United States Supreme Court decided the
6 landmark case of Gideon v. Wainwright, holding, as a matter of
7 constitutional law, that states must provide attorneys to
8 persons who are accused of felony crimes and cannot afford to
9 hire their own counsel; and
10 WHEREAS, The United States Supreme Court, in its opinion in
11 Gideon v. Wainwright, said that: "[R]eason and reflection
12 require us to recognize that in our adversary system of criminal
13 justice, any person haled into court, who is too poor to hire a
14 lawyer, cannot be assured a fair trial unless counsel is
15 provided for him"; and
16 WHEREAS, In 1972 the United States Supreme Court further
17 held, in the case of Argersinger v. Hamlin, that indigent
18 criminal defendants are entitled to counsel for any criminal

1 charge which could result in a term of imprisonment, whether the
2 charge is a felony or misdemeanor; and
3 WHEREAS, The Constitution of Pennsylvania guarantees to an
4 accused in all criminal prosecutions the "right to be heard by
5 himself and his counsel," a constitutional provision which has
6 been interpreted to provide an independent State constitutional
7 right to counsel for indigent criminal defendants; and
8 WHEREAS, In Pennsylvania, funding for indigent criminal
9 defense is provided exclusively at the county level; and
10 WHEREAS, The Pennsylvania Supreme Court Committee in 2003
11 published its Final Report on Racial and Gender Bias in the
12 Justice System, devoting an entire chapter to the issue of
13 indigent defense in Pennsylvania; and
14 WHEREAS, The Pennsylvania Supreme Court Committee found that
15 Pennsylvania was one of only three states that provide no State
16 funds to ensure adequate defense services for indigent criminal
17 defendants and that Pennsylvania does not provide any Statewide
18 oversight of the systems for providing services to indigent
19 criminal defendants; and
20 WHEREAS, The Pennsylvania Supreme Court Committee on Racial
21 and Gender Bias in the Justice System relied on a study
22 completed by the Spangenberg Group, a nationally recognized
23 research and consulting organization with experience and
24 expertise in evaluating indigent criminal defense services,
25 which study found serious deficiencies in the indigent criminal
26 defense system in many Pennsylvania counties; and
27 WHEREAS, Attorneys who represent indigent criminal defendants
28 face extraordinarily large caseloads, leaving them little time
29 to provide individualized investigation and representation of
30 their clients; and

1 WHEREAS, The study completed by the Spangenberg Group found
2 that staggering caseloads create poor attorney-client contact,
3 inadequate preparation by attorneys and late assignment or
4 appointment of counsel; and
5 WHEREAS, Attorneys who represent indigent criminal defendants
6 are unable to reasonably and effectively use investigators,
7 social workers and expert witnesses due to inadequate funding;
8 and
9 WHEREAS, Many counties in Pennsylvania are facing significant
10 budgetary problems due to increasing costs related to the
11 operation of the courts, including the costs related to indigent
12 criminal defense services; and
13 WHEREAS, Litigation against Allegheny County was instituted
14 challenging the adequacy of the services provided to indigent
15 criminal defendants, and other counties are also facing
16 litigation over this issue; and
17 WHEREAS, The American Bar Association recommends that in
18 order to comply with the spirit of Gideon and to maintain a
19 system that provides for effective, ethical and conflict-free
20 legal representation to criminal defendants who are unable to
21 hire an attorney, states must meet the following Ten Principles
22 of a Public Defense Delivery System:
23 (1) The public defense function, including the
24 selection, funding and payment of defense counsel, is
25 independent.
26 (2) Where the caseload is sufficiently high, the public
27 defense delivery system consists of both a defender office
28 and the active participation of the private bar.
29 (3) Clients are screened for eligibility, and defense
30 counsel is assigned and notified of appointment as soon as

1 feasible after clients' arrest, detention or request for
2 counsel.
3 (4) Defense counsel is provided sufficient time and a
4 confidential space within which to meet with the client.
5 (5) Defense counsel's workload is controlled to permit
6 the rendering of quality representation.
7 (6) Defense counsel's ability, training and experience
8 match the complexity of the case.
9 (7) The same attorney continuously represents the client
10 until completion of the case.
11 (8) There is parity between defense counsel and the
12 prosecution with respect to resources, and defense counsel is
13 included as an equal partner in the justice system.
14 (9) Defense counsel is provided with and required to
15 attend continuing legal education.
16 (10) Defense counsel is supervised and systematically
17 reviewed for quality and efficiency according to nationally
18 and locally adopted standards;
19 and
20 WHEREAS, The states of Georgia, North Carolina, Oregon,
21 Vermont and Virginia have recently reviewed their indigent
22 criminal defense systems to ensure that adequate representation
23 is being provided to all indigent defendants; and
24 WHEREAS, The interests of all Pennsylvanians are served when
25 Pennsylvania's indigent criminal defense system operates in an
26 effective, ethical and cost-efficient manner; and
27 WHEREAS, If counsel for the indigent cannot effectively
28 represent their clients, there is an increased possibility for
29 the wrongful conviction and incarceration of innocent persons as
30 well as the continuing risk posed by the failure to convict the

1 actual perpetrators; and
2 WHEREAS, Incompetent representation of indigent criminal
3 defendants further results in an increased number of claims of
4 ineffective assistance of counsel and new trials being granted
5 on account of ineffective assistance of counsel; and
6 WHEREAS, The criminal judicial process functions most
7 effectively and fairly when both the Commonwealth and each
8 individual defendant are competently represented; and
9 WHEREAS, The Senate should be knowledgeable about the
10 provision of indigent criminal defense services in this
11 Commonwealth; therefore be it
12 RESOLVED, That the Senate direct the Joint State Government
13 Commission to establish a bipartisan task force consisting of
14 two members appointed by the President pro tempore of the Senate
15 and two members appointed by the Minority Leader of the Senate;
16 and be it further
17 RESOLVED, That the task force create an advisory committee
18 composed of representatives of the Administrative Office of
19 Pennsylvania Courts, the Secretary of Budget and Administration,
20 the Attorney General, the Auditor General, the County
21 Commissions Association of Pennsylvania, the Pennsylvania Public
22 Defenders Association, the Pennsylvania District Attorneys
23 Association, attorneys with significant experience in the
24 defense of criminal cases, individuals with expertise in the
25 area of quality representation of indigent criminal defendants
26 and additional members as the task force deems appropriate; and
27 be it further
28 RESOLVED, That the task force study the existing system for
29 providing services to indigent criminal defendants, review how
30 other states provide such services and make recommendations to

1 the Senate regarding the funding of such services and the
2 creation of an entity to guarantee compliance with the
3 Constitution of the United States and the Constitution of
4 Pennsylvania in the delivery of such services.

APPENDIX B
OPERATIONAL COST CATEGORIES FOR OFFICE OF INDIGENT DEFENSE SERVICES

The following is a tentative list of the operational budget categories that the advisory committee recommends be funded to establish an effective statewide Office of Indigent Defense Services:

FISCAL YEAR 1[333]

ESTABLISHMENT OF STATE BOARD OF INDIGENT DEFENSE

- Appointment of 13 board members
- In-state travel and meeting attendance costs
- Interview and selection of executive director and executive staff

STAFFING (Salary, benefits[334] and travel)

- Executive director
- Office executive staff
    - Director of training and development
    - Director of appellate and postconviction review
    - Director of capital case litigation
    - Director of juvenile defense services
    - Technology and information systems officer
- Other staff
    - Administrative assistant to executive director
    - Training staff coordinator (handles training program logistics and qualification, reporting, and compliance management for the CLE office)
    - Human resources and office manager
    - Budget and contracts manager
    - Accounting and finance manager
    - Accounting staff (2)
    - Administrative assistant for appeals and postconviction review
    - Administrative assistant for capital case representation
    - Administrative assistant for juvenile defense services
    - LAN administrators (2)

[333] Because of the time needed to begin operations, expenses for FY1 will be paid for only part of the year.
[334] For all eligible personnel, benefits include retirement under the State Employee Retirement System.

    - Information technology analyst
    - Standards compliance officer for eastern, middle and western districts (3) (These may be hired at the end of FY1 or at the beginning of FY2.)

EXECUTIVE OFFICE COSTS

- Office setup
    - Rent
    - Configuration and design
    - Furniture, furnishings, and supplies
    - Conference and meeting room
- Electronics
    - Computers and Internet
    - Landline and cell phones
- Training equipment
    - Training rooms
    - Visual aids (easels, whiteboards, PowerPoint)
    - Recorders
    - Microphones

FISCAL YEAR 2

RECURRING COSTS

- State Board
- Staff salary, benefits and travel
- Recurring office expenses

COUNTY CHIEF PUBLIC DEFENDERS

- Salary and benefits for full- or part-time positions[335]
- Computers and technology to communicate with state office and executive staff

NONCAPITAL APPELLATE AND POSTCONVICTION REPRESENTATION

- Contracts with existing public defender office appellate units (funding sufficient to cover salary and benefits, paid through the local defender offices)
- Contracts with appellate specialists (on a per case fee basis for no more than 25 cases per attorney per year)
- Office staff (salary, benefits, and operational support)
    - Three appellate lawyers
    - Three juvenile appellate specialists

[335] The Office shall determine whether a chief public defender shall be full-time or part-time during FY1, and fund the position in FY2 pursuant to that decision.

(The most complicated, serious cases require appointment of a staff attorney under the supervision of the division director, who should carry a reduced caseload.)

CAPITAL CASE APPELLATE REPRESENTATION[336]

- Contracts with existing public defender office to support qualified capital appellate public defenders and staff (funding sufficient to cover salary and benefits, paid through the local defender offices)
- Contracts with capital appellate specialists
- Office staff: four capital appellate attorneys (under supervision of the capital case division director or serve as lead counsel with a contract capital appellate attorney)

TRAINING, EDUCATION, AND DEVELOPMENT PROGRAMS

- In-state training programs (lodging, CLE fees, honorariums for presenters, and program materials)
- Out-of-state training programs (lodging, registration, and travel)

DEVELOPMENT OF TECHNOLOGY AND REFERENCES

- Software for data collection and report generation and interpretation
- Software for online activities (registration for training programs, billing for contractors, CLE credits)
- Office website (building, securing, maintaining, and updating)
- Online library of reference and training materials
    - model briefs, writs, petitions, and motions
    - law review and other periodical articles

FISCAL YEAR 3

TRIAL AND POSTCONVICTION CAPITAL CASE REPRESENTATION

- Case requirements
    - Capital-qualified attorneys
    - Expert witnesses
    - Investigators
    - Travel costs for witnesses and staff
    - Transcription and copying costs
- Contracts with public defender offices (salary and benefits for staff capital attorneys, mitigation specialists, and capital investigators)
- Individual capital attorney, mitigation specialist, capital investigator contracts

[336] Under applicable standards, all capital cases require two capital-qualified attorneys.

- Office staff [337]
    - Capital trial attorneys (4)
    - Trial mitigation specialists (2)
    - Trial investigators (2)
    - Postconviction attorneys (6)
    - Postconviction mitigation specialists (2)
    - Postconviction investigators (2)

CONTINUING COSTS

- Board members
- Executive, professional and support staff
- Recurring operational costs
- Training and professional development
- Unanticipated needs (e.g., repairs to office space due to water sprinklers going off with a false alarm)

[337]These professionals (18 FTEs) may be designated a statewide capital representation team, or the attorneys may serve as lead counsel with a local individual attorney capital trial or postconviction contractor. Mitigation and investigation may also be covered by contracting to expand the number statewide of capital representation teams.

Sheriff's Office:
2011 Year in Review

CORE VALUES

We Believe in the value and worth of all members of the Allegheny County Sheriff's Office.

We Believe our integrity is not negotiable.

We Believe we are individually accountable for upholding the values of our organization.

We Believe we can best earn respect by first respecting the rights of others.

We Believe in striving to achieve the highest moral, ethical and professional standards.

We will adapt to the changing future by maintaining partnerships built upon accountability, integrity and respect.

GOALS & INITIATIVES

- Ensure effective, consistent, and cost efficient communications
- Build upon partnerships and collaborate with other law enforcement
- Improve and enhance the use of technology
- Make concerted efforts to sustainable initiatives – ***Going Green!***
- Provide the very best of professional services

2011 BUDGET & HIGHLIGHTS

Public safety is an essential service and although law enforcement agencies are not typically revenue producing, the Sheriff's Office has developed and maintains a serious commitment to cost containment and revenue enhancing opportunities by pursuing and securing a variety of grant funding. Illustrations of those grants follow:

AUTOMATED REPORTING SYSTEM - The Pennsylvania Department of Community and Economic Development awarded to the Sheriff's Office $100,000 to implement an automated reporting system. The system will allow a single entry of data and provide for the storage, viewing and retrieval of documents office-wide designed for ***efficient, eco-friendly law enforcement operations***. (*See other Sheriff's Office environmental initiatives below.*)

CRIME PREVENTION EDUCATION PROJECT - The Sheriff's Office received $20,000 in funding from the Pennsylvania Department of Community and Economic Development to sponsor our efforts in educating our citizens in preventing crime and avoid becoming victims.

LAW ENFORCEMENT SERVICES FUND - The Sheriff's Office was thankful and proud to team with The Walmart Foundation in serving our communities. The grant program provided funding in the amount of $14,250 for crime prevention materials to be distributed throughout the County in hundreds of our citizen awareness programs.

JUSTICE ASSISTANCE GRANT (JAG) PROGRAM - Through Allegheny County, the Sheriff's Office participated in the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. In 2011, the Sheriff's Office received $7,606 in JAG funds to install a camera system in the criminal court holding area and to acquire leg irons to maximize security and safety.

2011 ACHIEVEMENTS & FUTURE OPPORTUNITIES

In addition to attaining funding from a variety of grantee agencies, the Sheriff's Office received more than $146,700 in funding seized judicially from the forfeited assets of criminals in 2011. Reimbursements and cost recovery of $299,802 offset the cost of office operations and aided in balancing the budget for yet another year under Sheriff Mullen's administration.

Furthermore, his policy requiring payment of outstanding fees and restitution in order to receive a firearms license generated nearly $62,000 in fees for Allegheny County.

Sheriff Mullen has initiated policies and initiatives that are environmentally friendly and save money.

In addition to the Automated Reporting System implemented in the Sheriff's Office with grant funds, the office distributes all correspondence and information to its employees by emai, and our website offers online forms. ***All of these initiatives will avoid paper usage and promote our goal to become a totally paperless law enforcement operation***.

Our reduced, and better maintained, vehicle fleet improves fuel-efficiency and helps the budget.

The Sheriff's Office encourages double-sided printing, recycling printer cartridges and other ***environmentally friendly recycling practices, as small, but effective ways to save resources and reduce costs***.

Noteworthy investigations in 2011 included acknowledgment from ATF for our lead role in the investigation of two gun store burglaries and the trafficking of stolen firearms, which led to the apprehension of the perpetrators of the crimes.

In May 2011, Sheriff's Detectives apprehended Taivon Cunningham, a murder and robbery suspect, who ultimately confessed to the killing of Malachi Zargo Urbini.

The Sheriff's Office partnered with the Pittsburgh Tribune-Review and its generous advertisers in publishing a feature article displaying the photographs and charges of Allegheny County's Most Wanted Fugitives and distributing the feature to over 600,000 County residents.

Other topics of interest encompassed the Sheriff's Office initiating visual information centers in the courthouse to alert the public to news and communication during their visit to the court complex.

The Sheriff's Office participated in specialized training initiatives of Practical Tactical Medicine, Managing a Major Bombing Crime Scene, Mobile Field Force Training, and Flying Armed.

In the summer of 2011, a Sheriff's Office Lieutenant successfully completed the 246th Session of the FBI National Academy in Quantico, Virginia. The National Academy is a ten-week professional course of study that serves to improve the administration of justice in law enforcement agencies worldwide. Participation is by invitation only, through a nomination process.

The Sheriff's Office was responsible for the security operation of the capital murder trial of Richard Poplawski for the 2009 slaying of three Pittsburgh Police Officers.

Sheriff Mullen advocates and encourages community outreach as a fundamental responsibility of the law enforcement community. The office recognizes the Officers and Deputies who dedicated their time and talents by participating in the Pittsburgh Polar Plunge and Law Enforcement Torch Run benefiting Special Olympics. The events raised a combine total of more than $160,000 for this worthwhile organization.

2011 MISCELLANEOUS STATISTICS

SERVICE PROVIDED	TOTAL
WARRANTS CLEARED	11,257
PHYSICAL ARRESTS	7,451
ARREARS - NON-SUPPORT WARRANT CLEARANCES	$ 25,517,961.00
FIREARM PERMITS ISSUED	11,558
WRITS SERVED	40,936
MILES TRAVELED - PRISONER TRANSPORTS	603,398
PRISONER TRANSPORT TRIPS	11,674
PRISONERS TRANSPORTED	47,479
SHERIFF'S SALES	2,279

With its goal being to address inmate overcrowding, and save valuable law enforcement time and resources, the Sheriff's Office delivers written notification of warrants for non-support and summary offenses to violators. Defendants follow the instructions on the notice, report for a hearing, and generally are released after paying fines and costs.

Our Deputies distributed ***2,157 warrant notifications***, garnering ***555 surrenders*** for the year of 2011.

Deputy Sheriffs assigned to serve summary and city housing warrants cleared a total of ***815 warrants in 2011***, collecting fines and collateral totaling ***$79,491.00***.

2011 CANINE UNIT - USE SUMMARY

DETECTION	41	61%
EXPLOSIVE	35	
NARCOTIC	3	
FIREARM	3	
PUBLIC DEMONSTRATIONS	2	3%

PATROL	24	36%
TRACKING	15	
APPREHENSION	4	
BUILDING SEARCH	3	
CROWD CONTROL	2	
BITE	0	

Four canine and handler teams staff the Allegheny County Sheriff's Office Canine Unit. The four canines are two German Shepherds dually trained in explosives and patrol; one German Shepherd dually trained in narcotics and patrol; and one Bloodhound trained in tracking.

The Canine Unit is responsible to perform daily explosive detection sweeps and patrols of the County court complex and surrounding facilities. The unit provides assistance to criminal fugitive and non-support detective squads with warrant service and apprehension, and supports all the divisions of the Sheriff's Office.

The Canine Unit is routinely called upon to assist other law enforcement agencies throughout Allegheny County and other jurisdictions to track missing or wanted persons, and for narcotics and evidence detection. The unit has become an invaluable tool by significantly increasing the safety level of the public and our officers.

2011 CITIZEN COMPLAINT FINDINGS

	COUNT	PERCENTAGE
SUSTAINED	5	29%
SUSTAINED IN PART	1	6%
NOT INVOLVED	1	6%
UNFOUNDED	10	59%

Of the 17 complaints filed, 5 were sustained and discipline issued ranging from reprimand to suspension.

2011 EXPENDITURES (PRE-AUDIT)

TOTAL 2011 BUDGET	$ 13,684,517.79
TOTAL 2011 EXPENSES	$ 13,683,471.99
YEAR END SURPLUS	$ 1,045.80

2011 REVENUES

GENERAL FEES	$ 2,356,092.37
FIREARMS LICENSE FEES	$ 219,896.00
GENERAL REVENUE	$ 8,275.98
REVENUE ACCOUNTS	$ 2,516,930.14
GRANTS	$ 143,356.00
TOTAL REVENUE	$ 5,244,550.49

2011 EVIDENCE STATISTICS

PFA WEAPONS SEIZED	196
DRUG/DRUG PARAPHERNALIA	175
CRIMINAL FIREARMS	35
CRIMINAL WEAPONS	17
CRIMINAL MISCELLANEOUS	43
TOTAL SEIZED CRIMINAL ITEMS	270
TOTAL ITEMS SEIZED	466
TOTAL CURRENCY SEIZED	$ 16,269.00
ITEMS DISPOSED	171

Sheriff Mullen and the law enforcement professionals of the Allegheny County Sheriff's Office are dedicated to serving its citizens with distinction. He appreciates your interest in the Sheriff's Office, and thanks you for your support. Please contact him on how we may improve our operations and better serve the residents of Allegheny County. You are encouraged to visit our website at *www.sheriffalleghenycounty.com*.

SHERIFF WILLIAM P. MULLEN

ALLEGHENY COUNTY SHERIFF'S OFFICE

SERVING THE CITIZENS OF ALLEGHENY COUNTY SINCE 1789

2011 YEAR IN REVIEW

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Public Listening Session Meeting Minutes April 25, 2012

Courts Administration Vision Team
Public Listening Meeting
Gold Room
April 25, 2012 10:00 am

Present: William Crum, Mary Gibson, Alysia Keating, Brian Konick, Lazar Palnick, Lisette McCormick, K. Chase Patterson, Tracey McCants Lewis

The public listening session for the Courts Administration Team was scheduled for Wednesday April 25, 2012 at 10:00 am, however no members of the public signed up to attend the meeting. We did however meet with two deputy public defenders, Khadija Diggs (Deputy Director of Pre-Trial Division) and John Fenner (Deputy Director of Trial Division). Ms. Diggs and Mr. Fenner provided their wish lists for the PD's office and spoke openly about areas of concern in the office.

- **Facility / Infrastructure**
  Recommended that the court reporters be relocated to a different space to allow the PD's office to expand their office space to the entire floor.

  The overall quality of the work space needs to be improved. There is no value of the space that they are in.

  There is a dire need for new computers.

  Will Crum noted that security of the office space could be improved. He suggested that the "code" security system could be replaced with a card access secure entry system throughout the office.

- **Case Management System**
  Legal Edge is a good data warehouse but not a case management system. It is redundant and does not provide users with information on the location of cases.
  It can provide some useful reports but not all of the reports needed, i.e.
  - What cases are scheduled for formal or pre-trial conference
  - How many cases went ahead as scheduled or were held the day before

  It was noted that a major flaw in the system is the lack of accurate and consistent data entry. The staff does not like the system. John Fenner noted that the attorneys should do some data entry but the majority should be done by staff. Lazar Palnick noted that use of dictation software may resolve some of the issues related to the date entry. Attorneys could dictate their case notes for automatic transcription into the system.

  Software security will not permit attorneys to do any work from home since they cannot log into the County computer system from remote access.

- **Diversity**

  Approximately 75% of the clients are people of color (65% to 70% African American and 5% to 10% Latino), yet only 9 attorneys out of 80 in the PD's office are people of color. (6 African American, 2 Latino, 1 Asian).

  There is no diversity training for staff or attorneys. So there are likely issues with cultural competency. Exact numbers on staff diversity were requested by Chase Patterson.

  Alysia Keating noted that Sue Swan in the PD's office has a relationship with the Allegheny County Bar Association Diversity 1L program. (Sue Swan is in charge of the PD externship program.) The program recruits minority first year law students for paid summer legal positions in Allegheny County. At the present time these students and other externs are not maintained in the hiring pipeline for the PD's office.

  Alysia Keating also noted that the Allegheny County Bar Association can utilize the recruitment model designed for the Allegheny County DA's office to assist the PD's office with minority recruiting to ensure a more diverse pool of candidates for attorney positions.

- **Training Programs**

  There needs to be diversity training for attorneys and staff to create an environment of cultural competency. Both noted that he some staff lack compassion with the clients and their families.

  Training for attorneys is a priority. The PD's office had a contracted trainer however she is no longer available for training. In Philadelphia the Public Defender has a full-time trainer on staff. (The Philadelphia PD typically hires a class of 20 attorneys at a time who are trained for two months in an intensive academic program.) The Allegheny County PD provides some classroom time to new hires along with the opportunity to "shadow" a more senior attorney.

  Joint Continuing Legal Education (CLE) seminars for the PD and DA offices are available to the attorneys but are rarely defense focused.

  Lisette McCormick asked if the PD's office had applied for a grant from the Pennsylvania Public Defenders Association (PPDA) for training. John Fenner noted that they have applied for grants, but when the grant was received their county budget was reduced by the amount of the grant.

  Will Crum asked if they thought it was a necessity to hire a grant writer. Both agreed that this would be a good hire, but Khadija Diggs noted that it should not come before the priority hire of more attorneys.

- **Internal Procedures**

  Full-time attorneys work from 8:30 am to 4:30 pm

  Private practice attorneys work an unknown schedule. John Fenner noted that it is a moral issue to check in / keep tabs on the attorneys.

  It was also noted that different divisions have different calendar systems.

The process used to reassign cases to the Allegheny County Office of Conflict Council is overseen by the President Judge. Khadija Diggs noted that the national standard for transfer of cases is related to how many cases an attorney can handle in an ethical fashion. The Allegheny County PD uses a blended system. Ms. Diggs noted that there have been times when the attorneys in the office have been overwhelmed by the number and complexity of the cases.

Attorneys in the trial division are assigned between 65 to 110 cases involving felonies and misdemeanors.

- **Office Morale**

  John Fenner noted that there is an atmosphere of quietness and protectiveness in the office of the Public Defender. He mentioned that the press coverage of the office in October 2011 really had a detrimental effect on office morale.

- **Requested Resources / Actions**
  - **Khadija Diggs**
    - Better use of space / increased office space
    - Hiring of more attorneys
    - Replace Legal Edge (Michigan Public Defender has a system that they offered to the Allegheny PD approximately 3 or 4 years ago.)
    - Better training for attorneys
  - **John Fenner**
    - For the court to get off the back of the PD about postponements. He noted that 70% of postponements are requested by the PD, 20% by the DA and the remainder results from reasons related to the court.
    - Better use of space / increased office space
    - Dedicated trainer for attorneys

Renewal Statement

TO: All Members of the Courts Administration Vision Team In Allegheny County
FROM: Doug Williams, CEO of Renewal, Incorporated
DATE: Wednesday April 25, 2012
RE: Renewal's Interaction with the Public Defender and Court of Common Pleas

Comments Regarding Renewal, Inc.'s Relationship with the Public Defender's Office and the Allegheny County Court of Common Pleas

Thank you so much for giving me the opportunity to provide some comments on the relationship between Renewal, Inc and the Public Defender and the Court of Common Pleas to the members of the Courts Administration Vision Team for Allegheny County Executive for Rich Fitzgerald.

ABOUT RENEWAL, INC.

Renewal, Inc. provides re-entry services for Allegheny County Jail inmates who are deemed eligible for alternative housing programming. Re-entry services offered through Renewal, Inc. include mental health, specialized services for women, pre-employment readiness training, job placement and a full menu of drug and alcohol services. Renewal, Inc. can provide these services – as well as necessary daily services such as meals, showers, and beds – at a reduced cost per program participant than what the county currently expends at the jail. **We are proud that at any one time, over 80% of our residents who are eligible for work-release programs are employed.**

In addition to saving the county millions of dollars since the program's inception, **Renewal Inc. is very proud of the fact that we provide the residents of our facilities with the best possible care they need for a successful reentry into society. The economic benefits to our region of integrating these people back into society with the necessary treatment and job-placement programs to allow them to lead successful lives is immeasurable.**

Renewal, Inc. is a nonprofit based here in Allegheny County that currently employs about 200 residents of our region. Renewal has a contract with Allegheny County Jail to provide re-entry services for 200 eligible inmates. . Additionally, Renewal is contracted with the Allegheny County Court of Common Plea through the Allegheny County Probation Department to provide treatment and employment services to 100 probationers.

RENEWAL, INC'S RELATIONSHIP WITH THE PUBLIC DEFENDER AND COURTS

Renewal, Inc. has a great relationship with both the Public Defender's office and the Court of Common Pleas. Residents arrive at Renewal, Inc's facilities in one of three ways: either they are sentenced to alternative housing during their trial, the Public Defender's office actually refers current inmates from the jail to

TO: All Members of the Courts Administration Vision Team In Allegheny County
FROM: Doug Williams, CEO of Renewal, Incorporated
DATE: Wednesday April 25, 2012
RE: Renewal's Interaction with the Public Defender and Court of Common Pleas

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Renewal, Inc., or the prisoner or his/her family finds out about Renewal, Inc. and calls or writes for referral.

Currently referrals from the Public Defender's office are dependent on the individual attorney calling Renewal, Inc. to refer the resident to our facilities. Some public defenders are very familiar with our program, while others are not. **A more open line of communication between Renewal, Inc. and the Public Defender's Office could lower the population at the jail, save the County inmate health care costs and, most importantly, provide the residents with critical rehab and job training/placement services.**

In addition, Renewal, Inc. could greatly benefit from an expansion in the information provided by the jail. Currently upon receiving a referral Renewal, Inc. copies a face sheet, court order and medical clearance from the jail. **Additional information such as the rap sheet, arrest record and behavioral reports (if any exist on the particular resident) would be most beneficial.**

Renewal, Inc. is proud of its record on safety at our facilities, and we also pride ourselves on knowing our residents and giving them the individualized attention they need for a successful reentry into society. This additional information would further our goals of providing a safe environment for our residents and ensuring they receive the best possible care.

Thank you so much for the opportunity to explain our program. Should you have any questions at all, please do not hesitate to contact me.

Doug Williams,
CEO Renewal, Inc.
412-690-2451
dwilliams@renewalinc.com

The Program for Offenders: Issues & Recommendations Concerning the Transfer Process from the Allegheny County Jail to Alternative Housing

May 23, 2012

TO: Court Administration Vision Team

FROM: Carol A. Hertz, Executive Director, THE PROGRAM for Offenders, Inc.

RE: Issues and Recommendations Concerning the Transfer Process from Allegheny County Jail to Alternative Housing

A. THE PROGRAM for Offenders, Inc. [TPFO] has always been an effective problem solver in the local criminal justice system.

TPFO is a nonprofit organization that provides residential alternatives to incarceration, drug and alcohol treatment, and a wide range of support services to male and female offenders and their families in Allegheny County. TPFO's mission is to give non-violent offenders a second chance at a crime and drug-free life, and to give their children a first chance. The agency does this by pursuing these specific goals: facilitating the reintegration of offenders into society; reducing recidivism and promoting public safety; increasing community awareness about the plight of offenders; strengthening families; and intervening in the cycle of intergenerational crime.

TPFO pioneered the implementation of gender-responsive alternatives to incarceration in Allegheny County, and is particularly known for its expertise in corrections strategies and alternatives that address the special needs of non-violent incarcerated women. TPFO has always worked with the County to develop programs and facilities that address overcrowding and gaps in service delivery at the Allegheny County Jail. In 1984, TPFO opened the County's first gender-responsive corrections alternative, a residential work release facility for 42 female offenders and their pre-school age children. In 1993, also at the County's request, TPFO opened the 50-bed Allegheny County Treatment Alternative [ACTA], a facility now exclusively for men. Both facilities combine work release with PA licensed intensive inpatient substance abuse treatment.

Historically, TPFO has provided services to non-violent offenders from local and federal jurisdictions at all stages of their involvement with the criminal justice system, from pre-trial to post-release. Currently, TPFO contracts with the Jail to provide housing, substance abuse treatment, and reentry services to nonviolent male and female offenders who are sentenced to the Jail, are awaiting trial, or have violated their parole. TPFO serves approximately 300 non-violent offenders and their families each year, including an average of 118 female offenders per year during 2004-2010.

B. TPFO's excellent outcomes are compelling evidence of its expertise in dealing with the barriers to successful reentry.

A substantial body of research indicates that offenders who participate in programs that address their patterns of crime, drug abuse and psychological recovery through appropriate programming will be less likely than those in standard programs to continue to abuse drugs and

commit crimes; likewise, they will be more likely to achieve the physical wellbeing and psychological healing they need for successful reentry. TPFO's outcomes demonstrate that its services contribute significantly to successful reentry, and that its staff has the experience, skill, and expertise to identify appropriate candidates for housing alternatives and to deliver on their potential for rehabilitation. For example, while residing in our facilities 81% of clients who enter job search secure meaningful employment; 94% who receive treatment reduce their reliance on mood-altering substances. Eighty-eight (88)% who receive family services begin the reunification process with their families, and 79% of clients increase their knowledge of both parenting and life skills topics.

TPFO has consistently had one of the lowest recidivism rates in the nation. This is significant since recidivism drives the high incarceration rates in Allegheny County, where approximately 70% of Jail admissions are readmissions. In 2011, our 12-month recidivism rate was 14.5%, significantly lower than the ACJ's overall rate (31.9%). TPFO's other outcomes are equally impressive. Ongoing evaluations conducted since 2009 with former clients at 6 months post-release show that 73% were attending Narcotics or Alcoholics Anonymous, and 66.3% indicated that they were still clean and sober. A majority (72.1%) of former clients had secured employment within 6 months of release, 51.7% within the first month. In appraising their own health status, 82.7% indicated that it was "very good to excellent". About two-thirds (67.6%) had maintained health insurance. A majority reported stable housing status: 67.1% had lived in only one residence since their release. Six out of 10 former inmates were residing in their own house or apartment, and 78% reported that they were paying rent or a mortgage. Relatively few (7.6%) reported issues related to obtaining public housing or a section 8 voucher. None were homeless.

C. The current process for the transfer of inmates from the Allegheny County Jail to housing alternatives is ineffective, inefficient, and prevents the County from realizing the long-term social and economic benefits that housing alternatives can provide.

Until November 2007, TPFO obtained approvals for transfers of screened inmates to its facilities from the Jail by dealing directly with Criminal Court Judges and Allegheny County Pre-Trial and Probation. While this process was far from perfect, it was relatively simple, responsive, and allowed for quick resolution of problems. As a result, transfers were generally smooth and regular: TPFO consistently operated both facilities at greater than 98% of its capacity.

This changed in November 2007, when the Judges relinquished their authority to approve transfers to the Warden at the Allegheny County Jail. This systemic change, while well-intentioned, has had a profoundly negative impact on TPFO's ability to keep its beds full: capacity dropped from 99% through October 2007 to 77% by December 2011, and occupancy at both facilities has not returned to pre-2007 levels despite continued overcrowding at the Jail and the high number of inmates eligible for transfer. (Please see Attachment Two, *Occupancy Spreadsheet 2007-2011*). Low occupancy in alternative housing causes undue stress on providers' resources; poor outcomes for underserved inmates; and wasted time and energy at the Jail.

In theory, the current process is designed to protect public safety by preventing inappropriate transfers. In practice, the Jail's gatekeeper function is an impediment that is cumbersome at best:

- The Jail initiates the transfer process when it receives a request from a TPFO Applicant Screener, by submitting its own criminal background request to ascertain eligibility;
- When eligibility has been determined, the Jail submits a probation detainer Court Order request from the sentencing judge;
- When this Order appears in the client's file, the screener makes a note in the client's file that triggers a medical clearance request;
- The Jail notifies the provider that the inmate is ready for transfer when the medical clearance is returned.

Most of the time, however, this process causes undue delay and confusion resulting from lack of/slow communication on the part of the Jail. For instance, the current system is predicated on a 48-hour turnaround for bond modification, detainer transfer requests, and medical clearance; usually, however, providers can wait much more than two weeks to receive an update on these requests. It can often take months to execute a transfer, and inmates are often released before this occurs. Often, providers wait without knowing that a request has been denied. Sometimes, providers are notified of a denial for an inmate whom they neither screened nor requested for transfer. Although TPFO staff screen clients at the Jail every day, they have no way of knowing, until it actually happens, who will be transferred or when.

There are many possible explanations for these miscommunications and delays, including the many pressing demands on Jail staff's time, ongoing rapid turnover in the Warden's position, and the complexity of obtaining medical and psychiatric clearances. The problem is not so much that bottlenecks exist; *the problem is that providers who have the expertise to recognize and select clients they know they can help are now simply the passive end-users of a process in which they cannot intervene to solve problems and in which no one at the County is held accountable*. There is no way to know, for example, whether untimeliness and/or inaccuracy is due to the Jail staff's delay in submitting a request, the recipient's delay in addressing it, or another reason. The inpenetrability of the process stresses providers, who must achieve certain economies of scale to ensure the sustainability of their programs, and ensures that inmates who could benefit from being in alternative housing will remain in the Jail.

D. The Vision Team can repair the broken transfer process by recommending the development of a new system that incorporates the best of the old and new processes.

The Vision Team can capitalize on the strengths of the system, and reduce its inefficiencies, by recommending that the County Executive:

1. Reaffirm the County's commitment to alternative housing, which has been endorsed as a beneficial cost-saving measure by many state and local officials, as a preferred strategy for facilitating reenty and reducing recidivism;

2. Fully authorize the Warden to work with all stakeholders, including Judges, Pretrial and Probation, providers, and the Jail, to develop a plan for alternative housing that sets occupancy goals and projects outcomes;

3. Fully authorize the Warden to manage and enforce all aspects of the transfer process in the Jail, including development of clearly defined communication processes across the system, accountablity structures within the Jail and Health Services, and processes for solving problems in a timely fashion. To insure accountability , the transfer process should include transfer targets for Jail staff, determined with input from staff and providers, and a process for monitoring timely execution.

B-PEP Report

"Problems of Inequity & Inequality in the Criminal Justice System -

Issues of The District Attorney's Office and the Public Defender's Office"

A REPORT FROM THE BLACK POLITICAL EMPOWERMENT PROJECT (B-PEP)

November 16, 2011

Identification of Problems:

The District Attorney's Office:

- Since at least the 1960's the ongoing response of those in office that "I can't find any" (Negroes, African Americans, etc.).
- "They won't work for the salaries I offer."
- Little pressure from the African American legal and activist communities.
- Decisions of who gets prosecuted and who doesn't are made by people who do not reflect, in sufficient numbers, the population being prosecuted. (At least 50% of those prosecuted in Allegheny County are African American)
- Benign neglect.
- Until October 2011, when one African American supervisor was identified, there were NO African American supervisors, and therefore NO African American input for TEN years!
- There has been a history of disparate offers on pleas to Black and White defendants (as charged by Judge Joe Williams some time ago).
- The committee set up by the DA to review all pleas offered on drug cases has had no African Americans and thus no African American input. The offers for pleas, through this process, appear to be MORE stringent than the previous process which had allowed individual Assistant District Attorneys to make their own decisions with regard to pleas.
- The work of the DA's Office does not promote 'true justice' in that the Assistant District Attorneys does not allow for sufficient discretion.

THE PUBLIC DEFENDERS OFFICE:

- Staff feel that they have been viewed by others in the criminal justice system as 'stepchildren'. (This has been the case for at least 3 years based on an earlier released report).
- Public Defenders rarely have the opportunity to be promoted and thus miss out on pay increases.

- Public Defenders feel they are treated differently than attorneys in the DA's office in internet use policies, holidays (4 fewer days), budgets (even restrictions on the purchase of pens), and promotions. This has led to frustration, low morale and a feeling of being disrespected.
- There is a significant disparity of employment in category 3, according to the attorney's union representatives: the DA's office has 33 people, earning $49,000.00 to $70,000.00; the PD's office has NONE.
- If the Public Defender wants to promote someone mid-year, or give a raise, that change must be approved by the Allegheny County administration. This is not the case with the DA's Office. There are still some incentives to 'work one self up' in the DA's Office that don't exist in the PD's Office. In the PD's Office promotion to the specialized trial unit results in NO pay increase.
- Budgetary constraints are limiting the PD's office to do its job well; i.e. under orders not or order transcripts from preliminary hearings due to cost. This leads to the Public Defenders not being able to properly prepare for trial. They cannot find inconsistencies from what was said on the stand and what was told to police.
- The October 2008 report from the Institute for Law and Policy Planning, a California nonprofit policy and research organization, conducted at the request of the Allegheny County Solicitor following numerous complaints from criminal court judges about a 'culture of delay', concluded that millions of dollars were being wasted in the Public Defender's Office. They also concluded that the numerous changes which were to have come about as a result of the ACLU negotiated agreement in 1996 and lifted in 2005, were NOT being implemented.
- PD lawyers state that the problems identified in Law and Policy Planning report have, for the most part, not been addressed.
- The reality of "perception" on the part of the public (having public dollars spent to 'zealously' represent clients).
- The ignoring of identified problems in the PD's Office for a period of fifteen (15) years, along with ignoring proposed solutions and recommendations. Compliance, where it has occurred, has drifted off over time.
- Mismanagement which deprives clients of their constitutionally protected rights and waste of taxpayer dollars through unnecessary court delays accompanied by long periods of incarceration even in cases where jail terms are NOT warranted. People's rights are being violated!

- Lost files – attorneys are losing files. Files are not being returned to the office, particularly in the preliminary hearing division.
- The above information could lead to an expensive federal court fight. (The ACLU sued Allegheny County in 1996 when it alleged shoddy defense work done by insufficient and poorly trained staff).
- Many of provisions contained in the agreement reached in the 1996 ACLU lawsuit mandating improvements have not been met according to a 2008 study. The most troubling of which might be that lawyers fail to meet their clients early enough in the process (within days of arrest) in order to understand the case and exactly what should be investigated, researched and argued. One in four clients, being held in jail, had NO contact with their public defender before their preliminary hearing. Often four months pass between the preliminary hearing and the next proceeding.
- The ACLU report released Monday, October 17, 2011 states that the PD's office did not implement ANY of the thirty (30) recommendations contained in the 2008 analysis.
- There are not enough lawyers and the existing lawyers have too many cases. They do not have sufficient help in that there are not enough investigators and support staff. In addition they are not properly compensated.
- The above issues creates high staff turnover.
- The proper legal defense of indigent criminal defendants, a fundamental component of a FAIR criminal justice system is being severely violated!
- At this time the quality of justice one receives is seemingly completely dependent on what side of the county line one is on when a crime is committed. One's constitutional rights should not be abandoned in poor economic times.
- The system of indigent defense in Pennsylvania places the responsibility representing the poor entirely on individual counties, even though it is a federal requirement under the 1963 U.S. Supreme Court opinion in Gideon v. Wainwright. There is a crisis of funding!

<u>SOLUTIONS – Public Defenders Office:</u>

- Allegheny County Government should implement the (Alan) Kalmanoff Report.
- The Public Defender's Office should be set up to operate as independently as the District Attorney's Office.

- Allegheny County's Public Defender's Office should meet the American Bar Association (ABA) Ten Principles of a Public Defense Delivery System which drives the public defender's offices reform *nationally*.
- Implement the suggested changes with regard to lost files, delays, lack of training, poor preparation and bad management, contained in the Institute for Law and Policy Planning of three years ago.
- Review and implement the negotiated agreement of the ACLU of 1996 which called for a higher attorney-to-client ratio; nearly doubling the number of attorneys and support staff, the hiring of thirteen investigators, increased training and supervision standards for attorneys, and placing a prohibition on outside practices by new lawyers.
- Fully review and implement key recommendations from the examination of the office case flow and file process performed by the University of Pittsburgh's Katz School of Business.
- Fully utilize the $100,000.00 Legal Edge software program which is aimed at merging the Common Pleas Court docketing and Allegheny County Jail's computer system.
- Support the call for the creation of a statewide office in Pennsylvania to oversee the representation of poor people in the criminal justice system. The statewide office, with Commonwealth support, would help eliminate the disparities in the quality of representation across counties and help equalize the resources allotted to public defenders and district attorney offices across the Commonwealth of Pennsylvania.

SOLUTIONS:

DISTRICT ATTORNEY'S OFFICE:

- Have Law Schools recommend young law students.
- Hire and assist in the training of the young law students.
- Hire these same law students upon graduation.
- Increase the number of African American supervisors and consistently maintain a sufficient number in leadership positions. (Until October 2011 there were NO African Americans in supervisory positions for TEN years).
- Contact the National Bar Association, a Black-based organization, to recruit Assistant District Attorneys.

- Contact the National Black Law Student Association, the national BLSA, to recruit Assistant District Attorneys.
- Reach out locally to the Homer S. Brown Association, the Hispanic Attorney's Committee, and the Asian Attorney's Committee to expand diversity in the District Attorney's Office.
- Contact the Career Service Offices at Duquesne University and at the University of Pittsburgh to assist with the recruitment of minority candidates for the District Attorney's Office.
- Be aggressive in advertising available positions in the DA's Office in all possible locations and in area minority media.
- Attend and recruit at Minority Career Fairs.
- Have Allegheny County representatives present at the annual NBPA (National Black Prosecutors Association's) Job Fair. (On August 2, 2012 the Job Fair will will take place at the Roosevelt Hotel in New Orleans where an estimated 200 attorneys and law students, interested in prosecution, are expected to attend).
- Actively create a better relationship with the Allegheny County Bar Association, so as to assist in the recruitment of minorities in the District Attorney's Office. Create an ongoing relationship with the Bar Association's Diversity Committee.
- Increase the number of African American supervisors and consistently maintain a sufficient number of leadership positions.
- The committee formed by the DA to review pleas offered on drug charges has no African American input. It appears that the offers are more stringent than those which occurred through the previous process which allowed the individual Assistant District Attorneys to make their own decisions with regard to pleas. The stringency issue should be reviewed and African Americans and minorities should be appointed to this committee.

Economic Development

VISION TEAMS

Imagining Allegheny County's Tomorrow

Doris Carson Williams & David Shapira, Co-Chairs

County of Allegheny

Executive Summary

Given that economic development is a critical component of crafting a vision for the future of Allegheny County, the Economic Development Vision Team concluded that the vitality of our region is best accomplished by encouraging and sustaining progressive land use policies and protocols related to commercial and real estate development, encouraging innovation and creating a marketing and tourism plan that highlights these priorities as a means to be both nationally and internationally competitive.

To that end, the recommendations put forth can be summarized under the following categories:

- **Encourage and Sustain Progressive Commercial and Real Estate Development**
  - After extrapolating the specific real estate requirements not being met by the region, identify the specific types of properties desired and the missing attributes needed to attract more companies; specifically facilitate increasing the supply of desired real estate via a redesign of the county's Economic Development's Comprehensive Plan to be a "working document".
  - Develop a priority list of all commercially zoned, 20(+) acres sites currently available within the county; Review priority list of properties with economic development agencies; validate/update the list of priority properties.
  - Allocate County resources to supplement any missing property information and prepare Site Investigation Reports for all priority sites. Finance the creation of standardized Predevelopment Due Diligence ;Establish an objective, standardized economic impact tool and allocate resources based upon job creation and/or job retention; Gain formal commitment from property owners (preferably, via an option agreement) to redevelop or sell property before committing funds.
  - Develop a comprehensive matrix of federal, state, county, and local economic development programs with criteria and determine which programs could be utilized to move priority properties to "shovel-ready" status; Aggressively pursue all potential public funding sources to help make properties developable within (1) year.
  - Form a County Executive Action Team (CEAT) that reports directly to the County Executive.
  - Establish a single point of contact within Allegheny County Economic Development to help facilitate all commercial real estate development in Allegheny County; conduct an internal analysis of their resources and capacities to integrate the following recommendations into practice.
- **Advocate for Aggressive Marketing and Tourism**
  - Lead the advocacy efforts to create and implement an aggressive marketing effort to promote our region (including municipalities in SW PA and the bordering counties of Maryland, Ohio and West Virginia.) as a diverse and inclusive region.
  - Raise the national visibility of public and private programs that support and facilitate the integration of immigrant and international residents and students.

- **Create a Culture of Innovation**
    - Embrace and demonstrate a culture of innovation by the creation of a mission statement, demonstrate that commitment in business practices, as well as, develop an Innovation award recognizing innovation in the public and private sectors which will be highlighted on the ACED website.
    - Identify a position within the county charged with focusing on innovation and partnerships with the City of Pittsburgh and oversight of a new resource matrix for all public, private, and nonprofit groups which is monitored by the county.
    - Institute a voluntary rotating committee of thought leaders on innovation that assists the County with implementing these and additional recommendations into action.

Vision Team Charge

The Economic Development Vision Team is charged with reviewing the Department of Economic Development, the business climate in the region, and the approach to creating and keeping good paying jobs. Attention should also be given to how the county can continue to ensure that there is a good blend of different types of businesses in our community. (This Vision Team will meet with the Workforce Development Vision Team at least twice and is directed to work cooperatively as appropriate.)

Scope of Work/Summary of Methodology

Scope of Work:

Given that economic development is a critical component of crafting a vision for the future of Allegheny County, the Vision Team concluded that the vitality of our region is best accomplished by encouraging and sustaining progressive land use policies and protocols related to commercial and real estate development, encouraging innovation and creating a marketing and tourism plan that highlights these priorities as a means to be both nationally and internationally competitive.

To accomplish this mission of addressing the broad and diverse economic needs of Allegheny County, the Economic Development Vision Team was divided into three separate subcommittees of 1) Innovation, 2) Marketing and Tourism and 3) Commercial and Real Estate Development and charged each subcommittee with the following:

1. Defining a future vision for the County.
2. Providing a fresh perspective on how government operates and should operate.
3. Implementing a process that will result in recommendations on operations, efficiencies and policy for Allegheny County to move forward.
4. Reviewing the structure and planning processes of the Allegheny County Department of Economic Development, the business climate in the region, and the County Executive's approach to creating and retaining good paying jobs.
5. Focusing on the means to ensure that there is a good blend of different types of businesses in our community.

To accomplish these objectives, the Economic Development Vision Team additionally determined that the recommendations must relate to Sustainability, Intergovernmental cooperation and Diversity/Inclusion and fall within the scope of one of three fields for which the County has a role:

1. The County performs or should perform, an administrative function related to the recommendation
2. The recommendation pertains to a financial interest of financial support of the County
3. The recommendation lends itself to advocacy by the County

Methodology:

To accomplish these objectives, the Vision Team and respective subcommittees engaged in a series of meetings on:

- June 5, 2012: Allegheny County Court House 4:00-6:00pm (Innovation Team)
- June 6, 2012: Allegheny County Court House 1:30-3:00pm (Real Estate)
- June 20, 2012: Allegheny County Court House 1:30-3:00pm (Real Estate)
- June 20, 2012: Pgh. Life Sciences and Greenhouse, 4:00-6:00pm (Innovation)

- June 27, 2012: Allegheny County Court House 1:30-3:00pm (Real Estate)

Additionally, with respect to the Commercial and Real Estate Subcommittee, meeting guidelines were identified to facilitate the development of appropriate recommendations (Refer to Appendix 1)

From an organizational perspective, once the three subcommittees submitted their summaries, findings and recommendations, the information was synthesized into one final report. However, due to the nature of these subcommittees, it was agreed that specifics related to each subcommittee would be noted as separate sections within the larger document.

Public Input

To engage the community in the process of generating creative and innovative solutions, the Innovation subcommittee solicited specific ideas using the Vision Team website; however, no specific ideas were submitted.

A scheduled public listening session was unattended by the public and so was canceled.

Commercial and Real Estate Development Subcommittee

According to the Project Disposition Analysis conducted by the Pittsburgh Regional Alliance (PRA), there were 216 companies/projects considering relocating to or expanding within the 10-county Pittsburgh region from 2007 to 2011. The region "won" 149 of the 216 projects and "lost" 67 - 14.77% of the companies/projects that were "won" cited real estate as the primary reason for their decision, and another 19.05% identified real estate as the secondary reason. Only "Local Ties/Existing Operations in the Region" contributed to more "wins." Of the 28.36% of companies/projects that were "lost," contacts cited real estate (or a lack thereof) as the primary reason for selecting another region making it the most frequently identified factor for consideration.

The preceding serves to highlight the importance real estate plays in the decision-making process of companies considering relocating or expanding to our region. A further breakdown of the "losses" shows that industries identifying real estate as their primary criteria would be broadly classified as commercial and more specifically identified as industrial: advanced manufacturing, back office financial, life sciences, distribution & logistics, and engineering.

According to CBRE, the vacancy rate for modern (Class A) industrial/warehouse within Allegheny County is currently 2.4% and trending down. As vacancies decline and fundamentals change, prices will increase placing an even greater emphasis on the importance of real estate as it relates to the decision-making process. For this reason and given the unprecedented opportunities presented by the gas-rich Marcellus Shale & Utica Shale formations for future economic development, the Commercial and Real Estate Development Subcommittee focused most of its attention on the industrial real estate market and the lack of supply.

For the purposes of understanding the business problems and framing the Subcommittee's process for crafting recommendations to address them, it is important to note that "real estate" can be defined as land and/or existing buildings and that the term "shovel-ready" means land with infrastructure (remediated of environmental contamination and graded with water & sewer to the site). Another critical consideration is timing. Companies considering the region want to be "in & operating" within one-year making it effectively necessary to have such real estate currently available since permitting and site & vertical construction themselves will absorb almost the entire 12 months.

In December 2008, Allegheny County (with the help of a 100-member steering committee, 40-member advisory committee, and a sounding board comprised of Ten Resource Panels made up of hundreds of local experts) published and adopted its first comprehensive plan titled Allegheny Places: The Allegheny County Comprehensive Plan. The subcommittee believes the Comprehensive Plan should be reviewed and updated to reflect market conditions in 2012 and that both short & long term goals should be added so that success can be benchmarked & measured. This should be done on an on-going process, and the Comprehensive Plan should serve as a "working document" which is frequently referenced.

More specifically, the recommendations for the future land use and economic development elements of the Comprehensive Plan should be revisited (altered / expanded to specifically address the impact real estate is having on economic development) and every effort should be made to help facilitate their implementation. Special emphasis should be placed on Brownfield and Redevelopments Sites since infrastructure is more readily available to them (i.e., they theoretically can more quickly and cost-efficiently become "shovel-ready") and because they're typical located near existing transportation corridors, already zoned for commercial / industrial, and most likely have local support for

redevelopment. Please see Map 4A.2 from Allegheny Places for a geographic listing of these sites. Master Plans for these sites should be developed that incorporates the vision from the Comprehensive Plan but goes a step further and spells out the tactics for prioritizing & facilitating the delivery of the needed real estate. The Non-Aviation Master Plan for the airport or Pittsburgh International Airport Area Development Vision Plan (Aerotropolis) commissioned by the Allegheny County Airport Authority was identified as a good model / example to follow.

With 158 active projects currently in the pipeline, the potential for several billion dollars in total investment to be made, and a potential total employment impact of 9,640 new and 540 retained jobs, it is imperative that real estate be identified as key driver for economic development in Allegheny County and the 10-county Pittsburgh region. There are literally thousands of acreages available within the county, but only a small percentage could be considered" shovel ready. Therefore, this Subcommittee strongly suggests that Allegheny County allocate the necessary resources to ensure there is a sufficient supply of "shovel-ready" land and/or rehabilitated buildings with market-oriented attributes so that we "win" a greater percentage of the 158 companies/projects currently considering expanding and relocating to the region.

Findings:

There were 10,191 property searches performed using the PittsburghProspector.com website in 2011. 6,260 were for buildings (2,063 industrial buildings & 1,398 for office buildings) and 3,931 were for land. Based upon this information, there are companies/projects considering the region that are not identified by the Pittsburgh Regional Alliance.

Recommendations:

In light of these findings, the Real Estate Subcommittee recommends the following:

- Work with Pittsburgh Regional Alliance to extrapolate the specific real estate requirements not being met by the region from their Project Disposition Analysis & current project pipeline and establish the specific types of properties desired and the missing attributes needed to attract more companies looking relocate to or expand within the region. Engage brokerage community to help validate criteria. Our general understanding is that the region lacks 20(+) acre "shovel-ready" sites.

- Revisit the future land use and economic development elements of the Comprehensive Plan. Review recommendations and update as needed to specifically facilitate increasing the supply of desired real estate. Work towards implementation by establishing short-term and long-term goals and benchmarks to measure success. Make the Comprehensive Plan a "working document" by periodically crafting new / revising existing recommendations.

- Using Map 4A.2 from the Comprehensive Plan (Brownfields and Redevelopment Sites), start developing a priority list of all commercially zoned, 20(+) acres sites currently available within the county, compile any & all pertinent information available about the property including ownership, determine their "shovel-ready" status, and identify any high-level steps needed to become "shovel-ready". Use Pittsburgh Prospector (http://www.pittsburghprospector.com/) and PA Site Search (http://www.pasitesearch.com/) websites to help identify properties by desired criteria and to gather information about them.

- Review priority list with local economic development agencies & individual municipalities and valid/update the list of priority properties. Contact property owners and/or their agents for additional information about properties.

- Allocate County resources to supplement any missing property information and prepare Site Investigation Reports for all priority sites. Finance the creation of standardized Predevelopment Due Diligence Reports which includes geotechnical investigation, environmental reports, ALTA survey, and conceptual site development plan for high priority sites and the development of Master Plans for the highest priority sites which spells out the strategy & tactics for expediting the delivery of needed real estate (see Non-Aviation Master Plan for the airport or Pittsburgh International Airport Area Development Vision Plan a.k.a. Aerotropolis). Establish an objective, standardized economic impact tool and allocate resources based upon job creation and/or job retention. Gain formal commitment from property owners (preferably, via an option agreement) to redevelop or sell property before committing funds.

- Develop a comprehensive matrix of federal, state, county, & local economic development programs with criteria and determine which programs could be utilized to move priority properties to "shovel-ready" status. Aggressively pursue all potential public funding sources to help make properties developable within (1) year.

- Form a County Executive Action Team (CEAT) that reports directly to the County Executive comprised of real estate industry leaders and experienced economic development professionals that can advise the County Executive on real estate matters and provide assistance to Allegheny County Economic Development (and the PRA) when working with companies looking to establish new business operations in Allegheny County or companies considering retention and/or expansion of existing Allegheny County operations. This would be a similar in concept to the Governor's Action Team but at a County level. CEAT could also assist with economic development outreach by promoting the Comprehensive Plan and influencing adoption by the local municipalities.

- Establish a single point of contact within Allegheny County Economic Development who can work with municipalities, developers, engineers, & brokers to help facilitate all commercial real estate development in Allegheny County. Primarily an administrative function, this position would compile information such as zoning maps, land development & subdivision ordinances, flood maps, sewer maps, etc. for all 130 municipalities. This position could also help with the permitting process by serving as a liaison between applicants and the Allegheny County Conservation District and PADEP on NPDES permits and PADOT on Highway Occupancy Permits (HOP).

- Have the Allegheny County Economic Development Department do an internal analysis of their resources and capacities to integrate the following recommendations into practice.

Marketing and Tourism Subcommittee:

Findings:

Essentially, the subcommittee concluded that four (4) core areas required the leadership capacity of the County to:

- Market Pittsburgh to diverse target demographic groups and leverage local assets and amenities to attract more residents, employers, and visitors.

- Increase functional consolidation of government services to ensure that issues of marketing and tourism are kept in front of the County Executive, Governor, Legislature and other marketing and tourism boards and committees

- Have County collaboration with the Pittsburgh Regional Alliance (PRA) and other real estate developers to promote the development of high quality pad ready real estate

- Advocate for a large convention center hotel attached to the David L. Lawrence Convention Center.

Recommendations:

To facilitate the achievement of these four salient issues, the subcommittee recommends the following:

- Serve as the political leader visibly advocating for a more diverse and inclusive Pittsburgh region to:

    - incorporate key messages about diversity in speeches, county website, and marketing collateral materials;

    - partner with organizations to promote the region to diverse groups in key markets outside the region

- Work with economic development organizations, political leaders and employers to promote a region-wide diversity, inclusion and welcome message

- Utilize a popular local brand and success story to advance the objective and generate traction. One recommendation is to have the county adopt and promote the "Rooney Rule" which is being used by Vibrant Pittsburgh. The Rule along with a Pittsburgh diversity and inclusion message was launched with the help of Art Rooney and Robert Johnson in March 2012. The Allegheny Bar Association has recently encouraged the region's law departments and law firms to use the rule.

- Raise the national visibility of public and private programs that support and facilitate the integration of immigrant and international residents and students (e.g., the Allegheny County Department of Human Services Immigrant and International Advisory Council)

    - Adjust or expand efforts consistent with best practices

- Because neighboring municipalities also need to grow their tax base, Allegheny County should bring together municipalities throughout S.W. PA and the bordering counties of Maryland, Ohio and West Virginia to coordinate a region-wide attraction messaging and marketing effort. This will result in a stronger more compelling message.

- Work with the Pittsburgh Regional Alliance and Industrial/Commercial Real Estate Developers and Realtors to support efforts to create more brownfield and "pad" ready sites in the region.
- Develop a regional commission that brings together neighboring municipalities to create and sustain common procedures and processes (e.g., the permitting process from one municipality to another) to ensure that government practices facilitate business attraction

- Create a mobility incentive fund that includes private/public funds and provides an added incentive for targeted businesses to relocate to the region or hire employees in the region

- Partner with VisitPittsburgh and other organizations to attract large scale conventions to the David Lawrence Convention Center including conventions that will bring together diverse groups, result in national and international visibility for Pittsburgh, and attract people in key professions that are in high demand in the region.

- Work with cities with a significant number of sports fans (particularly cities with large Steeler, Penguins, or Pirates fan bases) to increase the flow of people coming to Pittsburgh for games.

- Work with SEA to locate a developer for the convention center hotel.

- Offer financial incentives to the developer of a convention center hotel.

- Develop/Introduce visitor-friendly way finding signage.

- Utilize the region's third-party accolades (Most Livable, Top 20 Places To Visit) in messaging, where appropriate.

- Continue to support the efforts of the arts community. In particular, the Pittsburgh Symphony Orchestra who partners with the Pittsburgh Regional Alliance (PRA) on international tours to market the region. This partnership has been instrumental in attracting new foreign companies to our region, retaining those that are already here and launching the Pittsburgh to Paris Delta flight. Promote and support assets of the Pittsburgh Cultural Trust.

Innovation Subcommittee:

Innovation is an important driver of the economy of Allegheny County. Innovation can be viewed as a process by which individuals and organizations generate new ideas and put them into practice to create value. Spurring the innovations that will drive the region's future economic growth and competitiveness requires critical focus on basic foundations: our workforce, our research & development of ideas and our infrastructure. County businesses are our engines of innovation. They bring ingenuity to market, where new ideas are proven and commercialized. It is imperative to promote a regional environment ripe for innovation and entrepreneurship that allows us to drive future economic growth and continue to lead on the national economic stage. The comprehensive process by which individuals and organizations drive innovation is inherently connected to the following elements of Allegheny County's economic vitality; job growth, classic economic development, improved efficiencies and collaboration in the community, improved business process and infrastructure, talent, investment and entrepreneurship.

The importance of innovation to the county cannot be understated. The county has a responsibility to help sustain and improve upon the innovative business climate in the region. The county should become an accelerator of existing resources in the community to encourage, promote, and tell the story of innovation in the region. This story should be an inclusive tale that not only talks about classic economic development successes, but also highlights and champions the innovative ways that established for-profit organizations are doing business. The county must take a primary role in helping organizations take the next step in improving their capacity and ability to innovate. Just as importantly, the county must realize that how they communicate about the region and their own administration programs and priorities must be presented in a manner that is current, relevant, sophisticated and reflective of the region's vibrancy and innovation underpinning.

Findings:

Innovation is at the heart of a burgeoning Allegheny County economy. Innovation continues to be driven by existing regional competitive strengths. The county must engage stakeholders; facilitate community collaboration; provide stability for economic development through long-term intergovernmental and public/private collaboration; and support the growth of existing and emerging industries.

The county has the opportunity to play an important role in promoting and facilitating the innovation that is occurring in the region. It is important that the county promotes a culture of innovation that acknowledges all sectors of the economy, not just in technology-based economic development which is traditionally associated with innovation. The county has a responsibility to contribute to a productive ecosystem for innovation that can flourish through the relationships among academia, government, industry, corporations and the entrepreneurial community. The county should not necessarily focus on new ideas but address the manner with which it conducts business and uses existing infrastructure in regards to improving and sustaining the business climate surrounding innovation.

Recommendations:

We recommend that the Allegheny County Economic Development Department conduct an internal analysis of their resources and capacities to integrate the following recommendations into practice.

- Create an innovation mission statement that can drive strategy and tactics directly related to the county's focus on promoting and facilitating the innovation that is occurring in the region.

- Make major updates to the Allegheny County Economic Development website; most notably have a website link specifically for innovation information. The website should be a "front door" of the county's image as it pertains to regional vitality. Currently, the website is dated, limited in its information and cumbersome to navigate. Accurate reflection of the county must be improved, updated and maintained on this site. One suggestion to address the cost of updating the current website deficiencies is offering an innovative website design challenge to the community.

- Create a new resource matrix for all public, private, and nonprofit groups which is monitored by the county. This matrix would be an aggregator of resources that could be utilized to help organizations that are interested in learning more about or participating in programs that address innovation, entrepreneurship, investment, acquisition of space, funding programs, etc.

- Create or reassign an existing a department/program/position within the county that is responsible for and focuses on the innovative climate of the region (ex. -San Francisco Municipal Chief Innovation Officer). The county should also look to partner on innovation initiatives with the City of Pittsburgh where it makes sense to pool resources (ex. – PowerUp Pittsburgh and city's Innovation and Entrepreneurship Strategist).
- Explore and create opportunities where the County itself can show its dedication to conducting business in an innovative, responsible way. For example, seek out natural-gas-powered vehicles as it makes additions to its existing fleet. Currently, major auto manufacturers Chrysler, Ford and General Motors have all begun to produce vehicles as light as three-quarters of a ton that run on compressed natural gas. (ex. – City of Columbia, Missouri).

- Implement a county hosted Innovation Award to recognize the region's most innovative ideas, new procedures, products and services in the public, private and nonprofit sectors. (ex. – Chicago Innovation Awards).

- Institute a voluntary rotating committee of thought leaders on innovation that assists the county with implementing these and additional recommendations into action.

Ideally, with additional analysis and planning, an innovation strategy should be developed by the county.

According to the U.S. *Strategy for American Innovation,* regions need to harness the inherent ingenuity of their academia, government, industry, corporations and entrepreneurial entities to ensure that economic growth is rapid, broad-based, and sustained. Innovation based economic growth will bring greater income, higher quality jobs, and improved health and quality of life to communities across our nation.

Next Steps

As part of the charge from the County Executive, the Economic Development Vision Team was also asked to outline next steps, and to categorize those as changes that needed to be made immediately, followed by short term and long term goals. Those steps follow:

Commercial & Real Estate Development Subcommittee

Immediate Changes:

The subcommittee recommends the following immediate changes:

- Have Allegheny County Economic Development Department internally review the recommendations and determine their value as well as assess internal resources and their overall capacity to initiate the above recommendations.

- Review the assumptions, mission and goals of the Future Land Use and Economic Development elements of Allegheny Places Comprehensive Plan.

Short Term Goals:

With respect to a short term goals, the subcommittee recommends the following :

- Identify the need (demand) - Gain thorough understanding of the general real estate needs of the 158 companies/projects currently considering expanding and relocating to the region. Determine what the typical land & building attributes are being required such as size, rail and/or barge access, access to major highways, utility demands, geographical preference, etc.

- Take an inventory of the supply – Create database of all available properties meeting the requirement above and gather pertinent information available. Evaluate to determine their "shovel-readiness" what need attributes are missing. Develop priority list of real estate.

- Develop plans and allocate resource necessary to convert priority properties into "shovel-ready" sites that can be developed within 1-year. Pursue grant funding as needed. Identified and leverage ALL federal, state, county, and private-grant funding programs available.

- Create County Executive Action Team (CEAT) / independent advisory board that reports directly to the County Executive to oversee implementation of the recommendations and provide relevant real estate-related knowledge to policy makers.

Long Term Goals:

In regard to the long-terms goals, the subcommittee recommends:

- Define process for determining on-going & future real estate needs and financing public investments in horizontal development that will ensure the on-going availability of "shovel-ready" sites

- Revisit the Future Land Use and Economic Development elements of the Comprehensive Plans. Convert strategies into Action Plans with short & long terms goals with benchmarks to measure success. Publish results.

- Create a position within the ACED planning department to manage and monitor these resources so they can best facilitate real estate development in the county.

Innovation Subcommittee

Immediate Changes:

The immediate changes need to be focused on leveraging existing resources to help create and sustain a culture of innovation in the region. The county must become a conduit for information and resources that can help individuals and organizations integrate their innovative ideas into the regional economy. The chief priorities are related to administrative functions of the county and sustaining the innovative culture of the region.

- Have Allegheny County Economic Development Department conduct an internal analysis of their existing resources and overall capacity to initiate the above recommendations. Framing questions may include:

    - How can we brand innovation in the county?

    - How can we create a culture of innovation in the county?

    - How can we tell the story of innovation?

    - How can we aggregate existing information and resources?

    - Who are the most appropriate organizations for the county to partner with to help grow innovation in the region?

- Update the Allegheny County Economic Development Website to adequately reflect the innovation that is occurring in the region. This website should also provide snapshots of successful regional innovators, information on funds and resources that are available to organizations trying to innovate or locate to Allegheny County.

Short Term Goals:

- Create/assign a position within the Allegheny County Department of Economic Development that is focused on improving and sustaining the innovative culture in the region.

- Create a voluntary committee or oversight board to assist the county with the implementation of these recommendations.

- Update current economic development website.

Long Term Goals:

- Create an innovation award or prize to recognize the region's most innovative ideas, new procedures, products and services in the public, private and nonprofit sectors.

- Explore and create opportunities for the County to adopt and apply innovative practices to the way that it conducts business.

Members

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Doris Carson Williams, Co-Chair
African American Chamber of Commerce of Western Pennsylvania

Jim Barthen
Pittsburgh Symphony Orchestra

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Hill House Association

Melanie Harrington
Vibrant Pittsburgh

Bob Imperata
VisitPittsburgh (Retired)

Abass Kamara
Pittsburgh Penguins

Dusty Kirk
Reed Smith LLP

Cathy Lewis-Long
The Sprout Fund

Leo Makosky
Mistick Construction Company

Jim Malanos
Baker Young Corporation

Michael Matesic
Idea Foundry

Joe McGrath
VisitPIttsburgh

Kevin McKeegan
Meyer, Unkovic & Scott, LLP

Kevin McMahon
Pittsburgh Cultural Trust

Melvin Pollard
Black Political Empowerment Project (B-PEP)

Chuck Powell
Urban Redevelopment Authority

Craig Rippole
Trinity Commercial Development

Victor Rodriguez
a.m. Rodriguez Associates

Caryn Rubinoff
The Rubinoff Company

Timothy Ryan
Eckert Seamans Cherin & Mellott, LLC

Brendan Schubert
Pittsburgh Department of City Planning

Jeff Spear
Duane Morris, LLP

Merrill Stabile
Alco Parking Corporation

Mark Thomas
Iron Workers Local Union No. 3

Richard Thomas
Pepper Hamilton, LLP

Veronica Toran
Sci-Tek Consultants, Inc.

Dan Wilson
Eat 'n Park

Gary Wilson
Langholz Wilson Ellis, Inc.

Commercial & Real Estate Subcommittee Meeting Guidelines

Subcommittee Meeting Guidelines

- Gain an understanding of the opportunities being missed by the region and county because of a lack of available real estate:
    - What space requirements / property attributes are unavailable to companies considering expanding the location or relocating to the region?
    - How does the available inventory in Allegheny County compare to the inventory in surrounding counties?
    - Identify the obstacles to increasing the supply of desired space / property:
        - What is preventing the supply from keeping-up with demand?
        - What is delaying properties from being redeveloped / buildings from being retrofitted to meet today's needs?
    - Are Greenfield projects better suited to meet the unfulfilled demand?
    - Discuss phases, milestones, & risks in real estate development:
        - What is the length of the typical development cycle?
        - What milestones take the longest to reach and why?
        - What are the risks and challenges associated with real estate development?
        - Is the county better positioned than private developers to take on these types of projects?
- Recommend processes to-be-defined by the county to help facilitate real estate development:
    - Can the county encourage the development of the needed space?
    - How and where can the county help expedite the real estate development process?
    - What are the specific tools and programs available to help promote development (federal, state, county, local, private foundations, etc.)?
    - Is there a better way to coordinate the resources and support of all the stakeholders involved to encourage the desired outcome?
    - Are there existing concepts that can be refined, customized, and/or adopted locally to help accomplish the above (i.e., PA Brownfield Action Team, etc.)?
- Propose benchmarks for objectively determining need, allocating resources, and measuring success:
    - What is the most effective way of establishing priorities: job creation potential, tax revenue increases, homeownership / vacancy, etc.?

- Can an evaluation methodology be standardized?

Energy & Environment

VISION TEAMS

Imagining Allegheny County's Tomorrow

Andrea Geraghty, Chair

County of Allegheny

Executive Summary

The Energy and Environment Vision Team found that County government can improve its operations while encouraging economic development and energy conservation by implementing certain changes in its management structure, and modifying its focus to acknowledge the development opportunities arising from shale gas development. At the same time, the county must continue to wield its power to maintain and improve environmental protection and public health, safety and welfare.

Additionally, the County should seize the opportunity to be at the forefront of energy efficiency and sustainability by reducing energy use, reusing and repurposing public buildings, reducing maintenance costs by centralizing management of facilities and systematically incentivizing sustainability and energy conservation.

Most importantly, by simultaneously serving as a leader in energy conservation and renewable energy technology, financial savings can be realized for County taxpayers.

With this, the following recommendations are submitted:

- **Encourage Environmentally and Fiscally Responsible Shale Gas Development and Practices**
    - Support and encourage environmentally responsible shale gas development and production and, where economical, support new gas-powered electricity generation initiatives, encouraging the development and ongoing refinement of 'best practices' and minimizing negative impacts on the public and the community.
    - Work closely with other government entities, and private or public organizations to coordinate and encourage economic development relating to shale gas and its derivatives, while protecting the safety of county environment and County residents.
    - Evaluate, develop, and encourage uses for natural gas for example, in vehicles and factories, because of the increase in demand will encourage more production, and thus more employment and opportunity in our region.
    - Encourage the use of natural gas powered vehicles, and the installation of CNG fueling stations. To that end, the county should consider entering into public-private partnerships with companies that are already performing vehicle retrofits and developing CNG fueling stations.
    - Engage in an ongoing dialogue with industry and work to make companies more inclined to move development and operations to Allegheny County.
    - Identify and evaluate developable sites in the County, including those that are currently underutilized or undervalued, as attractive for use as industrial sites, particularly for industries that will find the affordability and abundance of natural gas an advantage or will easily able to use the byproducts of natural gas.
    - Highlight the availability of natural gas and its potential to help keep gas and electricity services affordable and to act as a draw attract new business to Allegheny County.
- **Promote Comprehensive Planning and Multi-government Cooperation**
    - Evaluate Allegheny Places, Allegheny County's comprehensive plan, to determine whether any amendment is appropriate in light of the desirability for alternative energy development, including shale gas development.
    - Endeavor to work with local municipalities to do the following: ensure the proper planning for alternative energy production/development such as natural gas pipelines and other high-impact and/or large-scale issues;

encourage coordinated and multi-municipal planning where appropriate; provide assistance in updating and coordinating municipal ordinances in light of applicable law, and in consideration of the comprehensive plan, Allegheny Places; support efforts for Fleet Vehicle grants and provide grant writing support for local municipalities, authorities and non-profits with fleets so that they can apply for these grants; coordinate regulatory review to aid pipeline installers with permitting and planning; and advocate for and support changes to local permitting requirements for all renewable energy projects to standardize and streamline those requirements across municipalities.

- **Ensure Health and Public Safety**
    - Monitor all reports on public safety and health and specifically track the development of data from the new Washington County air monitoring system established by the Pennsylvania Department of Environmental Protection. Utilizing the first responder approach and recommendations in Act 13, train EMS, fire, and police to respond to potential health issues and supplement funding so that first responders will be able to appropriately respond to emergency conditions that arise at Marcellus Shale gas drilling sites.
    - Designate some portion of Act 13 revenue derived from drilling for natural gas to support health, safety review and training
- **Support Environmentally Appropriate Development on County Property**
    - Identify all county owned property, and property owned by county related entities, and explores development opportunities with respect to the County's natural resources.
    - Endeavor to refrain from allowing surface disturbance of County parks.
- **Encourage Production and Efficient Use of Electricity**
    - Encourage practices that minimize electricity use and cost for its own facilities and for the residents and businesses of the County, and should encourage the production of electricity via alternative resources including natural gas, solar and wind power.
    - Create incentives for County employees to proactively engage in and support appropriate energy conservation practices.
    - Designate and empower one County employee as responsible for decisions on a variety of energy-related issues to increase efficiencies**.**
    - Encourage wider participation among municipalities in the bulk purchases of energy programs.
- **Manage Facilities and Operations as Valuable Assets**
    - Manage all County properties and facilities in a standard, comprehensive, cost-effective manner, as these properties and facilities are valuable and substantial tangible asset.
    - Create a director-level position responsible for management of all County properties and facilities and empower them to make and enforce decisions regarding standards and increased energy efficiency; the Green Action Team should serve in an advisory role.

- **Ensure Safety and Exploit the Availability of Cleaner, Low-Cost Natural Gas for Vehicles**
    - Acquire, maintain and utilize all vehicles that it owns or operates in a safe and cost-effective manner.
    - Use natural gas vehicles.
- **Create a Culture that Promotes the Highest Standards of Health and Safety**
    - Adopt a "Safety at All Times" culture for County facilities and employees, and develop and implement a Safety Plan to improve safety metrics and the overall safety culture within the County workforce.
    - Advocate that portions of public funds be allocated to the Pennsylvania Department of Health to allow it to work with appropriate local resources to conduct research and develop background databases on the public health impacts of local issues.
- **Promote Sustainability in Private/Municipal Energy Programs**
    - Advocate for a region of energy conservation.
    - Encourage municipalities to use Energy Star portfolio management to track and assess energy and water consumption.
    - Maintain a clearinghouse for information on cost-savings opportunities and energy efficiency programs for municipal governments and authorities.
    - Assist municipalities in updating municipal ordinances to include requiring green infrastructure.
    - Provide assistance to help municipalities update their ordinances or implement projects consistent with a municipalities adopted green infrastructure ordinance.
    - Develop or encourage the development of a model storm water ordinance that integrates the use of green infrastructure to the maximum extent practical and/or provide example language and have it available online.
    - Develop or encourage the development of a model municipal ordinance relating to zoning and permitting for renewable energy products.
    - Coordinate programs offering subsidized home energy audits/weatherization programs for county residents to ensure widespread access to a program.
    - Create and implement an Allegheny Sunshine Program to help county businesses and households to install solar technology, to advance solar businesses, and stimulate the local solar market.
    - Coordinate programs offering energy conservation programs and resources for Commercial and Industrial properties and publicize to encourage non-residential county citizen participation.

- **Prepare Students to Meet the Demands of Industry Jobs**
    - Encourage the use of local training programs and unions to prepare students for careers that can be used in the shale gas industry and connect the students to industry contractors.
    - Evaluate all energy-related jobs in the County and determine if there is training available in the County, either through a formal institution or through an organization such as a union, for residents who want to be employed by those jobs. If no training is available for a particular job, explore options for making the training available, such as creating a certificate program at Allegheny County Community College. Then confirm that employees on job sites owned by Allegheny County meet applicable training requirements.
    - Establish a program to direct displaced workers to energy-related job training programs offered by formal institutions and organizations, including the Allegheny County Community College Marcellus Shale Initiative; and
    - Consider methods to encourage local employment on energy-related projects, including the feasibility of including such requirements in County contracts, or in contracts with any County financial support.
    - Explore the potential for incentivizing local employment.

Vision Team Charge

The Energy and Environment Vision Team was charged with looking at energy and the environment and the opportunities that oil, natural gas, electricity and renewable energy sources, including solar and wind power, provide for economic growth and job creation in our region. The Vision Team was also directed to give equal attention to County efforts to protect the environment, including water and air quality, and ensure that development of energy is minimally invasive to our communities.

Scope of Work/Summary of Methodology

The Energy and Environment Vision Team has found that County government can improve its operations while encouraging economic development and energy conservations by implementing certain changes in its management structure and modifying its focus to acknowledge the development opportunities arising from the identification of shale gas in the County and the region.

Allegheny County should support a safe and viable natural gas industry in the County and in the Commonwealth, while wielding its power to maintain and improve environmental protection and public health, safety and welfare. This will increase employment, reduce energy costs, and build our local and regional economy.

The County can reduce its energy use, reuse and repurpose public buildings, reduce maintenance costs by centralizing management of property and facilities, and systematically incentivizing sustainability and energy conservation

At the same time, the County can encourage the use of new technology and lower cost natural gas, support the growing industry and serve as a leader in energy conservation and renewable energy technology, increasing financial savings and thus reducing expense to all County taxpayers.

Scope of Work

The Vision Team segmented its approach to the broad topics covered by its charge, endeavoring to address the administrative functions and the financial interests of the County as well as those issues on which the County might properly take an advocacy position. In its work, the Vision Team additionally accounted for issues of sustainability, intergovernmental cooperation, environmental protection, employment opportunities, and diversity.

In the arena of Shale Gas, the Vision Team considered drilling and gathering of natural gas, land use planning and local regulatory approvals, emergency management issues, Act 13 impact fees, and the potential for development on County owned and controlled property

The Vision Team delved into issues surrounding the production and use of electricity. It investigated viable sources of power generation, including solar, wind, water, coal and natural gas, the desirability of certain generation resources, the County's electricity use and the possibility of incentives to encourage use of renewable resources.

Considering County facilities and operations allowed the Vision Team to address the use of energy resources and available conservation opportunities in the operation and maintenance of properties and

The County also has the ability – either directly or indirectly – to address Energy and Environment issues in public programs addressing health, employment, energy conservation, and air and water quality. The Vision Team explored these areas in developing its recommendations.

Summary of Methodology

The entire Vision Team met seven times, including March 22, April 26, May 24, June 6, June 20, July 11, and July 25. During the course of these meetings, the entire Team discussed a variety of issues surrounding shale gas development, facilities and operations, and various sources of electricity. The Vision Team also broke into two separate subcommittees: Facilities and Operations, which held three separate meetings on May 29, June 12, and June 26; and Electricity Production, which held its three meetings on May 30, June 13, and June 28.

The Facilities and Operations Subcommittee focused on providing recommendations involving Allegheny County properties, vehicles, and the Port Authority of Allegheny County. The Electricity Production Subcommittee focused on providing recommendations involving all potentially viable source of electricity, County uses of electricity, and County

incentives to reduce electricity use. The Energy and Environment Vision Team as a whole was charged with providing recommendations regarding shale gas development and public programs as well as considering, editing, and approving subcommittee recommendations.

External resources utilized to develop recommendations included websites, reports, and invited topic experts from various organizations and companies. Certain guests were invited to address the Vision Team and its subcommittees including representatives from P.C. McKenzie Company, Green Action Team, PennFuture, Steamfitters Local Union, and Dr. Bernard D. Goldstein. The Vision Team members – many of whom are experts in their own fields – were encouraged to review and consider a variety of other available resources, including, but not limited to the documents and reference materials made available to the members, as is set forth at the conclusion of this report. Documents were uploaded and shared with Team members using the Concert-oh file sharing and meeting website.

Public Input

The Vision Team held a Listening Session on May 24. Members of the public who were unable to attend the Listening Session to voice their questions and concerns were encouraged to submit comments to the Team via www.richfitzgerald.com, and all comments submitted after the Session were distributed to members of the Vision Team.

Subjects of public comment, question, and concern offered at the Listening Session and via email comment regarding energy and the environment in Allegheny County included the following:

- Will the natural gas extracted in Allegheny County be used in Allegheny County or be transported for use elsewhere?
- Will natural gas drilling in Pennsylvania create only temporary jobs or will long-term jobs for Western Pennsylvanians exist?
- Will property values be decreased as a result of nearby shale drilling?
- What are the exact constituents (chemical species) of hydro fracturing fluid?
- Do best practices exist and is technology available that will ensure public and environmental health and welfare? If not, then what can be done to develop and require the use of best practices at all times?
- If unconventional gas economics are not sustainable, what can be done to prevent a future collapse of the industry?
- What will be the legacy left from shale drilling?

The Listening Session also resulted in a some specific recommendations regarding energy and the environment in Allegheny County include the following:

- Clean Energy Funds (CEFs) or renewable energy fund (REFs) should be used to provide investments for renewable energy, clean energy, or energy efficiency projects;
- Public promotion or development of projects to increase conservation and energy efficiency, especially through culture change, should begin or be coordinated throughout the County to provide maximum public access to the programs;
- Explore using the American Recovery and Reinvestment Act (ARRA) to provide money for green jobs and energy efficiency in Allegheny County;
- Develop and improve reliable and comprehensive mass transit, especially electric and/or natural gas public and County transportation and electric and/or natural gas vehicle recharging and refueling stations;
- Advocate for the development of CNG fueling facilities throughout the County;
- A viable and sustainable natural gas industry must be created in Allegheny County to ensure the local use of extracted natural gas and long-term job creation for local workers; and

- Collaborate with conservation organizations to reclaim land impacted by extraction to minimize the negative legacy left from shale drilling.

Findings

The presence of Marcellus Shale gas in Pennsylvania and Allegheny County presents a unique opportunity for the County to exploit, manage, and protect all that surrounds the resource and industry, all to the benefit of Allegheny County citizens and citizens of the entire region. Allegheny County should exert its efforts to improve environmental and public protection and support a safe and viable natural gas industry in the County and in the Commonwealth. We recognize that the authority of local government may be limited by the Pennsylvania's Oil and Gas Law, as recently amended by Act 13 of 2012. There are, however, many opportunities for the influence of County government to enhance the protections of our environment and public health and the ongoing economic development of our County and our region. Since natural gas is a low-cost, cleaner burning fuel that is being extracted locally, we should encourage the use of natural gas within the County at current and future industrial sites and in vehicles. Allegheny County should work closely with the shale gas industry to manage the planning of shale gas drilling and transportation within the County so as to minimize impacts and have comprehensive and consistent planning for future work.

County owned and controlled property should be operated with an eye toward energy efficiency, conservation and maximization of resources. Management and scheduling of repair and maintenance duties will enable cost effective utilization of employees and equipment, bulk purchases and advanced planning for future space needs. Facility matters are currently addressed intra-departmentally with no universal system of allocation or inventory. By centralizing property management in one department, the County can identify all County owned property and to manage it more effectively.

The Green Action Team, created in 2008, provided goals for 2010 to 2015 to decrease water usage, decrease the carbon footprint, increase fuel efficiency, decrease energy usage, and obtain LEED certification for certain buildings in Allegheny County. Since the County is on track to meet the goals, these goals should be increased to challenge facilities to continue improving resource uses and provide a central framework for reporting resource use and then manage facilities more appropriately.

Water conservation efforts should include implementation of green infrastructure to minimize the impacts of stormwater runoff. To provide funds for conservation projects, a policy should be implemented to return and invest a portion of sustainable measures implementation cost savings back into the projects related to resource conservation. Cost savings quantified and recorded, and returned to the property where savings are recognized can provide incentives for additional conservation efforts.

The County would similarly benefit from an established framework to evaluate the number and quality of fleet vehicles and other energy consuming equipment and determine the best alternatives for assignment, cost, and carbon footprint of the vehicles.

Centralized review and management of electricity use would tend to focus County staff on reducing electricity consumption and developing and completing projects with an eye toward conservation. The County, through an agreement with NORESCO, completed an energy audit of several of its facilities that has resulted in implementation of practices that reduced energy consumption and resulted in utility savings to the County. Programs are currently in place to perform home audits and weatherization projects for Allegheny County residents. Coordinating conservation projects for both private property and public buildings and facilities can lower their energy usage and cost and can develop employment opportunities for the trained individuals performing the work. Central control would also encourage the evaluation of available electricity generation technology, as well as programs and grants to support and fund improved technology. The County will be able to supervise completion of projects, gather data on use and cost savings, and coordinate evaluation of prospective projects.

The County can expand its current participation in the program for the bulk purchase of electricity and identify appropriate partners, perhaps including municipal governments, authorities, schools and other public and private entities, to continue to reduce electricity costs. In this way, the County can take a leadership role in energy conservation and renewable energy technology while leading the way to further financial savings, thus reducing the expense to all County taxpayers.

Recommendations

Shale Gas Development

Allegheny County should support and encourage environmentally responsible shale gas development and production and, where economical, support new gas-powered electricity generation initiatives, encouraging the development and ongoing refinement of 'best practices' and minimizing negative impacts on the public, the environment and the community. With that in mind, the county should encourage green well completions in advance of EPA's 2015 deadline.

The County should work closely with other government entities and private or public organizations to coordinate and encourage economic development relating to shale gas and its derivatives, while protecting the safety of County environment and County residents. These would include the Pennsylvania Department of Environmental Protection, the Pennsylvania Department of Community and Economic Development, the Allegheny Conference, local foundations, colleges and universities, and any other entities that have interests in this area.

The County should evaluate, develop, and encourage uses for natural gas – for example, in vehicles and factories – as the increase in demand will encourage more production, and thus more employment and opportunity in our region. Encouraging multiple uses of natural gas such as alternative fuel for vehicles, manufacturing, and power generation facilities will spur economic development.

The County should encourage the use of natural gas powered vehicles and the installation of CNG fueling stations. To that end, the County should consider entering into public-private partnerships with companies that are already performing vehicle retrofits and developing CNG fueling stations.

Allegheny County is the "geographic center' of the shale industry in this region and the most advantageous location for establishing business offices and corporate headquarters. It should engage in an ongoing dialogue with industry and work to make companies more inclined to move development and operations to Allegheny County.

Developable sites in the County, including those that are currently underutilized or undervalued, should be identified and evaluated as attractive for use as industrial sites, particularly for industries that will find the affordability and abundance of natural gas an advantage or will use the byproducts of natural gas. In this identification and evaluation process, the County should specifically consider areas that are near established transport routes using pipelines or shipping containers and should be prepared to promote the development or redevelopment of those sites.

The County should highlight the availability of natural gas and its potential to help keep gas and electricity services affordable for consumers as a draw to attract new business to Allegheny County.

Comprehensive Planning and Multi-government Cooperation

Allegheny Places, Allegheny County's comprehensive plan, should be evaluated to determine whether any amendment is appropriate in light of the desirability for alternative energy development, including shale gas development.

The County should endeavor to work with local municipalities to do the following:

- Ensure the proper planning for alternative energy production/development such as natural gas pipelines and other high-impact and/or large-scale issues;

- Encourage coordinated and multi-municipal planning where appropriate;
- Provide assistance in updating and coordinating municipal ordinances in light of applicable law, and in consideration of the comprehensive plan, Allegheny Places;
- Support efforts for Fleet Vehicle grants and provide grant writing support for local municipalities, authorities and non-profits with fleets so that they can apply for these grants; and
- Coordinate regulatory review to aid pipeline installers with permitting and planning.

Health and Public Safety

The County should monitor all reports on public safety and health and specifically track the development of data from the new Washington County air monitoring system established by the Pennsylvania Department of Environmental Protection.

- Utilizing the first responder approach and recommendation in Act 13, the County should train EMS, fire, and police to respond to potential health issues and supplement funding so that first responders will be able to appropriately respond to emergency conditions that arise at Marcellus Shale gas drilling sites; and
- The County should consider designating some portion of Act 13 revenue derived from drilling for natural gas to support health, safety review and training.

Development on County Property

The County should identify all County owned property, and property owned by County related entities and should explore opportunities with respect to the County's natural resources.

As part of the identification process, the County should be evaluating the properties for suitability for drilling, considering, among other things, the impact on communities, both residential and commercial, traffic access, available water sources, and anticipated location of any drill site.

Communication with industry and use of the Allegheny Places Comprehensive Plan (Allegheny Places) will allow for determination of ideal development locations and placement of pipelines within applicable regulations.

Recognizing that parks are special and important places that should be preserved for the benefit and use of all, the Vision Team recommends that the County should endeavor to refrain from allowing the disturbance of surfaces of County parks. If any disturbance is necessary, the disturbance should be very limited in both extent and duration. Further, a portion of any income to the County derived from natural gas production in the parks should be returned to the parks for restoration and improvement.

For any County properties determined to be appropriate for the development of energy resources, especially shale gas drilling, effort should be made to limit the impact to the property, the adjacent community, and to public uses of the property.

- Any RFP soliciting proposals for drilling on County property should direct that proposers to consider any potential negative impacts on local communities, both residential and commercial, including traffic, noise, and access issues and require that any proposers should use established 'best practices';

- On drilling sites owned by the County, employees should have certain specific levels of training, and if possible, Allegheny County residents should be preferred for employment;

- The County should emphasize meeting applicable federal, state, and County air and water quality requirements and regulations;

- Before any drilling occurring on Allegheny County owned property or for Allegheny County owned natural gas rights, a public forum should be conducted to obtain input from residents who live in or near the municipality where the activity is to occur; and

- Consideration should be given to available scientific data related to air and water quality to make appropriate recommendations as to conditions for future leasing of County property.

Production of Electricity

Allegheny County should encourage practices that minimize electricity use and cost for its own facilities and for the residents and businesses of the County and should encourage the production of electricity via alternative resources including natural gas, solar, and wind power.

For improving direct County performance, the Vision Team recommends that the County:

- Create a director level position empowered to make and enforce decisions on a variety of energy-related issues, including pursuing grants for energy projects, identifying new electrical generating technology for County facilities, selecting alternate energy suppliers for the County's purchase of electricity, and collaborating with other entities to make bulk purchases of electricity. All County policy and personnel should be mandated to comply with such decisions and to direct County resources so as to ensure compliance;

- Evaluate, using industry expertise, Pittsburgh Allegheny County Thermal, Ltd. (PACT) to determine potential strategies to increase efficiency for energy production for downtown Allegheny County facilities;

- Regularly evaluate alternate electrical generating technology, including any that uses natural gas as a fuel source, to determine if any new technology would result in cost-savings and/or minimize the County's carbon footprint. Make appropriate recommendations based on these evaluations;

- Regularly evaluate the availability of grants for funding new energy technology applications, particularly renewable energy projects, and apply for appropriate grants;

- Regularly evaluate the energy conservation and energy efficiency practices used by the County to determine if any new practices would be appropriate for the County to implement. Make appropriate recommendations based on these evaluations;

- Regularly evaluate prices of alternate electricity suppliers to obtain the lowest possible price with minimal environmental impact for County electricity purchases;

- Track developments on Act 129 Energy and Conservation Program for the purpose of identifying any funds that may be available for County energy projects; and

- Continue to collaborate with other governmental entities to make bulk purchases of electricity and encourage the expansion of participation.

In its work with other governmental agencies and residential and commercial citizens, the Vision Team urges the County to do the following:

- Encourage County municipalities to fully evaluate the option of selecting an alternate energy supplier as a means for lowering their electricity bills;

- Support County municipalities in exploring ways to use more renewable energy, employ more energy efficiency/energy conservation practices, and offer the assistance of any knowledgeable County employees;

- Advocate for and support changes to local permitting requirements for all renewable energy projects so as to standardize and streamline those requirements across municipalities and otherwise remove impediments to the development of renewable energy facilities throughout the County. Consider advocating for a model municipal ordinance relating to zoning and permitting for renewable energy projects;

- Educate the public about the significance of shale gas development to electricity generation and pricing, including that: a.) the emergence of shale gas has resulted in a surge of regional gas production that has led to lower natural gas prices, which, in turn, has led to lower electricity prices for residents and businesses in Allegheny County; and b.) the continued availability of shale gas will significantly affect the prices of both electricity and natural gas for residents and businesses in Allegheny County;

- Provide information to enable residents and businesses to make appropriate choices of cost-effective electricity providers as a means for lowering their electricity bills. Track plans for default residential providers and advocate for the appropriate lowest possible default rate;

- Investigate potential incentives to foster better energy choices, such as purchasing more energy-efficient appliances and employing energy conservation practices such as painting building roofs white or creating green roofs;

- Promote the evaluation of all available electrical generating technology, including that fueled by natural gas to increase available cost-effective and efficient production; and

- Encourage both residents and businesses to use more renewable energy technology so as to lessen their carbon footprint.

<u>Facilities and Operations</u>

The County should endeavor to manage all County properties and facilities in a standard, comprehensive, cost-effective manner, as these properties and facilities are the most valuable and substantial tangible asset and offer a ready opportunity for cost savings and sustainability.

The Vision Team recommends that Allegheny County designate or form a director-level department to be responsible for management of all County properties and facilities. By doing so, the County can establish systems that do the following:

- Give authority, responsibility, and necessary budget to one Department with the knowledge and skill best suited to make decisions regarding the management of all aspects of properties and facilities, from

strategic facility planning (space compression, allocation, procurement/leasing, etc.) to daily preventative maintenance, capital budgeting, maintenance and operations, janitorial and mechanical systems and programs;

- Globally prioritize work to be performed;
- Develop conservation and sustainability goals, and measure progress toward achieving those goals; and
- Apply industry best practices and standard measurements of cost savings – operating cost/square foot in evaluating utilization and performance of facilities and properties.

The director of this department should have skills and experience in building systems, construction, accounting and budgeting, and should be or become familiar with the following:

- Building Owners and Managers Association (BOMA) 360 Program is a total management program that covers everything from Security to Sustainability to occupant satisfaction and everything in between;
- BOMA Stars in BOMA's Energy Star benchmarking program; and
- BOMA BEEP Program (BOMA's Energy and Efficiency Program) is a 6-course educational program on building operating efficiency methods geared for building engineering and managers.

This department should implement a comprehensive plan of energy efficiency and energy conservation practices throughout the County's facilities, including weatherization practices, creating green roofs, or other practices especially those that are low-cost and easy to perform such as the following:

- Enter into Green leases for all facilities, as new leases come due;
- Utilize Green Cleaning products, nontoxic building materials, and Integrated Pest Management (IPM) for all County facilities and advocate the same for all County Authorities – to reduce toxic chemicals from interior facilities, enhancing indoor environmental health;
- Require Energy Star standards in equipment procurement for County and all Authorities;
- Commit the County to the U.S. Department of Energy's (DOE) Better Building Challenge of 20% higher efficiency of buildings by 2020;
- Provide a feedback mechanism to each County facility to give employees the opportunity to voice opinions on energy and water resource usage to give ownership to individuals and change the conservation culture within a facility;
- Create incentives for County employees to proactively engage in/support appropriate energy conservation practices. Monitor the energy savings and cost savings achieved by these activities and publicize the data (i.e. the County saved "x" dollars by following these practices). One possible incentive is to direct the savings resulting from the conservation practices back to the facility or Department where the practices were implemented to fund infrastructure, other improvements, enhancements, or further conservation practices;
- Conduct research on available County leaseholds and explore opportunities with respect to the County's natural resources. The County may then leverage this asset towards reducing natural gas costs; and

- Develop a policy that returns and invests at least 40% of any cost savings resulting from conservation or sustainable measures implementation back into conservation projects or deferred maintenance projects that are related to energy conservation. By providing that the policy cost savings is quantified and a fund is created by the money saved that could potentially fund the department as well.

The Green Action Team should serve in an advisory role to the director of this department. And furthermore, since the Goals for 2015 of the Green Action Team, as part of Allegheny Green, were on track to be met, those goals should be increased as follows:

- From 20% to 35% water usage reduction;
- From 20% to 35% carbon footprint reduction;
- 5% to 10% increase in fuel efficiency of fleet vehicles;
- From 20% to 35% energy use (gas & electricity) reduction;
- Meet LEED Existing Building Standards for facilities larger than 20,000 sq. ft. by 2018, although certification is not necessary; and
- Link performance measurement of all departments to achieving these objectives.

Water usage and control are also a focus of facilities management, thus the Vision Team suggests the County do the following:

- Prioritize facility plumbing system repairs and periodic maintenance and consider instituting a "fast response" team and process as part of the work order system, to effectively address small leaks in a timely manner. Any major leaks or ruptured water lines should be immediately reported and repaired as soon as possible;
- Initiate an aggressive leak detection and repair program at the County Parks, which are a major consumer of water for the County;
- Practice water conservation in County buildings, including but not limited to: turning off faucets when not in use. Where financially possible upgrade to low flow or waterless equipment;
- Ensure that all water-based chilling equipment that qualifies for a sewage-deduct meter receives the appropriate financial credit and that all water-consuming recreational systems (golf course irrigation, snow-making, etc.) are equipped with a deduct-meter, to avoid sewage charges for these water uses;
- Review all installations of once-through water-cooled chilling systems at County facilities to assess impact on water usage and associate costs, along with opportunities and costs for replacement to air-cooled systems or conversion to closed loop water-chilled systems;
- Review proposed parks landscape additions and projects; limit hours for non-recirculating water fountains and water play features; research technologies with the potential of providing water savings such as faucet aerators and automatic irrigation rain shut-off devices that monitor according to the moisture content of the air and the soil;
- Limit County vehicle washing to appropriate levels considering for health, sanitation, and safety reasons;

- Use green infrastructure on County owned property while promoting the same for County authorities. Develop incentives and requirements for all new developments or areas of re-development and in all County-funded projects;

    - Analyze and implement where possible infiltration-based storm water best management practices such as rain gardens, bioswales, and bioretention.

    - Utilize green roofs whenever possible to mitigate stormwater, enhance energy efficiency, enhance bio-diversity, and provide aesthetic qualities for properties in proximity of the structure. Roofs are typically wasted real estate that could serve as storm water management facilities, alternatives to potable water use for irrigation and toilet flush water and photovoltaic (PV) generation facilities.

    - New construction and re-roofing projects should require engineering and architectural evaluation of opportunities to reduce storm water discharges through the use of green roofs, rainwater capture and reuse or combinations of both.

    - Consider life-cycle benefits of the likely doubling of roof life when installed in combination with green roofs in cost decisions. Target designs to reduce roof runoff on average 60% during the recreational boating season and at least 25% in the off-season.

    - Utilize pervious paving options whenever possible for sidewalks and in low speed traffic areas such as parking lots and moderately used roads to mitigate stormwater for all new developments or areas of re-development.

    - Evaluate opportunities to convert impermeable paving to pervious and/or grass paving systems. Grass parking would be especially appropriate where winter snow removal is not an issue such as swimming pool parking lots. Provide escrow funding for design-life maintenance in the cost of any purchases of alternative paving systems.

- Research and evaluate the current Allegheny County Act 167 Stormwater Management Plan and identify, or create an appropriate institution/entity(ies) capable of addressing stormwater management on a comprehensive, equitable, hydrology (watershed) basis, which would also consider regulatory compliance, costs, and incentives to promote effective and efficient stormwater management best practices; and

- Implement and advocate for institutional changes at the Allegheny County Conservation District and Penn State Extension to take a more active role in sustainable stormwater management and education.

<u>Vehicles</u>

The County should endeavor to acquire, maintain and utilize all vehicles that it owns or operates in a safe and cost-effective manner, recognizing and endeavoring to exploit the availability of cleaner, low-cost natural gas. The Vision Team has learned that approximately 700 fleet vehicles and 500 additional pieces of motorized equipment (lawnmowers, etc.) are used within the County. Increasing the use of natural gas as a vehicle fuel also serves to increase demand for natural gas, thus favorable impacting economic development and employment in our region.

In its effort to improve utilization and maintenance of its vehicles and equipment, the Vision Team recommends that the County do the following:

- Analyze the County fleet for best alternative fuel options regarding operations and implementation, carbon and criteria pollutant reduction, return-on-investment, and initial cost. Retire high emissions mowers, etc. via the scrap market, not resale, to permanently reduce this source of volatile organic compound (VOC) emissions;

- Enact policies that require full staff compliance with fuel measurement and tracking systems. Presently available consumption, use, and vehicle history data offer a somewhat skewed analysis because of varied use of vehicles;

- Benchmark against other Counties and review the internal budgeting structure involved with fleet vehicles to establish policies to drive selection of fuel-efficient vehicles by departments;

- Review and reconsider limitations on purchase of used or refurbished heavy machinery that are likely to be less efficient;

- Consider ending the practice of "remaindering" 6-cylinder police vehicles to become fleet vehicles, as these vehicles are high fuel consumers;

- Conduct County-wide review of vehicles and assess the feasibility of converting vehicles to run on alternative fuels. Explore all avenues of funding including federal, state, and other private foundations for support to convert or acquire natural gas powered vehicles;

- Consider the use of compressed natural gas (CNG) fueled or dual fueled vehicles, including the potential to retrofit vehicles;

- Consider the practicality of supplementing fuel sources with alternative fuels such as biofuels;

- Advocate and provide leadership in the effort to analyze CNG fleet conversion and illustrate the potential benefits to the City of Pittsburgh, local municipalities, and other County authorities; and

- Advocate for the use of clean vehicles by County contractors and support a County procurement policy that provides preference for contractors using clean alternative fuel vehicles.

- Encourage the Port Authority of Allegheny County to evaluate the conversion of Port Authority vehicles to run on alternative fuels and explore all avenues of funding including private/public partnerships. Share with Port Authority management the results of the County's evaluation of its own fleet.

<u>Public Programs</u>

- **Health and Safety**

  - Adopt a "Safety at All Times" culture for County facilities and employees, and develop and implement a Safety Plan to improve safety metrics and the overall safety culture within the County workforce;

  - Advocate that portions of public funds be allocated to the Pennsylvania Department of Health to allow it to work with appropriate local resources to conduct research and develop background databases on the public health impacts of local issues;

- Emphasize meeting applicable federal and state air quality requirements and regulations; and
- Ensure that air quality monitoring stations and emission control systems are working appropriately. The County should track developments of air monitoring systems to ensure accurate data collection and analysis.

- **Private/Municipal Energy Programs**
  - Advocate for a region of energy conservation;
  - Encourage municipalities to use Energy Star portfolio management to track and assess energy and water consumption;
  - Maintain a clearinghouse for information on cost-savings opportunities and energy efficiency programs for municipal governments and authorities;
  - Assist municipalities in updating municipal ordinances to include requiring green infrastructure;
  - Develop or encourage the development of a model stormwater ordinance that integrates the use of green infrastructure to the maximum extent practical and/or provide example language and have it available online;
  - Provide assistance to help municipalities update their ordinances or implement projects consistent with a municipality's adopted green infrastructure ordinance;
  - Coordinate programs offering subsidized home energy audits/weatherization programs for County residents to ensure widespread access to a program. Evaluate the need for development of additional energy conservation programs and develop it if necessary;
  - Create and implement an Allegheny Sunshine Program to help County businesses and households to install solar technology, to advance solar businesses, and stimulate the local solar market. Initial recommendations of the Clean Energy Finance Center, through the DOE Rooftop Challenge, include five possible finance scenarios for solar in the Allegheny County region. (The Clean Energy Finance Center report should be finalized September 1, 2012); and
  - Coordinate programs offering energy conservation programs and resources for Commercial and Industrial properties and publicize to encourage non-residential County citizen participation.

- **Jobs**

The County should encourage the use of local training programs and unions to prepare people for careers that can be used in the shale gas industry and connect them to industry contractors. Standard training and knowledge could be taught so that there is a common minimum knowledge level. Appropriate training should be developed and coordinated with trade unions, community colleges, and local trade or technical school. Education on drug free requirements and drug testing should be considered and implemented to promote a drug-free workplace and industry.

  - Evaluate all energy-related jobs in the County and determine if there is training available in the County, either through a formal institution or through an organization such as a union, for residents who want to be employed by those jobs. If no training is available for a particular job, explore options

for making the training available, such as creating a certificate program at Allegheny County Community College. Then confirm that employees on job sites owned by Allegheny County meet applicable training requirements;

- Establish a program to direct displaced workers to energy-related job training programs offered by formal institutions and organizations, including the Allegheny County Community College Marcellus Shale Initiative; and

- Consider methods to encourage local employment on energy-related projects, including the feasibility of including such requirements in County contracts, or in contracts with any County financial support. Explore the potential for incentivizing local employment.

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Financial Sustainability

VISION TEAMS

Imagining Allegheny County's Tomorrow

Joan Ellenbogen, Chair

County of Allegheny

Executive Summary

Charged with reviewing and making recommendations on the financial sustainability of the County, the Financial Sustainability Vision Team crafted strategies the County might embrace to reduce reliance on property taxes as well as, delineating other options the County should consider to ensure financial integrity. Additionally, the team focused on identifying factors that may jeopardize that financial stability and identifying strategies that could be employed to move forward.

Recognizing the depth and breadth of these issues, the committee issued findings and recommendations related to: (1) Increasing operational efficiencies; (2) Options for long-term sustainability and tax fairness; and, (3) Generation of supplemental revenue. Given the complexity and interrelationships of these issues, recommendations were categorized for consideration as Immediate, Short-Term, Medium-Term, or Long-Term, as follows:

1. **Increasing Operational Efficiencies**

   SHORT-TERM RECOMMENDATION: Consider engaging an independent third party to develop, conduct, and analyze a survey of all employees to generate their ideas on achieving greater efficiency

   SHORT-TERM RECOMMENDATION: Consider conducting a general review of information collection, management, and dissemination among the departments to ensure that up-to-date data are organized to ensure maximum usefulness for analysis and decision-making

2. **Options for Long-Term Sustainability and Tax Fairness**

   Advocate for state legislative action

   SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to establish a statewide commission to address property taxes across the Commonwealth and recommend either a uniform methodology of levying property tax, or a plan by which to eliminate or greatly reduce the property tax burden on the citizens.

   SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation allowing the County to shift to alternative funding sources.

   Consider the Viability of Alternatives to the Property Tax System such as Sales Tax Changes or Income Tax

   LONG-TERM RECOMMENDATION: Consider reducing its reliance on or eliminate the property tax and replace it with an alternative funding source.

   OPTION ONE: SALES TAX

   SHORT-TERM RECOMMENDATION: Consider expanding the state sales tax to a number of currently exempted goods and services. Exempted items such as groceries, clothing, prescription drugs, tuition, and legal and medical services should remain exempt, but other goods and services should be considered for inclusion in the sales tax. For example, Pennsylvania is the only state that does not have a tax on non-cigarette tobacco products. The County should also consider whether business-to-business transactions should be exempt from the sales tax.

LONG-TERM RECOMMENDATION: Consider increasing the sales tax by an additional 1%. The expected additional revenue generated would be around $176 million annually.

OPTION TWO: INCOME TAX

LONG-TERM RECOMMENDATION: Consider instituting a personal income tax.

LONG-TERM RECOMMENDATION: Consider negotiating with contiguous counties to establish a regional personal income tax.

Achieve Property Tax Fairness

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to legislate a statewide assessment system so that Allegheny County is not unfairly singled out.

In the event that a statewide solution doesn't materialize, there are still several steps the County could take to ameliorate the existing problem:

MEDIUM-TERM RECOMMENDATION: County Council should consider adopting legislation that would define a consistent system and process by which property values are adjusted so as to minimize subjectivity and confusion through a more objective "mathematical" calculation. We suggest that a system be based on two factors:

- Square footage: Calculate based on square footage of the property, including building and lot; and
- Location: Factor in the municipality or township of residence/ownership so that there is both fairness based on current neighborhood "value" and that residents/owners are encouraged to locate in "undervalued" areas to increase population and market property values.

Or:

MEDIUM-TERM RECOMMENDATION: County Council should consider adopting legislation that would use the 2013 reassessment numbers as a base year.

MEDIUM-TERM RECOMMENDATION: County Council should consider adopting legislation that provides a schedule for future reassessments so that they occur in predictable, reliable intervals.

3. Generation of Supplemental Revenue

Departmental Revenue Generation

IMMEDIATE RECOMMENDATION: Where appropriate, consider increasing user fees to keep pace with the rise in the Consumer Price Index.

IMMEDIATE RECOMMENDATION: The County Executive and Manager should work with department directors to devise an overall strategy and process, and then empower the directors, within the parameters of that process, to develop department-specific incentives for the purpose of generating additional revenues.

IMMEDIATE RECOMMENDATION: If not already available internally, each department should produce an up-to-date fee schedule.

Support Adoption of the 2011-2012 Official Policy Statement by the County Commissioners Association of Pennsylvania, calling for the following:

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to use haste in complying with the Pennsylvania Supreme Court's decision in Allegheny v. Commonwealth, without commensurate reduction in other county programs, and oppose any legislation that purports to negate the funding decision.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to reinstate the district justice reimbursement or equivalent funding for the general purposes of the County, regardless of the manner of resolution of court funding generally.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to provide for appropriate budgeting, accounting, and auditing of drug forfeiture receipts, including the ability of the commissioners or their home rule counterparts to allocate the funds for general county purposes.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation requiring the state to pay the costs of arbitrators impaneled on behalf of the Court of Common Pleas.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation to pay the costs of the Public Defender's Office.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation providing full and permanent funding for the establishment of drug courts and other treatment courts in Pennsylvania where such courts might be effective.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation to permit additional mechanisms to collect fines, costs, and judgments, including such strategies as wage attachments, freezing bank accounts through credit bureau reporting systems, garnishment of federal and state income tax refunds, denial of driver's licenses except where wage attachments have been agreed to, garnishment of lottery winnings, attachment of workers' compensation or other insurance payments, and publishing the offender's name and fiscal delinquency data in a statewide databank for ease of tracking.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to transfer juror costs to the state.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to increase funding from the state to each county for reimbursement of costs associated with each judge in the various judicial districts from the current $70,000 per year to $150,000 per year, with corresponding adjustment annually by the same percentage as the cost of living increases in judicial pay.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation requiring plaintiffs to reimburse counties their actual costs to have them excused from cases in which the counties were wrongfully sued.

Market-Based Opportunities for Revenue Generation:

SHORT-TERM RECOMMENDATION: Allegheny County should consider taking advantage of market-based revenue opportunities by selling advertising rights to county property and naming rights to roads, bridges, and other assets.

MEDIUM-TERM RECOMMENDATION: Allegheny County should consider providing certain services, for a fee, to local governments that cannot adequately or cost-effectively provide the services on their own.

Public/Private Partnerships or Outright Sale of Assets

SHORT-TERM RECOMMENDATION: Consider investigating the costs and benefits of selling and/or leasing appropriate assets to for-profit entities.

SHORT-TERM RECOMMENDATION: Consider investigating the sale or lease of the Nova and Yeshiva work release houses to non-profits that specialize in work-release services, such as The Program for Offenders, Inc., only with the assurance as well that such non-profit continuously maintain compliance standards.

Adoption of New Fees, Licenses, and Permitting Requirements

MEDIUM-TERM RECOMMENDATION: Consider exploring, identifying, and possibly instituting license requirements for businesses and professions that are not already governed by state, county, or city licensing requirements.

SHORT-TERM RECOMMENDATION: Consider the costs and benefits of a general business license requirement for all businesses in the County.

SHORT-TERM RECOMMENDATION: Consider generating additional revenue by instituting entertainment license requirements.

SHORT-TERM RECOMMENDATION: Consider generating additional revenue by instituting an alcoholic beverage license requirement

SHORT-TERM RECOMMENDATION: Consider empowering County officers to issue citations to property owners both to generate revenue as well as encourage property owners to maintain the integrity of their communities.

SHORT-TERM RECOMMENDATION: Consider instituting a County realty transfer fee or increase related administrative fees.

Payment in Lieu of Taxes Agreements (PILOTs)

MEDIUM-TERM RECOMMENDATION: Rather than challenging an organization's non-profit tax liability status in court, Allegheny County should consider the implementation of Payment in Lieu of Taxes agreements with non-profits within a defined, collaborative, and consensual process; it is strongly within the County's interest to pursue such a program. The County should be the leader in convening and

facilitating such a collaborative process with key non-profits (serving both the City and the County) to reach agreement on a comprehensive PILOT policy as it is in its interest to do so, and the County Executive has the broader leadership platform.

Additionally, consider establishing a task force with an independent facilitator to take this charge and pull together non-profit, City, and state leaders in an intentional conversation that will result in meaningful commitments.

Miscellaneous (Other) Tax Considerations

IMMEDIATE RECOMMENDATION: Consider raising the Allegheny County Alcoholic Beverage Tax back to the original rate of 10%.

SHORT-TERM RECOMMENDATION: Consider increasing the administrative fee to be recouped by the County related to the Hotel Occupancy tax.

SHORT-TERM RECOMMENDATION: Consider levying an additional cigarette tax in Allegheny County with provisions directing the revenue to the County.

SHORT-TERM RECOMMENDATION: Consider levying taxes on insurance, meals, fuel, and motor vehicles.

Creation of an "Infrastructure Trust"

LONG-TERM RECOMMENDATION: Consider establishing an Infrastructure Trust, along the lines of that implemented by the City of Chicago, to relieve the full burden of financing infrastructure projects aside from dependence on property tax supported General Obligation Bonds issued by the County. Consider the creation of a similar government-related entity that would look to regional and national sources of long-term investment funding such as foundations, pension funds, private equity funds and mutual funds.

County Equity Ownership

LONG-TERM RECOMMENDATION: Consider engaging regional universities on the topic of equity ownership for Allegheny County.

Consolidation and Asset Management Changes

MEDIUM-TERM RECOMMENDATION: Consider exploring the potential merger of duplicative functions of Allegheny County and the City of Pittsburgh, such as the Pittsburgh and Allegheny County homicide divisions or the Urban Redevelopment Authority and the Allegheny County Redevelopment Authority.

MEDIUM-TERM RECOMMENDATION: Consider reviewing the process the Allegheny County Redevelopment Authority uses to convey property to interested sellers, and ensure that this process is expeditious, efficient, and that the County does not hold land for too long due to a tedious process. Further ensure that the County receives a fair value for property conveyed.

MEDIUM-TERM RECOMMENDATION: Consider conducting a building audit to learn if the county is leasing or renting property and consolidate county functions into fewer buildings, providing for the opportunity to rent out or sell newly vacant buildings.

MEDIUM-TERM RECOMMENDATION: Consider conducting an audit to learn if there are operations being rendered downtown that could be moved to other, lower-cost areas.

Vision Team

FINAL RECOMMENDATION: Consider preserving the Financial Sustainability Vision Team as a working advisory committee to the County Executive.

Vision Team Charge

The Financial Sustainability Vision Team was charged with reviewing and making recommendations on the financial sustainability of the County; specifically, what steps the County might take to reduce reliance on property taxes, and what other options the County should consider to provide for financial sustainability – as well as identifying factors that may jeopardize that stability and how best to address or plan for those factors moving forward.

Scope of Work/Summary of Methodology

Scope of Work

The Vision Team addressed these essential topics in response to the charge:

- Optional strategies to ensure sustainability and tax fairness
  - Sales tax
  - Income tax
  - Property tax fairness

- Ability to generate additional or supplemental revenues (over and above those currently generated through County activities)
  - Departmental revenues
  - "Market-based" opportunities to generate revenues
  - Fees, licenses, and permits
  - Payment in lieu of taxes (PILOTs)
  - Additional taxes
  - "Infrastructure Trust"
  - County equity ownership
  - Cost savings through consolidation and asset management changes

Summary of Methodology

The Vision Team divided the work under its charge into five subcommittees, each of which met throughout the spring to conduct research and analysis and discuss findings and recommendations. These subcommittees included:

- Alternative Taxes and Revenues
- Other Municipalities' Practices
- Property Tax Sustainability
- Service Provision and Assets
- User Fees

The subcommittees met as a full Vision Team to vet and delineate findings and recommendations. Specific subcommittee reports were submitted to the full committee for discussion, and subcommittee recommendations are included in this report. The complete subcommittee reports, including research have been provided to the County Executive, along with this report.

Overarching Themes

During the course of the Financial Sustainability Vision Team's research and development of findings and recommendations for this report to the County Executive, several themes emerged which we believe are important to state. These notes are offered in the best possible spirit of good will, as it is the wish of the entire Financial Sustainability Vision Team, comprised of volunteer citizens of the County, to help take excellent governance to the next level.

While the Vision Team was not charged with examination of County expenditures and efficiencies and thus cannot offer specific findings and recommendations on such, we believe that there are further possibilities in these areas to be explored, as well as opportunities to simplify County government to effect greater cost savings and leveraging of programs and services.

> *SHORT-TERM RECOMMENDATION: The County should consider engaging an independent third party to develop, conduct, and analyze a survey of all employees to generate their ideas on achieving greater efficiencies.*

The County, as is the case with other government entities (particularly at the local level), will have to live within its means. Given the state of the global economy and the exigencies of both our Federal and state government, no relief from continuing revenue shortfalls and increasing expenses due to a number of factors, is in sight. Therefore, it is in our common interest to continue focus on both the revenue and the expense sides of the budget.

The Vision Team thanks the Allegheny County Department of Budget and Finance for assistance during the vision team process. The Vision Team did, however, find a lack of information available to fully carry out its charge, particularly regarding the ability to decrease or eliminate property taxes. Moreover, certain asset and/or user fee lists were unavailable. Further, for purposes of analyzing the costs and benefits of recommending retention of certain assets or raising fees, the Vision Team in many cases was not able to determine from the information available how expenses compared with related revenues.

> *SHORT-TERM RECOMMENDATION: The County should consider conducting a general review of information collection, management, and dissemination among the departments to ensure that up-to-date data are organized to ensure maximum usefulness for analysis and decision-making.*

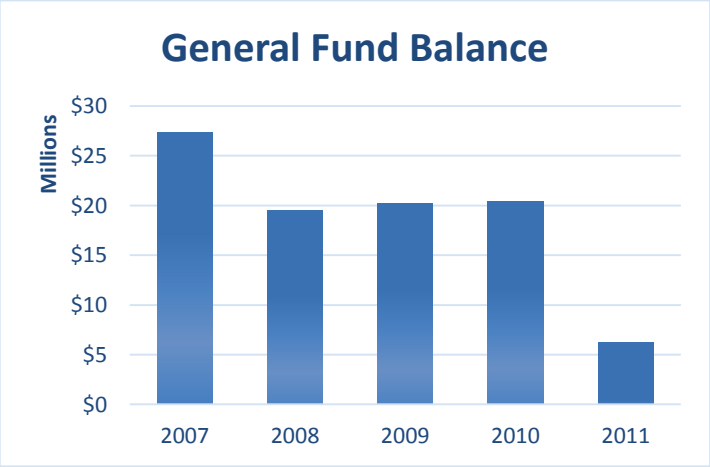
With regard to the results of this report as it relates to the rest of the vision team process (eleven other teams), we believe that there may be significant overlap in some topics studied and recommended upon; therefore we suggest that there be a joint meeting of the other vision team chairs and subcommittee chairs to vet and come to consensus.

Finally, we would like to emphasize that we understand that many of our recommendations are likely to incite controversy. The financial crisis has made clear the urgent need for change – and change worth making never comes without its detractors. We hope these recommendations foster a sensible, calm discussion on what the County must do to weather the storm it finds itself in, and hope that the need for change doesn't succumb to the strength of political winds.

Situational Context

The global financial crisis has left local governments in turmoil as they grapple with shrinking tax revenues and increasingly inadequate funding from higher levels of government. The Western Pennsylvania economy has avoided the worst of the crisis due to a number of factors – a previously declining population prevented a housing bubble; some local financial institutions avoided the sub-prime mortgage market ; a booming energy industry followed the discovery of Marcellus Shale. However, Allegheny County government has not fared as well.

IMPEDIMENTS TO FINANCIAL SUSTAINABILITY



Allegheny County's short-term funding outlook is bleak. The County's fund balance prior to the onset of the financial crisis was over $43 million[1] with a General Fund balance of $27.3 million as of 12/31/07 according to the County's Office of Budget and Finance. Additionally, according to the Comprehensive Annual financial Report (CAFR), the County's fund balance at the end of 2011 was only $6.2 million although "rating agencies recommend maintaining a fund balance of at least $35 million."[2] To meet its obligations in the face of an extreme revenue shortage, the County has been forced to rely on "one-time, non-recurring, or unbudgeted areas of funding, such as a $17M transfer of PA Department of Transportation reimbursements from the Capital Fund, and other one-time payments totaling an additional $28.6M for a total of $45.6 million in one-time, non-recurring, or unbudgeted items."[3]

Further, nearly 40% of Allegheny County's approximately $750 million annual operating budget is funded by the property tax. Thus, the property tax is Allegheny County's primary source of revenue other than state funding.

This report of the Financial Sustainability Vision Team seeks to address these critical concerns to ensure the ongoing vitality of the second largest county in the State, which impacts on the region even more broadly. The Vision Team intentionally generated a wide range of ideas and understands that not all may be feasible or even, after additional discussion and analysis following this process, desirable.

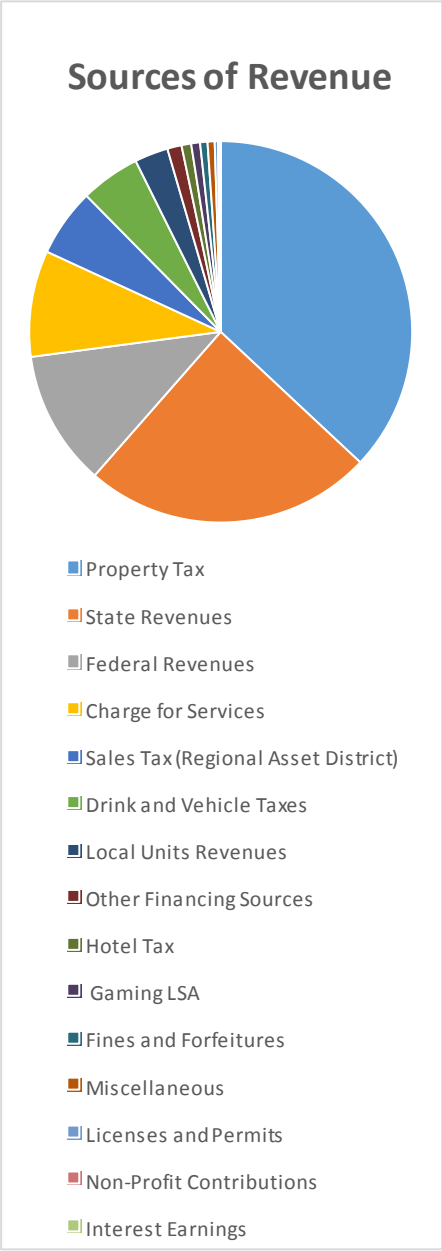
Findings and Recommendations Related to Options for Long-Term Sustainability and Tax Fairness

PLEASE NOTE: To the extent any of the following options are exercised, we recommend their implementation if, and only if, there is an equivalent reduction in the property tax. Further, it must be understood that most, if not all, of the following options require Pennsylvania General Assembly authorization to implement.

[1] Allegheny County Department of Budget and Finance
[2] Allegheny County Controller's Office, *2011 Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 2011,* Page 4.
[3] Ibid.

BACKGROUND AND CONTEXT

This section of the report goes to the heart of the issue charged to the Vision Team; i.e., both the essential lack of fairness to the residents, and the evident lack of sustainability, of the property tax as the main source of County-generated revenue. Thus, we take the time here to provide a detailed explanation and context of the current problem and resulting Vision Team recommendations.



As the past few years have demonstrated, our current property tax system is in shambles. In 2009, the Pennsylvania Supreme Court deemed Allegheny County's base-year system unconstitutional because it inherently becomes more inaccurate over time, therefore violating the uniformity clause of the Pennsylvania Constitution.

The Allegheny County Court of Common Pleas then devised a new plan for reassessment and an independent firm was hired to oversee the reassessment for $11 million. Following a series of delays for various reasons, homeowners were notified of their newly assessed property values in early 2012. After the revelation of wildly disparate values in assessment resulted in approximately 100,000 appeals on behalf of homeowners, one might conclude that the reassessment did not accomplish its intended goal of fairness for all property owners of Allegheny County.

One of the major objections to the property tax is that the value of the real estate upon which the tax is based is determined on the subjective opinion of an individual who is unlikely to be a qualified real estate appraiser; furthermore, different individuals compute the assessed values of various properties throughout the jurisdiction so the subjective nature is compounded by differing views of the different individuals. This subjectivity creates unfairness and resistance to the system.

These problems have been compounded by the fact that Allegheny County was singled out as the only County required to conduct a reassessment; most surrounding counties have not reassessed in decades.

The property tax poses additional challenges to our citizens because it is not based on an individual's disposable resources. Many senior citizens and others with fixed incomes continue to see their property taxes increase even though they may have less ability to pay than they did before.

It is clear that, as currently implemented, Allegheny County's system of property taxation is overly subjective, confusing, costly, and inequitable.

> *SHORT-TERM RECOMMENDATION: Allegheny County should consider urging the General Assembly to establish a statewide commission to address property taxes across the Commonwealth and recommend either a uniform methodology of levying property tax, or a plan by which to eliminate or greatly reduce the property tax burden on the citizens.*

SHORT-TERM RECOMMENDATION: Allegheny County should consider urging the General Assembly to pass legislation allowing the County to shift to alternative funding sources.

LONG-TERM RECOMMENDATION: Allegheny County should consider reducing its reliance on or eliminate the property tax and replace it with an alternative funding source.

Rather than recommend a specific alternative funding source, we present for consideration several options that we consider viable and preferable alternatives to the property tax.

OPTION ONE: SALES TAX

The Pennsylvania sales tax rate is currently 6.0% and the maximum allowable sales tax rate among all combined levels of government is 8.0%. Philadelphia is allowed to impose an additional 2% sales tax.[4]

In the mid-90s, in an effort to cooperatively fund the development of existing and new cultural assets throughout the region, Allegheny County and each municipality within the County agreed to create the Allegheny Regional Asset District (RAD). Allegheny County instituted a 1% sales tax, 50% of which is provided to the RAD, 25% of which is provided to Allegheny County, and the remaining 25% of which is distributed among each municipality.

SHORT-TERM RECOMMENDATION: Consider expanding the state sales tax to a number of currently exempted goods and services.[5] Exempted items such as groceries, clothing, prescription drugs, tuition, and legal and medical services should remain exempt, but other goods and services should be considered for inclusion in the sales tax. For example, Pennsylvania is the only state that does not have a tax on non-cigarette tobacco products. The County should also consider whether business-to-business transactions should be exempt from the sales tax.

LONG-TERM RECOMMENDATION: Consider increasing the sales tax by an additional 1%. The expected additional revenue generated would be around $176 million annually.[6]

Even if we assume a 10% elasticity factor resulting from an increase in the sales tax, it would still be expected to generate $152 million annually. The sales tax could be increased in a number of ways, including Allegheny County-only or statewide.

An increase in the sales tax may be advantageous for several reasons. First, a sales tax is objective, rather than subjective. Unlike with property assessments, there is no reliance on a subjective evaluation of an individual's tax liability.

Second, a sales tax spreads the taxing burden among a larger group of people, thereby reducing the average individual's tax burden. For example, individuals who neither own nor rent property currently do not pay County property taxes, yet would pay their fair share through the sales tax. Additionally, tourists and visitors from outside the County would also be contributing as taxpayers.

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[4] TaxRates.com, "Pennsylvania," accessed July 31, 2012, http://www.taxrates.com/state-rates/pennsylvania/.
[5] A complete list of exempted items is available at the Pennsylvania Department of Revenue. See Appendix for General Fund Tax Expenditure
[6] RAD Works Here, "What is RAD?" accessed July 31, 2012, http://radworkshere.org/interior.php?pageID=10.

Finally, a sales tax may be less costly to implement because it is already collected.

A common argument against increasing the sales tax is that it will hurt consumption. When the 1% sales tax was initially enacted in Allegheny County, there was significant concern that residents would "forum" shop for high-priced goods in other counties to avoid the additional 1% sales tax in Allegheny County. However, we have been unable to find any empirical data to back up the claim that this has happened in our region.

Additionally, one could argue that the sales tax is regressive because it is a flat tax on consumption regardless of income. However, there are exemptions for most items of necessity such as groceries and clothing.

OPTION TWO: INCOME TAX

> *LONG-TERM RECOMMENDATION: Consider instituting a personal income tax.*

Based on 2009 Pennsylvania Personal Taxable Income of Allegheny County residents, a 1% tax on only Allegheny County residents would generate over $300 million in revenue. A 0.3% income tax across Beaver, Butler, Washington, and Westmoreland Counties would generate over $50 million in revenue.

> *LONG-TERM RECOMMENDATION: Consider negotiating with contiguous counties to establish a regional personal income tax.*

We believe that a regional-based income tax is preferable to an Allegheny-only income tax, would generate significant revenue, accomplish fairness, and prevent emigration from Allegheny County. The manner in which contiguous counties would share their regional income tax revenue with Allegheny County is a political matter beyond our scope, but for our purposes we consider "region" to include Allegheny County and each of its contiguous counties at a minimum.

The reason to establish an income tax regionally rather than isolated to an individual county is to achieve fairness by spreading the cost of supporting certain purely public amenities over the entire geographic region. Currently, purely public amenities are supported totally by the taxpayers of the county in which the amenity resides, yet those amenities, including museums, operas, ballets, symphonies, sporting venues, universities, hospitals and many other not-for-profit enterprises, greatly benefit citizens from all of the counties contiguous to the county of residence. It would be in the public interest to have all of the counties whose residents utilize the amenities of Allegheny County share the full burden of supporting these entities.

A regional income tax, based on rate uniformity also would avoid pushing residents beyond the Allegheny County limits, where people sometimes move to avoid an Allegheny County-based tax. Currently, the Allegheny County property tax results in population bunching on the near perimeters of contiguous counties, so residents of the contiguous counties can easily enjoy the opportunities afforded by Allegheny County without sharing the cost of providing those opportunities.

The subjectivity inherent in Allegheny County's property tax system is avoidable with a regional income tax because a taxpayer's income is easily objectively measured by reviewing Forms W-2, K-1, and 1099, all of which are already prepared and used by individuals to compute federal, state, and municipal income taxes on their salaries, wages, partnership, limited liability company and S corporation income as well as pensions, dividends, interest and capital gains. It is understood that Pennsylvania statutes will require amendment to enable a county-based income tax and we

recommend that any such amendment be made as broad as possible so as to include all categories of income derived from any reasonable and applicable source.

Finally, a regional income tax would streamline the administrative process because it could be collected by a central agency, such as the Pennsylvania Department of Revenue. Then, based on the county of residence of the taxpayer, the collector could simply remit to the county the appropriate amount.

PROPERTY TAX FAIRNESS

If the property tax is not entirely eliminated, Allegheny County must make every effort to ensure that its implementation of the property tax is more fair, predictable, and sustainable. The most immediate concern is that Allegheny County is unfairly singled out to conduct reassessments.

> *SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to legislate a statewide assessment system so that Allegheny County is not unfairly singled out.*

In the event that a statewide solution doesn't materialize, there are still several steps the County could take to ameliorate the existing problem:

> *MEDIUM-TERM RECOMMENDATION: County Council should consider adopting legislation that would define a consistent system and process by which property values are adjusted so as to minimize subjectivity and confusion through a more objective "mathematical" calculation. We suggest that a system be based on two factors:*
>
> - *Square footage: Calculate based on square footage of the property, including building and lot; and*
> - *Location: Factor in the municipality or township of residence/ownership so that there is both fairness based on current neighborhood "value" and that residents/owners are encouraged to locate in "undervalued" areas to increase population and market property values.*
>
> *Or:*
>
> *MEDIUM-TERM RECOMMENDATION: County Council should consider adopting legislation that would use the 2013 reassessment numbers as a base year.*
>
> *MEDIUM-TERM RECOMMENDATION: County Council should consider adopting legislation that provides a schedule for future reassessments so that they occur in predictable, reliable intervals.*

Findings and Recommendations Related to Generation of Supplemental Revenue

DEPARTMENTAL REVENUE GENERATION

Finding: In 2008 (the most recent year in which fee data was provided) Allegheny County estimated a collection of $53.5 million in department-related (administrative) fees. The top five revenue producers were the Kane Regional Centers ($20.3 million), the Department of Court Records ($9.5 million), the Department of Real Estate Registry & Deeds ($8 million), the Court of Common Pleas ($4.8 million), and the Parks Department ($4.1 million).

We found that a majority of departments had not increased many of their fees in over a decade, and there do not appear to be in place incentives that encourage departments to increase revenues on their own.

IMMEDIATE RECOMMENDATION: Where appropriate, consider increasing user fees to keep pace with the rise in the Consumer Price Index. For example, a fee that has not been raised since 2001 should be increased by 24%.[7]

IMMEDIATE RECOMMENDATION: The County Executive and Manager should work with department directors to devise an overall strategy and process, and then empower the directors, within the parameters of that process, to develop department-specific incentives for the purpose of generating additional revenues. Sample incentives might include the ability of a particular department to retain a portion of its generated revenue within its own budget rather than directing all such monies back into the County's general fund.

IMMEDIATE RECOMMENDATION: If not already available internally, each department should produce an up-to-date fee schedule.

Finding: The Allegheny County Court System presents a unique opportunity to generate additional revenue. Under the Uniform Courts Provision of the Pennsylvania Constitution, Pennsylvania is required to pay for all court costs. Former Pennsylvania Supreme Court Justice Montemurro authored a report and timetable for implementation, yet the General Assembly has failed to pass the necessary legislation.

We concur with and support adoption of the 2011-2012 Official Policy Statement by the County Commissioners Association of Pennsylvania, calling for the following:

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to use haste in complying with the Pennsylvania Supreme Court's decision in Allegheny v. Commonwealth, *without commensurate reduction in other county programs, and oppose any legislation that purports to negate the funding decision.*

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to reinstate the district justice reimbursement or equivalent funding for the general purposes of the County, regardless of the manner of resolution of court funding generally.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to provide for appropriate budgeting, accounting, and auditing of drug forfeiture receipts, including the ability of the commissioners or their home rule counterparts to allocate the funds for general county purposes.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation requiring the state to pay the costs of arbitrators impaneled on behalf of the Court of Common Pleas.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation to pay the costs of the Public Defender's Office.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation providing full and permanent funding for the establishment of drug courts and other treatment courts in Pennsylvania where such courts might be effective.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation to permit additional mechanisms to collect fines, costs, and judgments, including such strategies as wage attachments, freezing bank

[7] Bureau of Labor Statistics, "Consumer Price Index, Pittsburgh – Second Half 2011," accessed July 31, 2012, http://www.bls.gov/ro3/cpipitt.htm.

accounts through credit bureau reporting systems, garnishment of federal and state income tax refunds, denial of driver's licenses except where wage attachments have been agreed to, garnishment of lottery winnings, attachment of workers' compensation or other insurance payments, and publishing the offender's name and fiscal delinquency data in a statewide databank for ease of tracking.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to transfer juror costs to the state.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to increase funding from the state to each county for reimbursement of costs associated with each judge in the various judicial districts from the current $70,000 per year to $150,000 per year, with corresponding adjustment annually by the same percentage as the cost of living increases in judicial pay.

SHORT-TERM RECOMMENDATION: Consider urging the General Assembly to pass legislation requiring plaintiffs to reimburse counties their actual costs to have them excused from cases in which the counties were wrongfully sued.[8]

MARKET-BASED OPPORTUNITIES FOR REVENUE GENERATION

There are a number of opportunities to generate additional revenue by creating new fees and permitting requirements.[9]

Finding: Although it has historically been rare for state and local governments to sell naming rights for roads, bridges, and other assets, the common practice of selling naming rights for sports arenas provides a good example of market-based revenue opportunities. Heinz pays $2.9 million per year for the naming rights to Heinz Field.[10] PNC Pays $2 million per year for the naming rights to PNC Park.[11]

SHORT-TERM RECOMMENDATION: Allegheny County should consider taking advantage of market-based revenue opportunities by selling advertising rights to county property and naming rights to roads, bridges, and other assets.

Allegheny County maintains more than 400 miles of inter-municipal roadways and 521 bridges (including more than 191 "major structures" ranging from 20 feet to 3,100 feet). It may be appropriate sell naming rights to these roads and bridges. The County could also sell naming rights for other high-profile County assets like parks and golf courses.[12]

There is recent precedent for selling naming rights of public assets from other state and local governments. For example, Virginia became the first state to announce plans to sell naming rights to roads and bridges in March 2012, estimating generation of $109 million.[13] In May 2012, the Miami City Commission approved an ordinance allowing

[8] The Pennsylvania County Platform, 2011-2012 Official Policy Statement, County Commissioners Association of Pennsylvania, Section X. Courts. p. 32, http://www.pacounties.org/GovernmentRelations/Documents/Platform20112012.pdf.

[9] For a peer-group comparison of revenue generation, please see Appendix: Revenue Comparison by Peer group
[10] ESPN, "Sports Business, Stadium Naming Rights," accessed July 31, http://espn.go.com/sportsbusiness/s/stadiumnames.html.
[11] Ibid.
[12] County of Allegheny, 2012 Capital Budget, accessed July 31, 2012, http://www.county.allegheny.pa.us/budget/2012/FiscPlan2012_2.pdf.
[13] AllGov.com, "Virginia First State to Sell Naming Rights to Roads," accessed July 31, 2012, http://www.allgov.com/Controversies/ViewNews/Virginia_First_State_to_Sell_Naming_Rights_to_Roads_120329.

illuminated signs on three city-owned properties, which the City believes will result in an additional $1 million per year.[14] Similarly, the City Council in Oceanside, California, recently approved a sign ordinance allowing up to four electronic digital billboards on city property, which local representatives estimate could enable collection of up to $48 million over the next 25 years by leasing land for signs. The city will also benefit from the signs by requiring the electronic billboards to carry public service messages such as Amber Alerts for missing children.[15]

Finding: Explore opportunities to increase County funds through entrepreneurial enterprises.

> *MEDIUM-TERM RECOMMENDATION: Allegheny County should consider providing certain services, for a fee, to local governments that cannot adequately or cost-effectively provide the services on their own.*

Allegheny County excels at many services that are more costly or less effective for municipalities to provide, such as tax collection and payroll services

Finding: There may be opportunities to generate additional revenues through public/private partnerships or outright sale of assets. Both of the proposals below require much further cost-benefit analysis than the FSVT was able to conduct during this timeframe.

> *SHORT-TERM RECOMMENDATION: Consider investigating the costs and benefits of selling and/or leasing appropriate assets to for-profit entities.*

> *SHORT-TERM RECOMMENDATION: Consider investigating the sale or lease of the Nova and Yeshiva work release houses to non-profits that specialize in work-release services, such as The Program for Offenders, Inc., only with the assurance as well that such non-profits continuously maintain compliance standards.*

ADOPTION OF NEW FEES, LICENSES, AND PERMITTING REQUIREMENTS

Please note than an overarching concern to the proposals stated below is the need to very carefully weigh the potential benefits of these revenue generating ideas against the salient interests of the County to encourage economic development through a business-friendly environment. Further, we would urge that an important consideration for this section of the report should be consideration of working with the contiguous counties to explore the possibility of regionalization of additional fees, licenses, and permitting requirements to mitigate the unwitting encouragement of residents to move to neighboring counties to avoid these costs while continuing to enjoy the amenities offered by the second largest county in the Commonwealth. We believe that thinking regionally benefits Allegheny County as well as the others.

Finding: Allegheny County, in comparison to other governmental entities, issues a relatively small number of professional or business licenses.[16] These are limited to plumbers[17], food facilities[18], sources of air pollution[19], private detectives[20], rooming houses, nursing, and personal care homes[21], and swimming pools and lifeguards.[22]

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[14] Kathleen McGrory, "Illuminated Billboards Coming to Miami City Properties," accessed July 31, 2012, http://www.hispanicbusiness.com/2012/5/30/illuminated_billboards_coming_to_miami_city.htm.
[15] Ray Huard, "Oceanside: Electronic billboards on tap along freeways," available at http://www.nctimes.com/news/local/oceanside/oceanside-electronic-billboards-on-tap-along-freeways/article_aea8b94d-1a5e-5fbd-bfec-b828492fa186.html.
[16] For a peer-group comparison of fees, permits, and licenses, please see Appendix: Licenses and Permits.
[17] "Plumbing," Allegheny County Health Department, available at http://www.achd.net/plumbing/plumbingstart.html.
[18] "Food Permits," Allegheny County Health Department, available at http://www.achd.net/food/foodpermit.html.

MEDIUM-TERM RECOMMENDATION: Allegheny County should consider exploring, identifying, and possibly instituting license requirements for businesses and professions that are not already governed by state, county, or city licensing requirements.

SHORT-TERM RECOMMENDATION: Allegheny County should consider the costs and benefits of a general business license requirement for all businesses in the County.

Many business and professional licenses are issued at the state level. The Pennsylvania Bureau of Professional and Occupation Affairs provides administrative, logistical, and legal support to 29 licensing boards and commissions, each authorized and governed by its own statute. Of the 29 boards and commissions, 13 are business-related, governing professions ranging from accounting to crane operations. There are 16 health-related boards, governing professions ranging from optometry to massage therapy and social work.[23]

The City of Pittsburgh also issues licenses for over a dozen types of businesses and professions, including antique dealers, contractors, pawnbrokers, and welders.[24]

Finding: Allegheny County currently requires only a few types of entertainment licenses and permits, including licenses for bingo and "small games of chance." In addition, for entertainment businesses that include food facilities, Allegheny County requires a health department license.[25]

Pennsylvania issues several types of entertainment licenses. The Pennsylvania Gaming Control Board, for example, is responsible for awarding gaming licenses.[26] The Pennsylvania Liquor Control Board also issues amusement permits to retail licensees who furnish entertainment such as dancing, theatrical or floorshows, or motion picture exhibitions.[27]

The City of Pittsburgh issues "amusement places and producers" licenses for any place "where the general public or a limited number of persons may, upon payment of an established price, attend or engage in any amusement."[28] The City also charges an "amusement tax" for "all manner and forms of entertainment," such as athletic contests, shows, and exhibitions.[29] In addition, the city requires Special Events permits for events on public property.[30]

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[19] "Air Quality – Permitting," Allegheny County Health Department, available at: http://www.achd.net/air/permitting.html.
[20] "Cost and Fee Schedule," Allegheny County Criminal Division, available at http://www.alleghenycounty.us/crim/fees.aspx.
[21] Allegheny County Housing and Community Environment, available at http://www.achd.net/housing/commenvironstart.html.
[22] Ibid.
[23] "Bureau of Professional and Occupational Affairs," Pennsylvania Department of State, available at http://www.dos.state.pa.us/portal/server.pt/community/bureau_of_professional___occupational_affairs/12483.
[24] "License Information," City of Pittsburgh Bureau of Building Inspection available at http://www.city.pittsburgh.pa.us/bbi/html/license_information.html.
[25] "Food Permits," Allegheny County Health Department, available at http://www.achd.net/food/foodpermit.html.
[26] Pennsylvania Gaming Control Board, "PA Approves First Gaming Licenses , Three Facilities Expect to Begin Slots Operations Within Months," September 27, 2006, http://gamingcontrolboard.pa.gov/?pr=69.
[27] "Information Booklet for Retail Licenses," Pennsylvania Liquor Control Board, available at http://www.lcbapps.lcb.state.pa.us/webapp/education/item_images/4419.pdf.
[28] "Amusement Places and Producers License," City of Pittsburgh Bureau of Building Inspection, available at http://www.city.pittsburgh.pa.us/bbi/html/amusement_places_and_producers.html.
[29] City of Pittsburgh Amusement Tax Regulations, January 1, 2006, available at http://www.city.pittsburgh.pa.us/finance/assets/forms/2008/2008_AT_regs.pdf.
[30] City of Pittsburgh Special Event Permit Regulations, available at http://www.pittsburghpa.gov/police/files/special_events/Spec_Events_Regs_final_2009_fees_05-28-09.pdf.

SHORT-TERM RECOMMENDATION: Allegheny County should consider generating additional revenue by instituting entertainment license requirements.

It should be further noted that, for many entertainment events, the County actually incurs related expenses without compensation through derived revenue.

Finding: Allegheny County does not require a retail license to sell alcoholic beverages.

The Pennsylvania Liquor Control Board is responsible for licensing and retailing alcoholic beverages within the Commonwealth of Pennsylvania.[31] The City of Pittsburgh also collects fees for liquor and malt beverage licenses. All establishments in Pittsburgh that serve liquor or malt beverages are required to purchase an annual license costing $75 to $250 depending on the type of establishment. The state collects these fees and forwards a lump sum payment to the city. The City of Pittsburgh projects that it will collect $430,402 for such licenses in 2012.[32] We note that this recommendation may require enabling legislation at the state level.

SHORT-TERM RECOMMENDATION: Allegheny County should consider generating additional revenue by instituting an alcoholic beverage license requirement

Finding: Unlike a number of other local government entities, Allegheny County does not cite property owners for negligent property maintenance.

Many municipal governments issue citations for a variety of property maintenance issues, such as broken windows, overgrown lawns, or graffiti. Officials in the City of Baltimore and surrounding counties, for example, issue citations to homeowners for grass and weeds that have grown more than 8 to 12 inches, depending on the local ordinance. For homeowners who do not comply, officials send government crews or contractors to do the landscaping and then charge the property owner through a bill or a lien attached to the property. In Baltimore County, homeowners are charged a mobilization fee of at least $80 and a $75 administrative fee in addition to the cost of the landscaping work.[33] Hernando County, Florida, issues similar citations and fees for property owners who permit grass or weeds to grow over 18 inches tall. Hernando County Code Enforcement officials are responsible for the inspections and for issuing violations notices.[34]

SHORT-TERM RECOMMENDATION: Allegheny County should consider empowering its officers to issue citations to property owners both to generate revenue as well as encourage property owners to maintain the integrity of their communities.

Finding: Allegheny County receives no income for collection of realty transfer fees other than small administrative and recording fees.

Real estate sold in Allegheny County is subject to both state and local realty transfer fees. The fee is based on a percentage of the sales price. The state fee is typically one percent while municipal and school district fees vary by

[31] "About the PLCB," Pennsylvania Liquor Control Board, available at http://www.lcb.state.pa.us/portal/server.pt/community/about_the_plcb/17499.
[32] "2012 Operating Budget," City of Pittsburgh, available at http://www.city.pittsburgh.pa.us/main/html/budget.html.
[33] Lisa Goldberg, "Grass 'police' help weed out overgrown lawns," August 21, 2005, available at http://articles.baltimoresun.com/2005-08-21/news/0508210104_1_grass-baltimore-county-code-enforcement.
[34] "Frequently Asked Questions," Hernando County Code Enforcement, available at http://www.co.hernando.fl.us/code/brochures/WEB-5%20-%20County%20Code%20Enforcement.pdf.

location. The City of Baltimore collects roughly $25 million annually in real estate transfer fees, and the City of Philadelphia collects roughly $116 million annually from such fees.[35]

Despite the fact that Allegheny County's Department of Real Estate is the agency responsible for the collection of these fees, the County receives no income from them.

> *SHORT-TERM RECOMMENDATION: Allegheny County should consider instituting its own realty transfer fee or increase related administrative fees.*

PAYMENT IN LIEU OF TAXES AGREEMENTS (PILOTs)

Finding: PILOTs may be advantageous because they result in non-profits paying for the public services they consume, provide essential revenue for some municipalities, address inequities created by the charitable property tax exemption, and can reduce inefficient location decisions made by non-profits. However, PILOTs are often ad hoc, secretive, and contentious. They could lead non-profits to raise fees, cut services, or reduce employment, and the cost of government administration for PILOTs can be high.

Although the recent Pennsylvania Supreme Court decision in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*, 1012 WL 1415770 (PA), has not changed the law on what constitutes a "purely public charity" for real estate tax exemption purposes, the County may be tempted to challenge the tax exempt status of properties previously determined to be exempt from real estate taxes under the test established in *Hospital Utilization Project v. Commonwealth,* 487 A.2d 1306 (Pa. 1985) ("HUP").[36] However, due to uncertainty over how the HUP test will be applied, there will be an increased incentive for nonprofits to enter into PILOT arrangements and it may be used as a strong negotiation tool.

> *MEDIUM-TERM RECOMMENDATION: Rather than challenging an organization's non-profit tax liability status in court, Allegheny County should consider the implementation of Payment in Lieu of Taxes agreements with non-profits within a defined, collaborative, and consensual process; It is strongly within the County's interest to pursue such a program. The County should be the leader in convening and facilitating such a collaborative process with key non-profits (serving both the City and the County) to reach agreement on a comprehensive PILOT policy as it is in its interest to do so, and the County Executive has the broader leadership platform.*[37]
>
> *We further suggest that the County consider establishing a task force with an independent facilitator to take this charge and pull together non-profit, City, and state leaders in an intentional conversation that will result in meaningful commitments. This is an ideal collaborative opportunity.*

The Allegheny County Controller's Office recently stated that Allegheny County is losing nearly $95 million in revenue each year due to property tax exemptions.[38] Based on Allegheny County's 2012 Certified Estimated Assessed Valuation Report, approximately 22% of the assessed valuation in the County is considered exempt from property taxes. In the City of Pittsburgh, that number is around 40%. In 2010, there were 9,308 non-profits located in the County and registered

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[35] Refer to Appendix: County and City Transfer Tax

[36] "Purely Public Properties in Pennsylvania, Back to the Future," Saul Ewing Alert, May 2012, available at http://www.saul.com/publications-alerts-833.html.

[37] Refer to Appendix: Sample Agreement to Make Payments in Lieu of Taxes

[38] Deanna Garcia, "Allegheny County Controller Calls for Review of Tax-Exempt Properties," June 25, 2012, available at http://www.essentialpublicradio.org/story/2012-06-25/allegheny-county-controller-calls-review-tax-exempt-properties-11559.

with the IRS. Hospitals and medical research charities make up 14% and higher education and other education organizations make up 16%.[39] Since 2009, the County has received approximately $300,000-$325,000 annually in PILOTs.

MISCELLANEOUS (OTHER) TAX CONSIDERATIONS

Finding: Allegheny County does not receive the full benefit of the locally legislated tax on retail sale of alcoholic beverages.

In 2007, Allegheny County instituted a 10% tax on the retail sale of alcoholic beverages within the County, with the funds directed to the Port Authority. In 2009, the tax rate was lowered to 7%. As the ordinance itself has been in place for five years, the County could take advantage of the timing to realize additional revenues by taxing to the full extent of the law.

> *IMMEDIATE RECOMMENDATION: Consider raising the Allegheny County Alcoholic Beverage Tax back to the original rate of 10%.*

Finding: The County does not gain maximum administrative cost recovery through the Hotel Occupancy tax.

The Hotel Occupancy tax rate in Allegheny County is 7%. All but a small administrative fee goes to tourism agencies such as the Sports and Exhibition Authority, Convention Center, and Convention and Visitors Bureau. In 2011, revenue from this tax totaled approximately $27 million. Administrative fees redirected to the County were roughly $1 million. Raising the County's related administrative fee is a fair opportunity to raise additional funds to provide related services.

> *SHORT-TERM RECOMMENDATION: Consider increasing the administrative fee to be recouped by the County related to the Hotel Occupancy tax.*

Finding: Allegheny County misses a potential opportunity to raise revenues through cigarette sales and other miscellaneous sources.

> *SHORT-TERM RECOMMENDATION: Consider levying an additional cigarette tax in Allegheny County with provisions directing the revenue to the County.* Pennsylvania taxes the sale or possession of cigarettes and little cigars at a rate of $1.60 per pack of 20 cigarettes or $16 per carton of ten packs.

> *SHORT-TERM RECOMMENDATION: Consider levying taxes on insurance, meals, fuel, and motor vehicles.*

"INFRASTRUCTURE TRUST"

Finding: There is precedent to establish strategies that will spread more fairly the ongoing costs of infrastructure through public-private partnerships. A primary example is the recently approved, Chicago Infrastructure Trust, proposed by Chicago Mayor Rahm Emanuel and approved by Chicago City Council as a means to bring other substantial resources to bear on important infrastructure needs of the City beyond reliance on the City's property taxes to pay debt service on government bonds of the City.[40] The County's 2011 Annual Financial Report indicates principal payments were $38.3 million and interest payments were $29.3 million for a total of $67.6 million in debt service bonds issued by the County. These bonds finance various County infrastructure projects including roads and bridges, public transportation, parks,

[39] "Nonprofit Sector in Allegheny County," The Urban Institute, available at http://forbesfunds.org/files/PittsburghPoverty_combined.pdf.
[40] See Appendix: Chicago Infrastructure Trust.

public buildings including the Courts and Health and Human Services facilities and support other important infrastructure assets throughout the County.

> *LONG-TERM RECOMMENDATION: Consider establishing an Infrastructure Trust, along the lines of that implemented by the City of Chicago, to relieve the full burden of financing infrastructure projects aside from dependence on property tax supported General Obligation Bonds issued by the County. Consider the creation of a similar government-related entity that would look to regional and national sources of long-term investment funding such as foundations, pension funds, private equity funds and mutual funds*.

These sources would be approached to consider investment in infrastructure projects within the County, providing an appropriate return on the investment while at the same time reducing dependence on County property taxes to finance public debt. To the greatest extent possible, Trust projects funded by such sources would look to the projects themselves, through user fees for example, to pay back the investments made.

The authorizing legislation for the Chicago Infrastructure Trust could also help to guide the County in creating and implementing a similar government-related structure, assuring public input, governmental oversight, ethical practices by participants, and contracting and procurement that would promote minority-owned and women-owned business participation. The goal would be to identify critical infrastructure needs of the County, such as parks, libraries, neighborhood business districts, green space, energy savings in public buildings and other innovative programs that could be financed in whole or in part by the Trust, freeing up property tax revenues to be reduced or used for other purposes. Presently for every $10 Million in bonded debt issued by the County, annual debt service requirements for such bonds total approximately $800,000 to $900,000.

COUNTY EQUITY OWNERSHIP

Although the following recommendation requires longer-term study, the Vision Team has included this option to provide a basis for discussion.

Finding: The County does not realize any income from the "sale" of intellectual property developed by the resident educational assets.

In general, universities secure a small percentage of ownership of inventions, products, technologies, drugs, and intellectual property, which are developed, by students and faculty while at the universities, with students and faculty retaining the majority ownership. The County could realize potentially significant income through the transfer of a small percentage of university ownership in these types of ventures.

> *LONG-TERM RECOMMENDATION: Consider engaging regional universities on the topic of equity ownership for Allegheny County.*

An innovative way to increase revenue might be found in negotiating a type of County "ownership" of resident university intellectual property. As Allegheny County provides numerous direct and indirect infrastructure services to support all of the major universities in the region, the county could engage in revenue sharing with the universities through intellectual property equity ownership.

COST SAVINGS BY CONSOLIDATION AND ASSET MANAGEMENT CHANGES

Finding: As stated earlier in this report, the Financial Sustainability Vision Team was not charged with the examination of reducing expenditures through efficiencies; however, this may be an opportunity for consideration going forth. Below are several ideas that may be worth further exploration:

> *MEDIUM-TERM RECOMMENDATION: Consider exploring the potential merger of duplicative functions of Allegheny County and the City of Pittsburgh, such as the Pittsburgh and Allegheny County homicide divisions or the Urban Redevelopment Authority and the Allegheny County Redevelopment Authority.*
>
> *MEDIUM-TERM RECOMMENDATION: Consider reviewing the process the Allegheny County Redevelopment Authority uses to convey property to interested sellers, and ensure that this process is expeditious, efficient, and that the County does not hold land for too long due to a tedious process. Further ensure that the County receives a fair value for property conveyed.*
>
> *MEDIUM-TERM RECOMMENDATION: Consider conducting a building audit to learn if the county is leasing or renting property and consolidate county functions into fewer buildings, providing for the opportunity to rent out or sell newly vacant buildings.*
>
> *MEDIUM-TERM RECOMMENDATION: Consider conducting an audit to learn if there are operations being rendered downtown that could be moved to other, lower-cost areas.*

Again, while we do not believe runaway spending or expansion of government is to blame for the current financial situation Allegheny County is in, nevertheless there may be opportunities to realize cost savings by consolidating services and making some changes to the way assets are managed and these options should be explored.

Conclusion

The Financial Sustainability Vision Team is proud to submit this menu of immediate, short-term, medium-term, and long-term solutions and options to insure the long-term financial health of Allegheny County. We must emphasize again that many of the options we've outlined require authorization from the Pennsylvania General Assembly and/or other institutions; however, we do not believe this fact should stifle progress and we encourage the General Assembly to work with Allegheny County on solutions to our financial challenges.

After months of research and analysis, members of the Vision Team agreed that much more work needs to be done and that it is imperative that the County Executive continue to have a team of advisors as a resource and sounding board. The Financial Sustainability Vision team is a broad-based, diverse group of volunteer citizens honored to serve the County.

> *FINAL RECOMMENDATION: Consider preserving the Financial Sustainability Vision Team as a working advisory committee to the County Executive.*

Members

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Kezia Taylor
The Rock Entertainment

Christy Uffelman
Mascaro Construction

Brien Wall
Mass Mutual Financial Group

Hon. John Weinstein
Allegheny County Treasurer

George Whitmer
PNC Bank

Elise Yanders
Merrill Lynch

PA General Fund Exemptions

SERVICES

Description: Expenditures for services are not taxable under the sales and use tax except when specifically taxed by law.

Purpose: Because the primary basis for the sales and use tax is tangible personal property, the majority of services are not taxed unless they are related to taxable property. Legislation adopted in 1991 imposed the tax on charges for selected business services. Act 7 of 1997 removed computer services from the list of taxable services.

(Dollar Amounts in Millions)

Estimates:	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
LODGING							
Recreational parks, camps & campgrounds	$ 45.0	$ 47.1	$ 49.3	$ 51.7	$ 54.1	$ 56.7	$ 59.3
PERSONAL SERVICES							
Dry-cleaning & laundry services	$ 54.7	$ 57.1	$ 59.6	$ 62.2	$ 65.0	$ 67.8	$ 70.8
Personal care services	114.3	119.8	125.4	131.4	137.6	144.2	151.0
Funeral parlors, crematories & death care services	46.0	48.2	50.5	52.9	55.4	58.0	60.8
Other: personal services.	48.1	50.3	52.7	55.1	57.6	60.3	63.1
BUSINESS SERVICES							
Advertising, public relations, & related services	$ 542.2	$ 558.2	$ 574.8	$ 591.8	$ 609.3	$ 627.4	$ 646.0
Services to buildings and dwellings	88.6	90.5	92.4	94.3	96.3	98.3	100.4
Consulting (scientific, environmental, & technical)	271.2	280.2	289.4	298.9	308.8	319.0	329.5
Scientific research & development services	165.2	172.4	179.9	187.8	196.0	204.5	213.5
Information services	50.9	52.7	54.6	56.5	58.5	60.6	62.8
Administrative services	449.4	465.7	482.5	500.0	518.1	536.8	556.2
COMPUTER SERVICES							
Custom programming, design & data processing	$ 325.9	$ 337.4	$ 349.3	$ 361.7	$ 374.5	$ 387.7	$ 401.4
AUTOMOTIVE SERVICES							
Parking lots & garages	$ 59.0	$ 61.7	$ 64.5	$ 67.4	$ 70.5	$ 73.8	$ 77.1
RECREATION SERVICES							
Spectator sports admissions (excludes schools)	$ 59.6	$ 62.4	$ 65.3	$ 68.3	$ 71.4	$ 74.7	$ 78.2
Theater, dance, music & performing arts admissions	97.7	99.8	102.0	104.2	106.5	108.8	111.2
Amusement, gambling & recreation industries	328.4	343.9	360.0	376.9	394.6	413.1	432.4
Museums, historical sites, zoos, and parks	18.7	19.6	20.6	21.5	22.6	23.6	24.8
HEALTH SERVICES							
Home health care, nursing care, & other ambulatory health care services	$ 895.2	$ 948.8	$ 1,001.6	$ 1,058.5	$ 1,122.1	$ 1,190.4	$ 1,261.7
Hospitals	1,368.1	1,449.9	1,530.6	1,617.5	1,714.8	1,819.1	1,928.1
Physician & dental services	1,085.7	1,150.6	1,214.7	1,283.7	1,360.8	1,443.7	1,530.1
Social assistance, including day care	260.4	272.8	285.8	299.3	313.6	328.5	344.1
PROFESSIONAL SERVICES							
Legal	$ 495.7	$ 512.8	$ 530.5	$ 548.9	$ 567.9	$ 587.5	$ 607.8
Architectural, engineering, & related services	279.8	288.6	297.7	307.1	316.7	326.7	337.0
Accounting, auditing and bookkeeping services	203.8	210.1	216.6	223.3	230.2	237.3	244.6
Specialized design	58.7	60.8	63.0	65.3	67.7	70.1	72.6
All other professional and technical services	178.1	184.5	191.1	197.9	204.9	212.2	219.8
TRANSPORTATION SERVICES							
Transit & ground transportation	$ 110.4	$ 115.1	$ 120.0	$ 125.1	$ 130.4	$ 136.0	$ 141.8
Air transportation	334.1	347.7	361.9	376.7	392.1	408.1	424.8
Truck transportation	154.9	164.3	174.2	184.8	196.0	207.8	220.4
Other transportation	151.6	159.4	167.5	176.1	185.1	194.6	204.6
MISCELLANEOUS SERVICES							
Basic television	$ 102.9	$ 108.1	$ 113.6	$ 119.3	$ 125.3	$ 131.6	$ 138.3
Tuition (college, vocational training & instruction)	537.4	563.9	591.7	620.9	651.5	683.7	717.4
Electrical, plumbing, heating & AC service fees	NA	NA	NA	NA	NA	NA	NA
Veterinary fees	33.3	34.7	36.3	37.9	39.6	41.3	43.2
Finance & insurance	416.7	442.8	472.3	501.9	532.8	562.0	591.1
Waste management and remediation services	114.0	116.6	119.2	121.9	124.7	127.5	130.4

Beneficiaries: Virtually all 4.9 million households and all 330,000 business establishments benefit from one or more of these service tax expenditures.

Revenue Comparison

Allegheny County Financial Sustainability Vision Team
Other Municipal Practices Subcommittee
Revenue Comparison By Peer Group
May 28, 2012

Revenue Source	Allegheny County Population: 1,223,583 $736,259,373		City of Boston Population: 617, 594 $2,409,528,110		City of Indianapolis, Marion County Population: 829,718 $1,037,687,218		Kansas City Population: 459,787 $460,545,850		City of Richmond Population: 204,214 $709,978,500		Hennepin County Population: 1,154,623 $584,221,813		City of Minneapolis Population: 382,578 $694,961,000		Baltimore City Population: 620,961 $1,382,912,744		Baltimore County Population: 805,709 $1,701,781,000	
Taxes - Property	$272,419,488	37%	$1,502,324,986	62%	$311,225,440	30%	$52,237,100	11%	$215,827,600	30%	$334,205,992	57%	$343,956,000	49%	$765,738,000	55%	$1,448,849,000	85%
Taxes - Sales and Use	$42,260,699	6%	$0	0%	$0	0%	$21,952,489	5%	$25,900,000	4%	$0	0%	$0	0%	$0	0%	$0	0%
Drink/Vehicle Tax	$37,078,575	5%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Hotel Tax	$5,990,531	1%	$0	0%	$0	0%	$180,000	0%	$0	0%	$0	0%	$0	0%	$20,239,916	1%	$0	0%
Non-Profit Contributions	$1,500,000	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Gaming LSA	$5,512,986	1%	$0	0%	$0	0%	$17,350,000	4%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Licenses and Permits	$2,022,195	0%	$32,490,000	1%	$16,192,059	2%	$25,241,800	5%	$35,682,600	5%	$4,693,274	1%	$29,301,000	4%	$0	0%	$4,480,000	0%
Federal Revenues	$84,429,275	11%	$0	0%	$0	0%	$8,070,948	2%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
State Revenues	$179,882,868	24%	$395,699,782	16%	$60,711,281	6%	$0	0%	$111,892,300	16%	$0	0%	$0	0%	$92,367,169	7%	$0	0%
Local Units Revenues	$20,833,539	3%	$0	0%	$85,862,309	8%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Charge for Services	$66,296,192	9%	$133,139,372	6%	$227,481,668	22%	$24,441,652	5%	$25,303,200	4%	$69,422,383	12%	$56,776,000	8%	$0	0%	$17,923,000	1%
Fines and Forfeitures	$4,593,618	1%	$70,407,500	3%	$0	0%	$0	0%	$10,602,300	1%	$315,786	0%	$9,934,000	1%	$0	0%	$3,876,000	0%
Interest Earnings	$147,545	0%	$0	0%	$0	0%	$4,613,739	1%	$0	0%	$6,997,422	1%	$6,269,000	1%	$1,630,000	0%	$852,000	0%
Miscellaneous	$4,425,866	1%	$0	0%	$22,692,439	2%	$1,790,560	0%	$23,243,200	3%	$24,450,987	4%	$35,366,000	5%	$117,078,833	8%	$32,468,000	2%
Other Financing Sources	$8,865,996	1%	$51,000,000	2%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Cemetery Trustee	$0	0%	$2,108,718	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Parking Meters	$0	0%	$15,000,000	1%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Penalties and Interest	$0	0%	$7,710,000	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Various Excises	$0	0%	$105,345,000	4%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
URA - Chapter 21	$0	0%	$56,600,000	2%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Income Tax	$0	0%	$0	0%	$218,816,797	21%	$185,421,169	40%	$0	0%	$0	0%	$0	0%	$243,169,887	18%	$0	0%
Wheel Tax	$0	0%	$0	0%	$8,750,000	1%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Local Taxes	$0	0%	$0	0%	$31,296,700	3%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
State Taxes	$0	0%	$0	0%	$39,107,703	4%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Payment in Lieu of Taxes	$0	0%	$35,702,753	1%	$2,480,858	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Other Intergovernmental	$0	0%	$0	0%	$13,069,964	1%	$0	0%	$0	0%	$142,261,126	24%	$189,510,000	27%	$0	0%	$186,868,000	11%
Utility Tax	$0	0%	$0	0%	$0	0%	$98,070,393	21%	$27,408,000	4%	$0	0%	$0	0%	$0	0%	$0	0%
Court Fines	$0	0%	$0	0%	$0	0%	$20,176,000	4%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Other Local Taxes	$0	0%	$0	0%	$0	0%	$0	0%	$84,100,000	12%	$1,874,843	0%	$0	0%	$0	0%	$0	0%
Personal Property Tax	$0	0%	$0	0%	$0	0%	$0	0%	$52,474,100	7%	$0	0%	$0	0%	$0	0%	$0	0%
Rainy Day Fund	$0	0%	$0	0%	$0	0%	$0	0%	$52,389,500	7%	$0	0%	$0	0%	$0	0%	$0	0%
Taxes Distributed Comm.	$0	0%	$0	0%	$0	0%	$0	0%	$45,200,800	6%	$0	0%	$0	0%	$0	0%	$0	0%
Special Assessment	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$23,849,000	3%	$0	0%	$2,475,000	0%
Recordation Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$18,622,000	1%	$0	0%
Transfer Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$23,175,000	2%	$0	0%
Telecommunications Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$31,740,000	2%	$0	0%
Energy Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$37,800,000	3%	$0	0%
Net Parking Revenue	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$31,351,939	2%	$0	0%
Operating Grants and Contr.	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Motor Fuel Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Grants & Entitlements	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Admissions Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
State Cigarette Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Fees & Other Revenues	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Business Income Tax & Receipts	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Other Local Non-Tax Revenue	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
City Account	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%

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	Milwaukee County Population: 928,449 $1,098,437,000		City of Milwaukee Population: 594,833 $583,266,000		Hamilton County Population: 802,252 $918,900,000		City of Cinncinatti Population: 296,943 $339,159,000		St. Louis County Population: 998,881 $584,421,300		City of Philadelphia Population: 1,526,006 $3,860,294,000	
Revenue Source												
Taxes - Property	$266,973,000	24%	$176,843,000	30%	$248,100,000	27%	$22,578,000	7%	$115,743,700	20%	$482,716,000	13%
Taxes - Sales and Use	$61,534,000	6%	$0	0%	$64,900,000	7%	$0	0%	$244,429,000	42%	$244,585,000	6%
Drink/Vehicle Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Hotel Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Non-Profit Contributions	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Gaming LSA	$0	0%	$0	0%	$0	0%	$0	0%	$8,447,200	1%	$0	0%
Licenses and Permits	$0	0%	$12,764,000	2%	$0	0%	$7,415,000	2%	$11,543,400	2%	$0	0%
Federal Revenues	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$165,405,000	4%
State Revenues	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$542,225,000	14%
Local Units Revenues	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Charge for Services	$409,662,000	37%	$93,517,000	16%	$134,600,000	15%	$22,755,000	7%	$43,960,700	8%	$0	0%
Fines and Forfeitures	$0	0%	$5,255,000	1%	$0	0%	$4,503,000	1%	$4,578,400	1%	$0	0%
Interest Earnings	$4,476,000	0%	$4,969,000	1%	$16,700,000	2%	$9,000,000	3%	$8,186,900	1%	$0	0%
Miscellaneous	$43,339,000	4%	$18,006,000	3%	$0	0%	$1,264,000	0%	$0	0%	$0	0%
Other Financing Sources	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Cemetety Trustee	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Parking Meters	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Penalties and Interest	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Various Excises	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
URA - Chapter 21	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Income Tax	$0	0%	$0	0%	$0	0%	$222,497,000	66%	$0	0%	$1,143,143,000	30%
Wheel Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Local Taxes	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
State Taxes	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Payment in Lieu of Taxes	$0	0%	$1,050,000	0%	$0	0%	$0	0%	$0	0%	$0	0%
Other Intergovernmental	$44,952,000	4%	$270,872,000	46%	$0	0%	$44,889,000	13%	$27,995,500	5%	$0	0%
Utility Tax	$0	0%	$0	0%	$0	0%	$0	0%	$34,318,100	6%	$0	0%
Court Fines	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Other Local Taxes	$0	0%	$0	0%	$28,800,000	3%	$0	0%	$0	0%	$95,112,000	2%
Personal Property Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Rainy Day Fund	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Taxes Distributed Comm.	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Special Assessment	$0	0%	$0	0%	$0	0%	$0	0%	$33,031,800	6%	$0	0%
Recordation Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Transfer Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$116,644,000	3%
Telecommunications Tax	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Energy Tax	$267,501,000	24%	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%
Net Parking Revenue	$0	0%	$0	0%	$0	39%	$0	0%	$0	0%	$0	0%
Operating Grants and Contr.	$0	0%	$0	0%	$360,900,000	1%	$0	0%	$0	0%	$0	0%
Motor Fuel Tax	$0	0%	$0	0%	$13,500,000	0%	$0	0%	$18,673,500	3%	$0	0%
Grants & Entitlements	$0	0%	$0	0%	$0	6%	$0	0%	$0	0%	$0	0%
Admissions Tax	$0	0%	$0	0%	$51,400,000	0%	$4,175,000	1%	$0	0%	$0	0%
State Cigarette Tax	$0	0%	$0	0%	$0	0%	$0	0%	$929,300	0%	$0	0%
Fees & Other Revenues	$0	0%	$0	0%	$0	0%	$0	0%	$32,592,800	6%	$65,027,000	2%
Business Income Tax & Receipts	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$376,946,000	10%
Other Local Non-Tax Revenue	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$280,027,000	7%
City Account	$0	0%	$0	0%	$0	0%	$0	0%	$0	0%	$348,464,000	9%

Fees, Permits & Other

Charges for Services

	Allegheny County[1]	City of Boston[2]	Indianapolis[3]	City of Kansas City[4]	City of Richmond[5]	Hennepin County[6]	City of Minneapolis[7]	City of Baltimore[8]	Baltimore County[9]	Milwaukee County[10]	City of Milwaukee[11]	Hamilton County[12]	City of Cincinnati[13]	St Louis County[14]	City of Philadelphia[15]	City of St Louis[16]
General government (inc "nonmajor")	$21,853,136	$26,784,000			$185,769		$40,016,000	$28,204,000	$190,247,000	$4,243,000	$9,931,000	$52,422,000	$9,826,000	$36,835,492	$349,700,000	
Public safety (inc. police and fire)	$9,042,496	$89,485,000	$1,801,560		$379,635			$27,918,000	$5,077,000	$9,992,000	$16,202,000		$7,843,000			$5,810,000
Health and/or Human Services	$2,035,718	$45,000		$2,846,000					$3,652,000	$328,101,000	$1,071,000	$17,343,000	$864,000	$6,119,967		$1,124,000
Recreation, Parks, and culture	$3,106,362	$756,000	$1,405	$6,027,000	$149,194			$876,000	$3,382,000	$31,381,000	$1,504,000			$865,634		$272,000
Real estate (inc assessors)	$1,417,170				$36,257											
Election	$62,379															
Use of property and equipment	$2,020,237															
Property and development		$5,471,000														
Patient income / reimbursements	$8,250,912					$15,937,189										
Collection from parents and guardians	$1,434,453															
Administrative fees	$1,124,306															
Private insurance	$3,928,931															
Commercial insurance	$11,605,655															
Miscellaneous / Other	$414,437				$4,572	$8,329,792						$31,634,000	$1,715,000			$32,000
Public works and highways		$12,029,000	$175,464,967		$14,675,094			$24,469,000	$3,195,000	$29,537,000	$68,135,000			$78,878		$14,549,000
Library (inc law library)		$354,000			$22,075	$958,687		$322,000								
Schools		$9,451,000														
Fee offices																$3,972,000
Services provided to other funds																$4,816,000
Metropolitan Development			$160,000													
Code Enforcement			$913,728													
Finance and Management			$75,000		$456,211											
Telecom and Video Services (cable)			$8,500,000													
Animal Care and Control			$32,400													
County Auditor			$734,300													
County Clerk			$1,655,954													
County Coroner			$453,100													
County Recorder			$2,407,273													
County Treasurer			$1,721,380													
County Surveyor			$154,171													
Information Services			$460,000													
Sheriff			$2,998,963		$296,572	$3,670,222										
Corrections / inmates			$816,000	$157,000		$6,101,006										
MECA			$2,650,000													
Courts (inc defenders and prosecutors)			$13,758,541							$4,622,000						
Development services				$5,823,000												
Ambulance services				$16,790,000												
Convention and tourism				$220,000												
Community or convention centers				$1,079,000			$4,500,000									
Arterial street impact fee				$160,000												
Community development					$4,075,406		$9,057,000		$851,000							
Department of Social Services					$7,160											
Real Estate Services					$206,920											
Risk Management					$3,912,973											
Service Center Fees and Passports						$2,577,323										
Assessor - Services Provided To Municipalities						$1,623,671										
Public Records Fees						$7,326,184										
Client Fees						$1,822,457										
Permanent improvement							$3,203,000									
Water and sewer services								$278,145,000	$224,510,000		$173,264,000				$558,500,000	
Parking								$64,380,000			$47,477,000					
Conduits								$10,511,000								
Development loans								$299,000								
Industrial Development								$1,630,000								
Capital grants and contributions								$22,818,000								
Conservation of health								$2,102,000								
Social services								$637,000								
Sanitation and waste removal								$9,769,000								
Legislative, executive, and staff										$1,786,000						
Airport / aviation										$79,644,000					$258,100,000	
Transit										$57,624,000						
Conservation and development											$303,000					
Port											$5,398,000					
Public assistance												$39,107,000				
Other Inspection Certificates													$1,387,000			
Elevator Certificates													$565,000			
Planning and Buildings													$194,000			
Recycling Incentive Fee													$361,000			
Industrial and commercial development															$500,000	
Total	$66,296,192	$144,375,000	$214,758,742	$33,102,000	$24,407,838	$48,346,531	$56,776,000	$472,080,000	$430,914,000	$546,930,000	$323,285,000	$140,506,000	$22,755,000	$43,899,971	$1,166,800,000	$30,575,000

Notes: (1) Each city and county may categorize, aggregate, or disaggregate its revenues differently. Therefore, caution is appropriate when conducting line-by-line comparisons. (2) Some cities and counties include certain taxes in their "Licenses and Permits" and "Charges for Services" categories. We do not include such taxes in these spreadsheets.

Sources

[1] Allegheny County CAFR (2011), pg 196
[2] City of Boston CAFR (2011), pg 16
[3] CCIMC 2011 Council Adopted Budget
[4] Kansas City CAFR, 2011, pgs B1-B77
[5] Richmond CAFR 2010, pg 87
[6] Hennepin County 2012 Budget, pg I-16
[7] Minneapolis CAFR 2010, pg 30
[8] Baltimore City 2009 CAFR, pg 17 and 100
[9] Baltimore County CAFR, 2011 pg 80
[10] Milwaukee County CAFR, 2010, pg 58
[11] Milwaukee City CAFR, 2010, pgs 38, 132
[12] Hamilton County, Ohio, Preliminary 2011 Annual Information Statement pg, 39
[13] Cincinnati CAFR, 2010, pg 119
[14] St Louis County CAFR, 2010, pg 117
[15] Philadelphia CAFR, 2011, pg 149, 158
[16] City of St Louis CAFR (2011), pg 131

Licenses and Permits

	Allegheny County[1]	Boston[2]	Indianapolis[3]	Kansas City[4]	Richmond[5]	Hennepin County[6]	City of Minneapolis[7]	City of Baltimore[8]	Baltimore County[9]	Milwaukee County[10]	Milwaukee City[11]	Hamilton County[12]	Cincinnati[13]	St Louis County[14]	Philadelphia[15]	City of St Louis[16]
Firearm Licenses (or police firearm permits)	$220,784	$25,000	$330,000													
Hunting, fishing, and dog licenses	$231,693				$36,653											
Road opening permits	$125,235															
Street and curb permits		$2,200,000											$2,098,000	$359,638		
Health licenses and permits - food	$1,143,359															
Health licenses and permits - housing	$159,529															
Health inspections - unspecified		$1,650,000														
Solid waste fuel permits	$21,560															
Flammable liquid permits	$20,770															
Small games of chance permits	$80,130															
Bingo Permits	$19,135															
Building structures and permits		$16,750,000									$6,159,000		$4,526,000			$4,893,000
Weights and measures		$330,000														
Pre-rental inspections		$120,000														
Other / unspecified		$915,000			$10,395	$535,365	$29,023,000	$29,390,000	$3,858,000	$640,000	$1,296,000	$2,923,000	$3,818,000	$8,174,517	$46,295,000	$635,000
Alcoholic beverages licenses		$3,350,000							$622,000				$505,000			$473,000
Entertainment licenses		$1,750,000														
Cable television		$5,400,000														
Business and professional					$27,904,888						$5,155,000		$172,000			$6,445,000
Cigarette																$1,505,000
Communication transmission																$1,395,000
Motor vehicle					$3,549,883	$1,734,297		$1,018,000								$1,390,000
Metropolitan Development			$1,040,305	$2,215,000												
Public Works			$5,621,210		$998,015											
Code Enforcement			$8,630,264													
Animal Care and Control			$10,280													
County Clerk			$50,000													
Park maintenance				$1,621,000												
Parking				$743,000	$90,902											
Health and community services				$349,000								$3,230,000	$2,000	$3,861,216		
Community centers				$2,260,000												
Arterial street impact fee				$105,000												
Transfers, Penalties, Interest & Delinquent Collections					$2,167,654											
Parking Meter Fees & Hauling Permits					$570,122											
Police, Fire & Emergency Services			$510,000		$45,531								$56,000			
Drivers licenses						$1,238,841										
Vital certificates						$1,184,771										
Permanent improvement							$278,000									
Zoning											$338,000					
Amusements													$56,000			
Total	$2,022,195	$32,490,000	$16,192,059	$7,293,000	$35,374,043	$4,693,274	$29,301,000	$30,408,000	$4,480,000	$640,000	$12,948,000	$6,153,000	$11,233,000	$12,395,371	$46,295,000	$16,736,000

Notes: (1) Each city and county may categorize, aggregate, or disaggregate its revenues differently. Therefore, caution is appropriate when conducting line-by-line comparisons. (2) Some cities and counties include certain taxes in their "Licenses and Permits" and "Charges for Services" categories. We do not include such taxes in these spreadsheets.

Sources

[1] Allegheny County CAFR (2011), pg 195
[2] Boston CAFR (2011), pg 71
[3] CCIMC 2011 Council Adopted Budget
[4] Kansas City CAFR, 2011, pgs B1-B77
[5] Richmond CAFR 2010, pg 86
[6] Hennepin County 2012 Budget, pg I-16
[7] Minneapolis CAFR 2010, pg 30
[8] Baltimore City 2009 CAFR, pg 19
[9] Baltimore County CAFR, 2011 pg 17
[10] Milwaukee County CAFR, 2010, pg 63
[11] Milwaukee City CAFR, 2010, pg 132
[12] Hamilton County, Ohio, Preliminary 2011 Annual Information Statement, pgs 41, 108
[13] Cincinnati CAFR, 2010, pg 42, 119
[14] St Louis County CAFR, 2010, pg 117
[15] Philadelphia CAFR, 2011, pg 149
[16] City of St Louis CAFR (2011)

Allegheny County

Charges for Services	
General government	$21,853,136
Public safety	$9,042,496
Health	$2,035,718
Recreation	$3,106,362
Real estate	$1,417,170
Election	$62,379
Use of property and equipment	$2,020,237
Patient income	$8,250,912
Collection from parents and gua	$1,434,453
Administrative fees	$1,124,306
Private insurance	$3,928,931
Commercial insurance	$11,605,655
Miscellaneous	$414,437
Total	$66,296,192

Source: Allegheny County CAFR (2011), pg 196

Licenses and Permits	
Firearm Licenses	$220,784
Hunting, fishing, and dog licenses	$231,693
Road opening permits	$125,235
Health licenses and permits - food	$1,143,359
Health licenses and permits - housing	$159,529
Solid waste fuel permits	$21,560
Flammable liquid permits	$20,770
Small games of chance permits	$80,130
Bingo Permits	$19,135
Total	$2,022,195

Source: Allegheny County CAFR (2011), pg 195

General government includes Sheriff, Court Records, Real Estate, and Medical Examiner, and Orphans Court
Recreation includes golf fees, swimming fees, ski rental and lessons, ice skating

Boston

Charges for Services	
General government	$26,784,000
Public safety	$89,485,000
Parks and Recreation	$756,000
Human services	$45,000
Public works	$12,029,000
Property and development	$5,471,000
Library	$354,000
Schools	$9,451,000
Total	$144,375,000

Source: Boston CAFR (2011), pg 16

Licenses and Permits	
Building structures and permits	$16,750,000
Weights and measures	$330,000
Street and curb permits	$2,200,000
Pre-rental inspections	$120,000
Other departmental licenses and permits	$785,000
Health inspections	$1,650,000
Alcoholic beverages and licences	$3,350,000
Entertainment licenses	$1,750,000
Police firearm permits	$25,000
Other business licenses and permits	$130,000
Cable television	$5,400,000
Total	$32,490,000

Source: Boston CAFR (2011), pg 71

Indianapolis

Charges for Services	
Metropolitan Development	$160,000
Public Works	$175,464,967
Parks and Recreation	$1,405
Code Enforcement	$913,728
Police	$1,290,000
Fire	$511,560
Finance and Management	$75,000
Telecom and Video Services (cable)	$8,500,000
Animal Care and Control	$32,400
County Auditor	$734,300
County Clerk	$1,655,954
County Coroner	$453,100
County Recorder	$2,407,273
County Treasurer	$1,721,380
County Surveyer	$154,171
Information Services	$460,000
Public Defender	$345,000
County Prosecutor	$5,441,766
County Sheriff	$2,998,963
Community Corrections	$816,000
MECA	$2,650,000
Superior Courts	$7,971,775
Total	$214,758,742

Source: CCIMC 2011 Council Adopted Budget

Notes:
911 Fees are over $4 million, and there are 911 taxes, too.
Cable generates $8.5 million

Licenses and Permits	
Metropolitan Development	$1,040,305
Public Works	$5,621,210
Code Enforcement	$8,630,264
Police	$330,000
Fire	$510,000
Animal Care and Control	$10,280
County Clerk	$50,000
Total	$16,192,059

Source: CCIMC 2011 Council Adopted Budget

Kansas City

Charges for Services (nonmajor funds)	
Motor fuel tax	$247,000
Park maintenance	$745,000
Golf and tennis	$5,282,000
Development services	$5,823,000
Ambulence services	$16,790,000
Health	$2,846,000
Convention and tourism	$220,000
Community centers	$1,079,000
Arterial street impact fee	$160,000
Inmate security	$157,000
Total	$33,349,000

Source: Kansas City CAFR, 2011, pgs B1-B77

Licenses and Permits (nonmajor funds)	
Motor fuel tax	$2,082,000
Park maintenance	$1,621,000
Parking garage	$743,000
Development services	$2,215,000
Health	$349,000
Community centers	$2,260,000
Arterial street impact fee	$105,000
Total	$9,375,000

Source: Kansas City CAFR, 2011, pgs B1-B77

Richmond

Charges for Services	
Assessor of Real Estate	$36,257
Richmond Public Library	$22,075
City Sheriff	$296,572
Department of Community Development	$4,075,406
Department of General Services	$185,769
Department of Finance	$456,211
Department of Social Services	$7,160
Departments of Police, Fire and Emergency Services	$379,635
Department of Public Works	$14,675,094
Department of Parks, Recreation and Community Facilities	$149,194
Real Estate Services	$206,920
Risk Management	$3,912,973
Non-Departmental	$4,572
Total	$24,407,838

Source: Richmond CAFR 2010, pg 87

Licenses and Permits	
Business and Professional	$27,904,888
Vehicle	$3,549,883
Dog	$36,653
Transfers, Penalties, Interest & Delinquent Collections	$2,167,654
Parking Meter Fees & Hauling Permits	$570,122
Department of Police, Fire & Emergency Services	$45,531
Vehicle & Parking Permits	$90,902
Department of Public Works	$998,015
Non-Departmental	$10,395
Total	$35,374,043

Source: Richmond CAFR 2010, pg 86

Hennepin County

Charges for services	
Service Center Fees and Passports	$2,577,323
North Point Patient Reimbursements	$15,937,189
Assessor - Services Provided To Municipalities	$1,623,671
Boarding of Prisoners	$4,881,334
Correction Facility Fees	$1,219,672
Law Library	$958,687
Public Records Fees	$7,326,184
Client Fees	$1,822,457
Sheriff Fees	$3,670,222
Other Fees and Service Charges	$8,329,792
Total	$48,346,531

Source: Hennepin County 2012 Budget, pg I-16

Licenses and Permits	
Drivers licenses	$1,238,841
Vital certificates	$1,184,771
Motor vehicle licenses	$1,734,297
Other licenses and permits	$535,365
Total	$4,693,274

Source: Hennepin County 2012 Budget, pg I-16

Minneapolis

Charges for services	
General	$37,303,000
Community planning and economic development	$9,057,000
Convention center	$4,500,000
Permanent improvement	$3,203,000
Nonmajor governmental	$2,713,000
Total	$56,776,000

Source: Minneapolis CAFR 2010, pg 30

Licenses and Permits	
General	$26,541,000
Permanent improvement	$278,000
Nonmajor governmental	$2,482,000
Total	$29,301,000

Source: Minneapolis CAFR 2010, pg 30

Baltimore City

Charges for services	
Water	$119,840,000
Waste water	$158,305,000
Parking	$64,380,000
Counduits	$10,511,000
Development loans	$299,000
Industrial Development	$1,630,000
Capital grants and contributions	$22,818,000
General government	$28,204,000
Public safety and regulation	$27,918,000
Conservation of health	$2,102,000
Social services	$637,000
Public library	$322,000
Recreation and culture	$876,000
Highways and streets 24,469	$24,469,000
Sanitation and waste removal	$9,769,000
Total	$472,080,000

Source: Baltimore City 2009 CAFR, pg 17 and 100

Licences and permits	
General	$29,390,000
Motor vehicle fund	$1,018,000
Total	$30,408,000

Source: Baltimore City 2009 CAFR, pg 19

Baltimore County

Charges for services	
General government	$190,247,000
Public safety	$5,077,000
Public works	$3,195,000
Health and human services	$3,652,000
Culture and leisure services	$3,382,000
Economic and community development	$851,000
Water and sewer services	$224,510,000
Total	$430,914,000

Source: Baltimore County CAFR, 2011 pg 80

Licences and permits	
General	$3,858,000
Liquor	$622,000
Total	$4,480,000

Source: Baltimore County CAFR, 2011 pg 17

Milwaukee County

Charges for services	
Legislative, executive, and staff	$1,786,000
Courts and judiciary	$4,622,000
General government services	$4,243,000
Public safety	$9,992,000
Public works and highways	$29,537,000
Human services	$328,101,000
Parks, recreation, and culture	$31,381,000
Airport	$79,644,000
Transit	$57,624,000
Total	$546,930,000

Source: Milwaukee County CAFR, 2010, pg 58

Licences and permits	
General	$640,000
Total	$640,000

Source: Milwaukee County CAFR, 2010, pg 63

Milwaukee City

Charges for services	
General government	$9,931,000
Public safety	$16,202,000
Public works	$68,135,000
Health	$1,071,000
Culture and recreation	$1,504,000
Conservation and development	$303,000
Water	$73,473,000
Sewer maintenance	$52,046,000
Parking	$47,477,000
Port of Milwaukee	$5,398,000
Metro sewer usage charges	$47,745,000
Total	$323,285,000

Source: Milwaukee City CAFR, 2010, pgs 38, 132

Licences and permits	
Business and occupational	$5,155,000
Other Licenses	$62,000
Building	$6,159,000
Zoning	$338,000
Other permits	$1,234,000
Total	$12,948,000

Source: Milwaukee City CAFR, 2010, pg 132

Hamilton County, Ohio

Charges for services	
General	$52,422,000
Public assistance	$39,107,000
Health and human services	$17,343,000
Other	$31,634,000
Total	$140,506,000

Source: Hamilton County, Ohio,
Preliminary 2011 Annual Information Statement, pg, 39

Licences and permits	
General fund	$2,923,000
Health and community services	$3,230,000
Total	$6,153,000

Source: Hamilton County, Ohio,
Preliminary 2011 Annual Information Statement, pgs 41, 108.

Cincinnati

Charges for services	
General Government	$9,826,000
Other Inspection Certificates	$1,387,000
Elevator Certificates	$565,000
Public Safety	
Police and Communication Charges	$10,000
Impounded Vehicle Fees	$1,673,000
Protective Inspection Fees	$187,000
Protective Service - Burglary Alarm	$298,000
Emergency Transportation Service	$5,527,000
Other Public Safety Charges	$148,000
Planning and Buildings	$194,000
Recycling Incentive Fee	$361,000
Other Public Services Charges	$1,715,000
Public Health	
Vital Statistics	$757,000
Clinic Fees	$106,000
Other Public Health charges	$1,000
Total	$22,755,000

Source: Cincinnati CAFR, 2010, pg 119

Licences and permits	
Street Use	$2,098,000
Health	$2,000
Police and Protective	$56,000
Beer and Liquor	$505,000
Business and Merchandising	$15,000
Amusements	$56,000
Professional and Occupational	$157,000
Buildings, Structures and Equipment	$4,526,000
Other	$3,818,000
Total	$11,233,000

Source: Cincinnati CAFR, 2010, pg 42, 119

St. Louis County

Charges for services	
General government	$36,835,492
Highways and traffic	$78,878
Health	$6,119,967
Parks and recreation	$865,634
Total	$43,899,971

Source: St Louis County CAFR, 2010, pg 117

Licences and permits	
General government	$8,174,517
Highways and traffic	$359,638
Health	$3,861,216
Total	$12,395,371

Source: St Louis County CAFR, 2010, pg 117

Philadelphia

Charges for services	
Government activities	$349,700,000
Water and sewer	$558,500,000
Aviation	$258,100,000
Industrial and commercial development	$500,000
Total	$1,166,800,000

Source: Philadelphia CAFR, 2011, pg 149, 158

Licences and permits	
Total	$46,295,000
Total	$46,295,000

Source: Philadelphia CAFR, 2011, pg 149

City of St. Louis

Charges for Services	
Parks and recreation	$272,000
Streets	$14,549,000
Public safety	$5,810,000
Health	$1,124,000
Fee offices	$3,972,000
Other	$32,000
Services provided to other funds	$4,816,000
Total	$30,575,000

Source: City of St Louis CAFR (2011), pg 131

Licenses and Permits	
Graduated business	$6,445,000
Cigarette	$1,505,000
Building division	$4,893,000
Communication transmission	$1,395,000
Liquor	$473,000
Other	$635,000
Motor vehicle	$1,390,000
Total	$16,736,000

Source: City of St Louis CAFR (2011), pg 131

Suggestions I've pulled from other commissions:

(A) Increase Retail Package Liquor Store and General Business License Fees and (B) Upgrade Occupational Tax/Business License Fee

Upgrade offerings and prices, and add additional locations for vending machines in county facilities

Initiate permitting and registration, inventory and change in valuation of properties occupied by billboards and cell towers

Increase Hotel/Motel Tax

Dedicate a staff person to identify grants on behalf of the county

Construct additional private hangars at Airport

Use Market Based Revenue Opportunities (MBROs) for advertising on various county properties, such as direct, indirect and media based advertising on county property, billboards, vehicles, and website.

Sell surplus county land beginning with inventory of vacant properties and evaluate feasibility;

Sell Geographic Information Systems (GIS) data

Collect 911 fees from Voice Over Internet Protocol (VOIP) providers

Review excess capacity possibilities with Seminole Road Landfill, green energy and vehicle maintenance services to share service with other jurisdictions

Payments in lieu of taxes

Charge for notary services.

Charge for copies of reports from Sheriff's Department, EMS and County Fire Department.

A charge for emergency services that respond to false alarms.

Charge for structure fire responses and responses to motor vehicle accidents where extrication equipment is used, also for responses to hazardous material spills.

Impact fees for new construction.

Solid waste disposal fee.

Charge for tires and brush at recycling center.

Reduce the residential garbage weight allowance per household.

Enact Transportation Utility Charge

Real Estate Transfer Tax

CITY REQUIREMENTS

»» County and City Transfer Tax

County Name	County Tax (Per $1,000)	City Tax (Per $1,000)	Total
Alameda	$1.10	Alameda $4.40	$5.50
		Albany $4.40	$5.50
		Berkley $15.00	$16.10
		Piedmont $6.50	$7.60
		Oakland $10.00	$11.10
		San Leandro $2.00	$3.10
Contra Costa	$1.10	Richmond $7.70	$8.80
		San Pablo $7.70	$8.80
Fresno	$1.10	None	$1.10
Kern	$1.10	None	$1.10
Kings	$1.10	None	$1.10
Los Angeles	$1.10	Culver City $4.50	$5.60
		Los Angeles $4.50	$5.60
		Pomona $2.20	$3.30
		Redondo Beach $2.20	$3.30
		Santa Monica $3.00	$4.10
Madera	$1.10	None	$1.10
Marin	$1.10	San Rafael $1.45	$2.55
Napa	$1.10	None	$1.10
Orange	$1.10	None	$1.10
Placer	$1.10	None	$1.10
Riverside	$1.10	Riverside $1.10	$2.20
Sacramento	$1.10	Sacramento $.00275x Sales Price	
San Bernardino	$1.10	None	$1.10
San Diego	$1.10	None	$1.10
San Francisco	$5.00	City & County Combined	$5.00
San Joaquin	$1.10	Stockton $3.00	$4.40
San Luis Obispo	$1.10	None	$1.10
San Mateo	$1.10	San Mateo $5.00	$6.10
Santa Barbara	$1.10	None	$1.10
Santa Clara	$1.10	San Jose $3.30	$4.40
		Mountain View $3.30	$4.40
Solano	$1.10	Vallejo $3.20	$4.30
Tulare	$1.10	None	$1.10
Ventura	$1.10	None	$1.10

Talbrook II Escrow Corp. is providing this general information as an accommodation. If your property does not reside in its own city then the transfer tax will be based on the sales price multiplied by the County of Los Angeles tax. Example: Sales price of home $200,000 divided by 1,000 = 200 x $1.10 = $220 County of Los Angeles transfer tax Home Located in City of Los Angeles AND county of Los Angeles: Example: Sales price of $200,000 divided by 1,000 = 200 x $4.50 per $1,000 = $900 (city tax) 200 x $1.10 = $220 (county tax) Total transfer tax= $1,120 payable at the close of escrow. Please contact your title officer for exact numbers as many cities have different or no transfer taxes. Talbrook II Escrow Corp. cannot guarantee the accuracy of the information provided and is not liable for any action you may take as a result of relying on such information, including loss, damage or legally. Please contact the city in question directly, to confirm required information for each specific transaction. Talbrook II Escrow Corp. will continue to monitor each city and attempt to keep this document as current as possible, for your convenience. Thank you for allowing Talbrook II Escrow Corp. to service your escrow needs, we appreciate your support.

Rev: 03/18/2011

Sample PILOT Agreement

SAMPLE AGREEMENT TO MAKE PAYMENTS IN LIEU OF TAXES

AGREEMENT, made this __ day of _____, 200__ at Boston, Massachusetts by and among *(name of tax-exempt institution)*, a non-profit corporation duly organized under Chapter 180 of the General Laws of the Commonwealth of Massachusetts having a usual place of business at *(location of tax-exempt institution)*, Boston, Massachusetts, and the City of Boston (the "City"), a municipal corporation in the Commonwealth of Massachusetts.

WITNESSETH THAT

(The tax--exempt institution), while currently entitled to exemption from obligations to pay local real and personal property taxes on its property pursuant to Massachusetts General Laws C. 59, § 5, Clause Third, as a matter of use and occupancy, recognizes that the existence of this property requires the City to furnish municipal services and is willing voluntarily to make certain payments to the City in the form of a payment in lieu of taxes ("PILOT").

(The tax-exempt institution) acknowledges that it intends to develop *(address and or ward and parcel number of project) ("the project")*. The said project may be exempt under the laws of the Commonwealth from local real property taxes provided that the uses of such property remain consistent with the tax laws relative to exemption, and *(the tax-exempt institution)* intends to file appropriate papers required by law to obtain and maintain such exemption.

(The tax-exempt institution) and the City further acknowledge and agree that other real and personal property owned by the tax-exempt institution which is now entitled to exemption from taxation shall continue to remain so entitled, subject to applicable law relative to exemption from real property taxation; and consistent with the above, that the above referenced project which is the subject of this agreement shall be granted exemption upon timely application for exemption and preservation of statutory rights of appeal, insofar as may be necessary, in the event that any or all of the property is taxed by the City in any particular fiscal year.

NOW, THEREFORE, in consideration of the municipal services to be furnished by the City and the mutual agreements herein contained, the parties hereto hereby agree as follows:

1. The payment due for each fiscal year after the first fiscal year in which payment shall be due pursuant to the terms of this Agreement shall be subject to a further adjustment as provided in the Inflation Adjustment Clause attached hereto as Exhibit A.

2. Notwithstanding the foregoing, if a certificate of occupancy is issued during the course of a fiscal year, the amount calculated according to Sections One and Two above shall be prorated in accordance with the portion of the fiscal year remaining.

3. Twenty-five percent (25%) of the total amount due in each fiscal year according to any or all of Sections One, Two and Three above shall be credited, contingent upon (*the exempt institution's)* documentation of community services being provided or funded and the City's approval of any such community services documented. The services must be over-and- above what (*the tax-exempt institution)* was providing prior to signing this agreement. In no event shall approved community service credits exceed 25% of the total amount due in the fiscal year the credits are claimed, and in no event shall any community services rendered by (the tax-exempt institution) be prorated to future fiscal years. Eligible services shall include, but not be limited to, (list of contemplated service).

4. It is the intention of the City, through its Assessing Department, to recognize the development as exempt pursuant to M.G.L. c. 59, § 5, Clause Third in future fiscal years so long as and provided that (a) exemption is warranted as a matter of ownership, use and occupancy and (b) Form 3 ABC is timely filed with the Assessing Department for each fiscal year.

5. In the event a real estate tax bill is issued for such property, however, it is the exclusive responsibility of (*the tax-exempt institution)* to do all things necessary to preserve the jurisdiction of the City's Assessing Department to grant abatement relief on the basis of exemption, overvaluation, misclassification and/or disproportion, including timely filing of application(s) for abatement, supporting documentation and appeal(s) to the Appellate Tax Board, as may be necessary, and timely payment of the deemed tax due as defined in M.G.L. c. 59, § 64.

6. If at any time hereafter, due to a change in the laws applicable to exemptions from real property taxation any tax payment is made pursuant to a M.G.L. c 59 tax assessment in a particular year for any property which is a subject of this agreement, such payment will be credited against the PILOT obligation as calculated above. Any overpayment made in a fiscal year by reason of this provision shall be credited against future PILOT obligations.

7. Pursuant to applicable law, the City may assess, and require that an otherwise tax-exempt institution pay real estate taxes based upon any commercial operation or uses of said property which are not exempt from taxation. Said tax payment would be made in addition to the PILOT payments made under this Agreement

8. If the Commonwealth of Massachusetts hereafter reimburses the City for property taxes lost as a result of exemptions and said reimbursement is based in part on valuation of property held by *(the tax-exempt institution)* which is the subject of this Agreement, there shall be a reduction of the amounts payable thereafter under this Agreement. Such reduction shall be in an amount equal to the percentage which the valuation of *(the tax-exempt institution's)* property under this Agreement constitutes the valuation of all exempt buildings on which the reimbursement is based. Such reduction shall be credited against the payment due under this Agreement in each fiscal year in which the City receives the state reimbursement.

9. The provisions of this Agreement shall be binding and inure to the benefit of the parties hereto and their respective legal representatives, successors in office or interests, and assigns and may be amended only by an agreement in writing duly executed by the parties hereto or their successors.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed as a sealed instrument by its officers duly authorized as of the day and year first above written.

SIGNATURES

Chicago Infrastructure Trust

Appendix ____

Chicago Infrastructure Trust

Mayor Emanuel described the $7 billion "New Chicago" CIT Infrastructure Plan as a means to rebuild, repair or expand the City's parks, streets, railways, airports, public schools, water and sewer systems and other infrastructure.

The first program targeted to receive investment by the CIT involves aggregating energy efficiency projects throughout the City of Chicago to accelerate energy retrofit projects with the intention of reducing City energy costs by more than $20 Million annually, while creating 2,000 construction jobs and removing emissions from the region's atmosphere. The CIT intends to reach beyond traditional taxpayer-supported bond financing of infrastructure improvements by bringing investment from foundations, public sector and private sector pension funds, private equity funds, mutual funds, labor unions and other long-term investment sources to supplement traditional government bonds floated by the City. Five financing organizations-Citibank, N.A., Citi Infrastructure Investors, Macquarie Infrastructure and Real Assets Inc., J. P. Morgan Asset Management Infrastructure Investment Group and Ullico have each agreed to consider the projects that the Trust is undertaking and evaluate them for investment. These investors represent some of the most highly regarded infrastructure investors in the world. Collectively, they have indicated an initial investment capacity in excess of $1 billion depending on the specific terms of individual projects. The CIT anticipates advancing projects that would generate a predictable revenue stream such as admission charges or user fees in exchange for the private source investment.

The legislation creating the CIT providers for a five member Board of Directors of the Trust appointed by the Mayor with the approval of the City Council, with Directors having expertise in financing and development of infrastructure, capital markets and municipal finance. The Board of Directors of the Trust would consider financing for qualifying infrastructure projects that would have the power to assemble various sources of financing not previously available to the City to improve major infrastructure assets. The core purpose of the CIT is to interest alternative sources of financing in making long- term investments in the City infrastructure that could lead to return on investment for investors such as public pension funds and foundations that have a long-term investment horizon.

The Board of Directors of the Trust would be subject to all public disclosure and freedom of information laws governing the City of Chicago agencies and would also be subject to ethics rules applying to City elected officials, including absenteeism from any vote or support for CIT projects in which individual Board members might have a financial interest.

The City's CIT authorizing legislation also provides for public access to the deliberations of the Board, requires annual audits and annual reports with respect to the use of CIT funds and requires the CIT to comply with all applicable City procurement rules and requirements including advancement of minority-owned and women-owned business opportunities.

To assure public input on CIT projects, the authorizing legislation requires City Council approval of all projects involving City funds for City asset. The Board of CIT cannot pledge the taxing power of the City to support its projects.

The recent approval of the Chicago Infrastructure Trust presents an opportunity to Allegheny County to examine features of the CIT that could be useful to Allegheny County in financing long-term infrastructure needs of the County while reducing dependence on County property taxes.

There are many steps yet to be undertaken by the CIT to implement its initiatives and the County should observe and learn from the example of the CIT before it forms a similar quasi-public partner to the County in its efforts to improve and maintain infrastructure while reducing dependence on County property taxes.

Human Services

VISION TEAMS

Imagining Allegheny County's Tomorrow

Karen Feinstein, Chair

County of Allegheny

Executive Summary

The Department of Human Services (DHS) has distinguished itself as a national model of innovation and has been recognized widely for service integration. The Human Services Vision Team provides the following recommendations which are designed to respect the leadership and history of DHS while better positioning the Department to thrive in light of significant budget cuts and policy shifts. Additionally, enhancing and broadening the Kane Regional Centers by adding services in behavioral health will clearly serve the changing needs of the community.

With this, the team put forth the following recommendations:

- **Develop a New and Updated Vision**
  - Give specific emphasis to the integration of services, enhancing prevention and in-home services, and cost efficiencies.
  - Convene a series of meetings with key stakeholders to determine the best strategies to structure DHS for long-term cost effective services.
  - In light of this new vision, the Department should seek foundation funding partnerships for new models of service and experimentation.
  - Undertake a program assessment process that identifies key areas for program integration within DHS and across County Departments.
  - Disseminate new vision with estimated implementation timeline to stakeholders.
  - Institute regular meetings between County Department Directors and the County Manager to identify opportunities for integration, coordination and avoidance of service duplication.
  - Complete demographic and geographic analysis of County-funded programs in order to prioritize opportunities for inter-Departmental program integration.
  - Develop an integration committee and train County staff in change management in preparation for program integration.
  - Develop a coordinated system for inter-Departmental communication and referrals.
- **Enter an Era of Enhanced Accountability**
  - Consider an enhanced accountability model that establishes high expectations for client outcomes.
  - Develop expected program outcome guidelines based on yearly achievement of high-performing organizations and use to guide contracting decisions.
  - Carry out proposed funding and accountability structure in a pilot format and rigorously assess outcomes prior to large-scale implementation.

- Enter into discussion with The Forbes Funds about services, geographies, and organizational cultures that may benefit from exploration of models of strategic restructuring.
- Provide or contract for a training series dedicated to strengthening human service providers' understanding and use of outcome indicators.

- **Consider Case Rate Funding and Fidelity Management**
  - Create "Lead Agencies" with increased flexibility and responsibility for how clients are served.
  - Streamline the number of County-funded service providers to the highest performing.
  - Reduce redundancy and consider mergers among agencies whose services are repetitive.
- **Conduct a Process Audit to create efficiencies in information technology, purchasing, and contract requirements.**
  - After securing approval from State and/or Federal governments, consolidate audits into one audit/agency within a specific timeframe that addresses fiscal, programmatic, organization issues, etc.
  - Accept publically certified audits for agencies rather than duplicating the current system of having publically certified paid audits in addition to financial audits by the County.
  - Implement a joint purchasing program of supplies, energy, etc. with providers of same program services.
- **Bring Quality Improvement Techniques to Human Services**
  - Train human service organizations in quality improvement techniques so that they can make the best use of available funding and continually improve their services.
  - Support quality improvement trainings for DHS-funded organizations to improve service delivery and strengthen programming during the integration process.
  - Commit to a level of ongoing quality improvement support for interested DHS-funded organizations to ensure appropriate implementation and improvement of outcomes**.**
- **Institute Regular Meetings Between DHS and Area Councils of Governments (COGs)**
  - Incorporate feedback from COGs on quarterly basis to ensure that DHS is apprised of changes in community needs and challenges.
  - Include information from COG briefs in DHS strategic planning and funding decisions.
- **Emphasize Cost Effective Care for the Aging Population including the expansion of in-home services**
  - Implement an expedited Medical Assistance eligibility and care planning process for people not on Medicaid.
  - Conduct assessment of short-term and long-term cost-effectiveness of expanding in-home services for the elderly; Implement all appropriate strategies identified.

- Draft and implement an expedited eligibility and care planning processes for the Medical Assistance program for individuals not on Medicaid.
- Strengthen the Kane Regional Centers through their participation in quality improvement training and application.
- Consider opening new behavioral units at the Kane Regional Centers.
- Provide quality improvement training and support improvement projects at Kane Regional Centers and monitor progress on key quality indicators.

Demographic and Funding Context

Allegheny County, under a new administration, aspires to adapt to a changing environment and offer the best human services system possible. After decades of losing population, the County is projected to steadily increase in size over the coming years. The University of Pittsburgh's University Center for Social and Urban Research (UCSUR) projects that the population of Allegheny County will gain nearly 200,000 residents over the next two decades—in stark contrast to having lost 410,000 individuals over the previous five decades.[1] Contributing to this growth is an aging population that is living longer, as well as an increasing number of Latino residents. The number of individuals aged 65-79 is expected to climb rapidly in the next 20 years, and UCSUR projects the County's population age 90 and older will increase 43% between 2010 and 2015.[2] Drawing on Census data, UCSUR also reports that the Hispanic/Latino population in Allegheny County increased by 70.8% between 2000 and 2010 and, as a share of the County's total population, increased from .9% to 1.6%.[3] These changes could pressure County government to provide new and additional services while experiencing reductions in government revenue.

Along with shifting demographics, Allegheny County faces current and historical disparities related to, among other things, race and socio-economic status. For instance, according to an analysis by DHS, the risk of homicide among young, black men in the City of Pittsburgh is 60 times higher than the city-wide average.[4] In the same vein, an UCSUR analysis found that African-American women age 55 to 64 were in poverty at a rate nearly four times higher than White women (26.1% compared to 7.3%).[5] These disparities, which are intimately linked to further disparities in behavioral and physical health, offer a glimpse into the depth and breadth of the issues DHS must address with limited resources.

At present, the County is faced with a more immediate challenge: how to effect efficiencies in order to provide necessary, high-quality human services in the most cost-effective manner. This circumstance is the result of a recession, as well as a number of public and private factors, and may ultimately alter the fundamental funding relationship between the County and the Commonwealth. With the modest economic growth projections from the Governor's Office, County human services received a 10% cut in Pennsylvania's 2012-2013 budget, on top of a series of cuts in

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[1] Cited in: Rotstein, G. (July 3, 2012). Pittsburgh's Population Expected to Grow in a Few Years. *Pittsburgh Post-Gazette*.
[2] University Center for Social and Urban Research. (November 17, 2011). Allegheny County's Older Old Population. http://www.ucsur.pitt.edu/thepub.php?pl=000349
[3] University Center for Social and Urban Research. (March 24, 2011). Hispanic and Latino Population in Allegheny County. http://www.ucsur.pitt.edu/thepub.php?pl=283
[4] Dalton, E., Yonas, M., Warren, L., and Sturman, E. (nd.). *Violence in Allegheny County and Pittsburgh*. Pittsburgh: Allegheny County Department of Human Services.
[5] Schulz, R. and Briem, C. (September 25, 2007). *Pittsburgh and Allegheny County: Portrait of an aging society*. Presentation at *Convening the Next Generation in Pittsburgh – Boomers and All*, sponsored by the National Press Foundation.

recent years. The human services block grant approach being piloted represents another possible change in funding and human services provision facing DHS in the near future. Moreover, health reforms at the national level, especially the ongoing implementation of the Affordable Care Act, will also affect the ways in which the County provides services.

The Human Services Vision Team suggests that these uncertain and demanding times also offer a unique opportunity to conduct a thorough self-evaluation and institute innovative strategies to improve the efficiency and effectiveness of County-funded service providers and, possibly, internal operations as well. Rather than passing along budget cuts to service providers evenly across the board, DHS notably has undertaken an effort to prioritize high-impact services and continue to identify opportunities to introduce innovations designed to further increase efficiency, accountability, and services integration. In response to a series of human services budget cuts at the state level, as well as anticipated cuts in 2013 and beyond, the Human Services Vision Team encourages DHS not to ignore an opportunity to improve the impact of its investments by cutting waste, increasing efficiency, and rewarding high performing organizations.

Vision Team Charge

Composed of nonprofit leaders, government officials, foundation executives, and consultants, the Human Services Vision Team was charged with identifying opportunities for increasing efficiencies in a time of shrinking resources, and envisioning a system for providing efficient, effective human services to Allegheny County residents.

Scope of Work/Summary of Methodology

Scope of Work

The Vision Team sought to address its charge within the context of a number of factors affecting the Department of Human Services (DHS). One of the central factors was ongoing challenges related to the funding environment, including successive cuts in human services from the state, as well as the impact of the recession on foundations' ability to provide financial support. The other key factor impacting DHS was shifting demographics within Allegheny County, including a large aging population, a growing Latino community, and the onset of overall population growth.

Methodology

Between April and July 2012, the Human Services Vision Team met five times to offer suggestions for providing even more efficient, effective human services to Allegheny County residents. A lively and beneficial public listening session occurred on April 25 to ensure community input. Additionally, it was expressly important to members that the Vision Team's recommendations accelerate the directions of DHS. Marc Cherna, Director of DHS, and Pat Valentine, Executive Deputy Director of DHS, were invited to present to the Vision Team at the May 25th meeting. The purpose of their presentation was to ensure the Vision Team gained a strong understanding of the strategies and approaches already underway at the Department. In addition to the expertise of Vision Team members and DHS officials, extensive input was sought from organizations providing County-funded human services. In collaboration with The Forbes Funds and the Greater Pittsburgh Nonprofit Partnership, a coalition of more than 300 nonprofits in our region, the Human Services Vision Team sent out a "Call for Blueprints" to service providers seeking their input on specific areas and strategies for improving the human services delivery system in Allegheny County. The responses included valuable insights, and three respondents, based on their submitted comments, were chosen by the Vision Team to further detail their ideas in discussions at the June 21st meeting. Valuable input on earlier drafts of these recommendations was provided by a number of Vision Team members, which is reflected in this final document.

Public Input

Community input, especially from human service providers who contract with DHS, was central to the Vision Team's work. The public listening session on April 25 exposed the Vision Team to important contributions from the community regarding areas of the current system that could be meaningfully reformed to ensure quality while containing costs. Despite this input, Vision Team members sought even greater input from the provider community. In collaboration with the Greater Pittsburgh Nonprofit Partnership, the Vision Team received further input from leaders of nonprofits providing a range of human services in the County about the challenges of the current system and specific recommendations for improvement. In addition to distributing the input to the entire Vision Team, three respondents were chosen to present their ideas and experiences to the Vision Team in person. The community input from the public listening session and the GPNP 'Call for Blueprints' was discussed thoroughly and incorporated throughout the Vision Team's work.

Findings

In analyzing the financial and social shifts impacting how DHS provides human services throughout Allegheny County, the Human Services Vision Team arrived at the following Findings:

1. DHS currently provides and funds many high-quality services for the residents of Allegheny County. The ongoing success of the Department is in large part due to the high caliber of its leadership, including its focus on demonstrating impact for vulnerable clients.

2. Notwithstanding the quality of the services and programs offered by DHS, there are systemic inefficiencies throughout the human services system that result in wasted human and financial resources, and detract from direct services provided.

3. The aforementioned ongoing and impending demographics shifts within the County will likely only exacerbate these embedded inefficiencies.

4. The inefficiencies are largely structural in nature, rather than the result of individual employees, and hence the Department could significantly revamp certain operations and requirements of providers to effect savings and effectiveness.

5. Three key elements were found to be central to fulfilling the Vision Team's charge: giving providers increased accountability for client outcomes in conjunction with greater flexibility in how services are provided; integration of services within DHS and across county departments; and a greater emphasis on value-based purchasing.

Recommendations

1. Develop a new and updated Vision

The Department of Human Services (DHS) could benefit from an intensive Visioning process that might articulate a new "paradigm" for the Department to move beyond incremental change, both in allocating funds among agencies and the number of agencies funded. DHS has the full support of the Vision Team to make the difficult decisions that will lead to a strong, effective Department over the long-term even in the face of financial cutbacks. Moreover, such a Visioning process would likely help DHS produce useful strategic plans that will help guide it in the coming years and offer clear direction to its agencies. Several areas for possible focus were identified. These include:

a.) Continue and expand the integration of services for certain populations, such as early childhood (preschool, Maternal and Child Health, child welfare, parenting programs, and some items not currently funded). Other populations for special focus could include teens, those with mental illnesses, and seniors (in-home services, informal systems of care, health homes, community health workers, etc.). The intent is that DHS would look internally for ways to continue integrating existing programs. In addition, it could streamline the number of human service agencies by consolidating redundant providers or eliminating less essential providers, and work more closely across County departments, such as with the Departments of Health, Housing, and

Economic Development, to integrate County programs for greater impact. Human service issues are often correlated with housing, economic, and health problems. This effort could also be utilized to focus work in "hot spots", areas of the County where residents with high levels of need are heavily concentrated. For this level of integration to occur, DHS recommended to the Vision Team that regular, substantive meetings between Department Directors and the County Manager, and as necessary with the County Executive, occur. The Vision Team also recommends that DHS transparently communicate the aspirational integration model they are working towards to the broader provider community.

b.) Enhance prevention programs. The goal of these services is to avoid future institutional care, whether in group homes, skilled nursing facilities, hospitals, etc. Governments have moved away from institutionalization for a number of reasons, including the fact that institutionalization itself produces certain co-morbidities in vulnerable populations creating further deficits and adds enormous cost to client services. It might be possible to create "SWAT" teams to visit and assess vulnerable individuals and families and construct preventative care plans and less costly early interventions. Case-based payment, which many providers support, would encourage prevention rather than more intensive services when individuals and families have crises, as it would provide an incentive for producing quality outcomes for the lowest cost, which prevention services have often been shown to provide.

c.) Revisit the cost/benefit ratio of what DHS currently funds vs. valuable services that may be underfunded. These underfunded services are often the informal services such as meals on wheels, caregiver support, parenting education, housing and community stabilization, senior centers, etc. DHS is encouraged to determine what it would take to ensure funding for these services and link them meaningfully to existing DHS programs, as well as assess the job requirements necessary to achieve this. It is possible that more functions could be assigned to paraprofessionals (e.g. community health workers, home visitors). DHS could expand its current in-home services, provided through programs like the Nursing Home Transition Program, or incentivize current home visitors to be cross-trained in order to provide a range of necessary services (and ensure funding streams allow for this to occur).

d.) Seek foundation funding partnerships for new models of service and experimentation, and encourage longer-term funding agreements. Foundations could also support the hiring of grant writers to assist DHS in attaining federal funds from Centers for Medicare and Medicaid Services. DHS has long had a close relationship with the philanthropic community, especially through the development and use of the Human Services Integration Fund (HSIF). HSIF dollars are often used to allow DHS the funding capacity to improve its operations; this could be an appropriate use moving forward.

In undertaking an intensive visioning process, it is recommended that the County do a report card on the quality of life of its residents as benchmarked nationally and internationally. The measures could include: dropout rates, obesity, smoking, premature births, teen pregnancy, joblessness, homelessness, teen violence, adult violence, depression, substance use, foreclosures, etc. Such a report, including an analysis of trends and projections related to the measures, would enable the County to target human services funding in the most strategic manner. The DHS data warehouse, containing 25 million client records and accessible for real-time reporting, could provide information on many—if not all—of these indicators.

2. Enter an Era of Enhanced Accountability

The Vision Team recommends that DHS continue its current efforts to develop an enhanced accountability model that would hold providers responsible for achieving optimal client outcomes through performance-based reimbursement. This recommendation comes from service providers themselves who advocated for increased

accountability so that high quality organizations are supported at higher levels than poorly performing organizations, ensuring DHS's funds would be used to their greatest potential. This enhanced accountability model requires an increase in data sharing and, potentially, public reporting if more accurate data on performance can be compiled. The KIDS data reporting system was identified as a useful current model.

In general, this recommendation reflects stakeholder input challenging DHS to "raise the bar and the threshold" for funding. Rigorous outcome measures must precede this, so that evidence-based payment is feasible, high performing organizations are fairly identified, and the results of outcome evaluations connect to funding decisions. Such outcome measures are also important as they would help facilitate the Department's performance-based contracting. Program outcome variables need to better represent the achievable gains of different programs and clearly reflect the timeframe that clients are involved in them.

It is suggested that DHS should seek to develop fewer, stronger providers—particularly in reference to Family Support Centers—so that they can achieve their intended results for clients and maintain elevated standards of service. It is also recommended that learning collaboratives could be considered to speed the adoption of best practices and to inform providers about alternative approaches. The United Way of Allegheny County and The Forbes Funds may both serve as important partners in these efforts.

3. Consider Case Rate Funding and Fidelity Management

This suggestion concerns case rate funding (The level of funding identified to manage the care of a person and/or family based on client demographic information) combined with "fidelity management" (The congruence of the delivery of services and the intended outcomes of a particular service or intervention), which would allow providers optimal flexibility and creativity in meeting established goals for client outcomes. The purpose of this shift in funding structure would be the customization of care to meet the needs of different consumers. DHS should consider the creation of "Lead Agencies" to manage the care of any one person or family. The Lead Agency would monitor and coordinate care, maintain ongoing contact with the consumer, and provide follow up after treatment ends to prevent issues such as recidivism or relapse. The Lead Agency could reduce redundancy of services as one of its mandates. Service providers are generally in support of increasing the accountability and responsibility for client outcomes if it is connected to improved ability to serve those clients in different ways as their needs change over time.

Case rate funding and fidelity management could serve to relax inessential program requirements and administrative barriers to quality care. For instance, it was noted that some Drug and Alcohol services use a funding algorithm that allocates cost to appropriate funding streams based on the client demographic information provided. Such an approach applied to other programs could streamline administrative processes so that funding for each case was better utilized through direct services and providers were better able to provide a combination of services in support of their clients. The objective would be to embed improvement processes in organizations that links costs to outcomes, in order to reward the broad achievement of goals while leaving the specific means to the agencies. New efforts related to Family-based Conferencing may serve as an example of care being customized and payments linked to outcomes, which would indicate that DHS is currently moving in this direction and is to be supported in such work.

4. Conduct a Process Audit to Create Efficiencies

In support of a major and consistent request from providers, the Vision Team encourages the County to direct attention to alleviating the heavy administrative burden of inessential and wasteful bureaucracy. The overarching result is that organizations must redirect a substantial amount of resources away from direct services to duplicative and burdensome administrative efforts. Redundant audits were the greatest, and most often cited, hindrance, though providers noted a number of other examples. Renewed attention could be given to a previous RAND study, *The Cost of Compliance*, which provides insight on the dimensions of the problem. DHS has a solid history of consolidating contract requirements in order to improve efficiency, and this willingness to undertake improvement efforts which reduce administrative burden could be applied to program and financial audits. DHS should look to gain support from state and federal sources to allow private or public audits on the same funds to be accepted across departments and between entities (state, county, etc.). Other inefficiencies mentioned were unnecessary daily transporting of supplies, and multiple service providers for the same families, creating service duplication. In this regard, consideration could be given to geographically-focused neighborhood and community based plans (Zip Code Care) akin to the "hotspotting" approach to caring for complex health patients. Planning on a subarea basis could produce both efficiencies and more targeted interventions, consistent with other recommendations.

An interest in improving DHS information technology (IT) capabilities was repeatedly mentioned as a way to better coordinate care, reduce duplication of services, and allow organizations to track client outcomes on a broader range of indicators. Centralizing intake through a single portal could reduce administrative burdens on providers and duplication of services. Similarly, it is recommended that DHS investigate appointing a single entity that would be responsible for helping individuals and families navigate the DHS system of providers, rather than the current system with multiple navigation entities. Joint purchasing represents another important area for creating efficiencies among provider agencies and it is likely that improved IT could enable this.

The Vision Team also suggests DHS investigate the possibility of co-locating services in order to provide better coordinated and more efficient services. However, the Vision Team advocates careful study of the costs and benefits, such as whether co-located consumers would appreciate/utilize co-located services and the potential of exacerbating the transportation challenges in Allegheny County. For instance, elderly and poor populations are concentrated in particular areas of the County, and moving services into central locations may make it more difficult for residents to access necessary services. Individuals with disabilities face particularly difficult barriers in travelling to services ; any attempts to co-locate services must pay particular attention to this reality. Should co-location be undertaken as a strategy for increasing efficiencies, it is also suggested that the County look into successful models of co-location, including the need for someone to coordinate co-location across the operation.

One high-priority option beyond co-location and joint purchasing is the consideration of merging provider organizations. While such efforts are inherently complex—requiring due diligence, cultural fit, mission alignment, and more—a partnership with The Forbes Funds could advance this effort, drawing on their leading experience facilitating mergers and other forms of strategic restructuring within the region's nonprofit community. In recent years, The Forbes Funds has supported both consultants and providers in better understanding the process and purpose of restructuring, as well as its importance in the current funding climate. Agencies and consultants are beginning to incorporate an exploration of restructuring into strategic planning, evidencing a growing openness and interest in merging as a key option for strengthening services and reducing costs.

5. Bring Quality Improvement Techniques to Human Services

Generally speaking, the Vision Team is unanimously supportive of implementing and, perhaps, requiring rigorous quality improvement efforts internally and among their contractors. One member suggested that DHS should investigate the potential to reward individuals/departments for efficiency gains generated from "lean" techniques, similar to standard operating procedures in the service, manufacturing, and transportation industries. While this would likely necessitate significant training in these "lean" techniques, these techniques have demonstrated their value and cost effectiveness in a number of industries. A local example, the Kane Regional Centers have completed a number of quality improvement projects. If linked to enhanced accountability and case rate funding, it would be in agencies' best interests to continually improve their processes and provide better care for lower cost. Such techniques could also be utilized to improve the integration of services following nonprofit mergers or co-location of services.

6. Institute Regular Meetings Between DHS and Area Councils of Governments (COGs)

The Human Services Vision Team discussed the potential for enhanced coordination and collaboration between DHS and its authorized service providers. In an effort to satisfy this need and in recognition of the important role which area COGs play in the provision of human services, the Vision Team recommends that the County institute regularly-scheduled meetings between the DHS Director and the various area COGs. If service providers (and perhaps consumers) within the jurisdictions of those COGs are also invited to attend such meetings, these gatherings can serve as opportunities to share concerns, exchange ideas and do subarea planning. Departmental staff could benefit from such meetings if they lead to strong partnerships with COGs and service providers. Additionally, staff would also likely gain a better understanding of what is happening in the field. Moreover, such assemblies could also provide service providers with a better opportunity to discuss emerging issues with DHS personnel, thereby avoiding larger problems in the future.

7. Emphasize Cost Effective Care for the Aging Population

Allegheny County's aging population will place new demands on the human services system, which will require an expansion of programs to help long-term care recipients receive care in the community first, reserving nursing home placement for those who cannot be cared for in their communities. An important role for DHS to play would be in the implementation of an expedited Medical Assistance eligibility and care planning process for people not yet on Medicaid. Such a program could enable individuals to avoid placement in a nursing facility through the delivery of home- and community-based services targeted to their needs.

In follow-up to recommendations made by the Health Care Summit Committee in 2006, a number of recommendations related to the Kane Regional Centers have recently been proposed. These recommendations should be evaluated by the Department. Included among them are to consider the addition of a 30-40 bed locked dementia or behavioral unit at Glen Hazel and a similar unit with 40-45 beds at the Scott Regional Center. The Ross Regional Center, specifically, could consider the development of a Life Center, as well as make an effort to sell six acres of unused land. Furthermore, the Kane Regional Centers would also benefit by continuing their ongoing focus on quality improvement, and are supported in their decision to strengthen their workforce by participating in the Jewish Healthcare Foundation's Long Term Care Champions program.

Additional Issues for Discussion – *not* consensus-based Vision Team recommendations

- Potential of integrating behavioral and physical health services (a "carve-in") for providing better coordinated and more comprehensive care.

- Potential impact of State block grant funding on giving the County maximum flexibility in allocating funds.

- Use of predictive modeling to prepare DHS for service needs resulting from demographic shifts in Allegheny County.

- Encouragement for State to explore national demonstrations for moving Medicare/Medicaid dual eligible individuals into managed care.

- Privatizing some current DHS services, as the Department has done successfully in the past. One possibility is to explore the privatization of the Area Agency on Aging (AAA). Though examples of privatized and thriving AAAs were cited, an alternative to outright privatization could be to privatize many of the separate responsibilities and service lines of the AAA, so that it becomes a planning and oversight body reducing redundancies, measuring outcomes, rewarding high performers, and setting countywide agendas.

- DHS working with the Allegheny County Health Department (ACHD) and Pitt's Graduate School of Public Health to "hotspot" areas of teen homicide and introduce SWAT teams relying on local providers who have demonstrated measurable and credible success in reducing teen violence. This would require the ACHD to use their broad data gathering and database capabilities in conjunction with the GSPH's predictive modeling skills to pinpoint areas for focused interventions which would be built upon DHS's close ties with the most effective community based providers capable of leading rapid interventions.

- DHS employing GPS and GIS systems to identify the location of recent immigrant groups in Allegheny County and encouraging provider partnerships to address the many social, health, educational, legal and cultural issues facing new arrivals. One potentially replicable local model is the close collaboration among the Squirrel Hill Health Center, Jewish Family and Children's Services' Refugee Resettlement Program, and the Squirrel Hill Community Food Pantry, which collectively are able to serve the multi-faceted needs of many immigrant groups.

Next Steps

As part of the charge from the County Executive, the Courts Administration Vision Team was also asked to outline next steps, and to categorize those as changes that needed to be made immediately, followed by short term and long term goals. Those steps follow:

Immediate Changes

- Develop a new and updated vision with specific emphasis on the integration of services, enhancing prevention and in-home services, and cost efficiencies. Involve foundations in supporting the necessary changes. The Department's new, aspirational vision should be clearly communicated to providers and consumers.
    - Convene a series of meetings with key stakeholders to discuss how best to structure DHS for long-term cost effective services and invite philanthropic support for the transition process.
    - Undertake program assessment process that identifies key areas for program integration within DHS and across County Departments.
    - Once drafted, disseminate new vision with estimated implementation timeline to stakeholders via digital and print mediums, as well in person presentations in communities throughout the County.

- Institute regular meetings between County Department Directors and the County Manager to identify opportunities for integration, coordination and avoidance of service duplication.
    - Complete demographic and geographic analysis of County-funded programs in order to prioritize opportunities for inter-Departmental program integration.
    - Develop integration committee and train County staff in change management in preparation for program integration.
    - Develop coordinated system for inter-Departmental communication and referrals.

- Train human service organizations in quality improvement techniques so that they can make the best use of available funding and continually improve their services.
    - Support quality improvement trainings for DHS-funded organizations to improve service delivery and strengthen programming during the integration process.
    - Commit to a level of ongoing quality improvement support for interested DHS-funded organizations to ensure appropriate implementation and improvement of outcomes.

- Consider an enhanced accountability model that establishes high expectations for client outcomes, creates "Lead Agencies" with increased flexibility and responsibility for how clients are served, and streamlines the number of County-funded service providers to the highest performing. Reduce redundancy and consider mergers among agencies whose services are repetitive.
    - Develop expected program outcome guidelines based on yearly achievement of high-performing organizations and use to guide contracting decisions.
    - Carry out proposed funding and accountability structure in a pilot format and rigorously assess outcomes prior to large-scale implementation.
    - Enter into discussion with The Forbes Funds about services, geographies, and organizational cultures that may benefit from exploration of models of strategic restructuring.
    - Provide, or contract, a training series dedicated to strengthening human service providers' understanding and use of outcome indicators.

- Conduct a process audit at DHS to create efficiencies in information technology, purchasing, and contract requirements.
    - After securing approval from State and/or Federal governments, consolidate audits into one audit/agency within a specific timeframe that addresses fiscal, programmatic, organization issues, etc.

    - Accept publically certified audits for agencies rather than duplicating the current system of having publically certified paid audits in addition to financial audits by the County.
    - Implement a joint purchasing program of supplies, energy, etc. with providers of same program services.

- Institute regular meetings between DHS and Area Councils of Government.
    - Incorporate feedback from COGs in quarterly brief to DHS in order to keep Department apprised of changes in community needs and challenges.
    - Include information from COG briefs in DHS strategic planning and funding decisions

- Emphasize cost effective care for the aging population, including the expansion of in-home services, implementing an expedited Medical Assistance eligibility and care planning process for people not on Medicaid, and strengthen the Kane Regional Centers through their participation in quality improvement training and application. Consider the opening of new behavioral units.
    - Conduct assessment of short-term and long-term cost-effectiveness of expanding in-home services for the elderly. Implement all appropriate strategies identified.
    - Draft and implement expedited eligibility and care planning processes for the Medical Assistance program for individuals not on Medicaid.
    - Provide quality improvement training and support improvement projects at Kane Regional Centers and monitor progress on key quality indicators.

Short Term Goals

- Improvements in providing human services at the County and provider levels lower service cost by eliminating waste in the system, such as duplicative audits and paperwork.

- Providers are better able to track and demonstrate improved outcomes for their clients and are rewarded for high performance.

- Opportunities for service integration across County Departments are identified and explored, resulting in decreased cost and improved client outcomes.

- Communications between DHS and the provider community regarding the Department's overall vision for the department, expectations for accountability, and its plan for implementation are clear and improved.

Long Term Goals

- DHS provides measurable high-quality human services in a cost-effective manner, with an emphasis on community-based in-home and prevention services that decrease the need for more expensive services later in life, and has tools built into the system to ensure continuous improvement in all facets.

- Human service provider community is high-performing, nationally recognized and well-respected by clients, DHS, and the broader community of Allegheny County, as well as leaders in the field.

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Infrastructure

VISION TEAMS

Imagining Allegheny County's Tomorrow

Dennis Yablonsky & Jim Kunz, Co-Chairs

County of Allegheny

Executive Summary

Recognizing that sound infrastructure is essential to the economic and public health and vitality of a community, it is imperative that strategies be developed and implemented that ensure the stability and integrity of all aspects of this critical element of our county. The Infrastructure Vision Team crafted the following recommendations to ensure that the highest standards are attained and maintained for our transportation system involving Roads, Bridges and Rail, Site Development and Water, Sewer, Locks and Dams including public drinking systems and adequate waste water management:

- **Recognize Criticality and Maximize Efficiency of Roads, Bridges and Rail**
    - Promote intergovernmental cooperation which will result in efficiencies through enhanced and expanded shared snow removal agreements and the exploration of Ownership Transfers between the county and the state involving the exchange of responsibilities high-functional classified/high-volume roadways and bridges from the county to Penn DOT, while transferring some appropriate lower functional classified /lower volume roadways and bridges to the county.
    - Increase predictability and certainty by improvements in the delivery process by expanding the role of the county's two design managers to advance projects without securing Penn DOT approval, or by greater coordination and synthesis between the county and Penn DOT.
    - Coordinate with the State to allow for Right-of Way Acquisition for road and bridge projects and approval for the county to develop the equivalent of ECMS to expedite project letting and record keeping.
    - Evaluate the development of an electronic permitting system to expedite permit approval.
    - Eliminate duplicative inspection/monitoring projects by designating one agency for these functions and sharing evaluations with other entities.
    - Encourage the Commonwealth to revisit the allocation formula for liquid fuel tax revenue to the counties. A system based upon miles of roadway, lane miles of roadway, bridge deck area and/or Average Daily Traffic would provide a more equitable allocation system.
    - Optimize the county's position on securing available funds by identifying an individual or retain outside support to monitor state and federal programs for funding transportation improvements.
    - Raise the alcoholic beverage tax from 7 percent to 10 percent. Dedicate the additional funds towards sustainable transit funding.
    - Consider a portion of the gaming revenue dedicated to infrastructure improvements.
    - Consider leasing large tract of land owned by the county (i.e. Airport, Parks) for Marcellus Shale exploration and a portion of the revenue dedicated to infrastructure improvement. Advocate for the enabling legislation that would allow local government to pass funding initiatives for local transportation needs, in accordance with the Governor's Transportation Funding Advisory Commission's (TFAC) recommendations.

- Exercise options in Public-Private Partnership (P3) Legislation for infrastructure improvements and/or asset management; utilize a broad-based committee (technical, financial, legal) to evaluate P3 proposals.

- Advocate for passage of the Governor's Transportation Funding Advisory Commission (TFAC) recommendation, including legislation to allow local governments to initiate a funding initiatives to fund regional transportation improvements.

- Prepare a transportation improvement program so that impact fees can then be imposed for transportation capital improvements; base fees on (1) the total costs of the road improvements; (2) included in the capital improvement plan; and (3) be located within a given transportation service area affected by new development.

- Consider using the concept of Value Capture or Tax Increment Financing to finance public infrastructure projects.

- Investigate Community Facility Districts and municipal authorities further for possible use as funding mechanisms for regional infrastructure maintenance.

- **Strategically Plan and Implement Protocols to Enhance the Marketability and Preserve High Quality Site Development**

  - Invest in a Site Development fund with regional matches, develop and market sites cooperatively and leverage regional expertise to address site development challenges. Use of this fund (patterned after the Strategic Investment Fund and Pennsylvania's Business in Our Sites program) will have long-term amortization.

  - Invest in sites that have demonstrated marketability, offer attractive interest rates, leverage private investment and help developers/land owners carry projects until absorption begins.

  - Advocate for re-capitalizing of Business In Our Sites and RACP funding from the state for site development. The County should assist private developers in securing these grants and loans.

  - Dedicate some portion of the revenues generated by natural gas drilling on Allegheny County Airport Authority land be used to help capitalize the site development fund.

  - Re-institute a planning function to plan for future development and for preserving a sustainable, high-quality environment.

  - Coordinate permitting procedures related to site development by a single office; coordinate with the Allegheny County Economic Development and its counterpart at the City of Pittsburgh is maintained and expedited.

  - To increase pad-ready site development, focus on Brownfield's and Greyfields and locations that can be developed as mixed-use communities

- **Further Strengthen and Enhance the Management of Water, Sewer, Locks and Dams**
    - Guide and coordinate the multiple parties involved with the ALCOSAN and Municipal Wet Weather Planning Process to provide the focus and vision needed to assure a cost effective and sustainable wet weather plan.
    - Create a water advocacy coordinator in the County Executive's office to develop and coordinate an integrated watershed management plan for Allegheny County watersheds.
    - Initiate an implementation team of stakeholders with the charge to carry out the leading regionalization recommendation(s) of the study including legislative (state and local) solutions to incentivize system consolidation and sustainability.
    - When using County funding programs such as CDBG or CITF, require demonstration that the community sewer rates are adequate to provide the real cost of service including comprehensive operation and maintenance (O&M) programs or at least at an affordability level of 2 percent of Median Household Income (MHI) before providing grant funding. Funding decisions should leverage management changes to assure continued sustainability of the system or promote regionalization.
    - Revise the Allegheny County Health Department Regulation, Article XIV, and Sewage Disposal, to require full funding of approved wet weather plans and adequate operation and maintenance programs and to require communities that cannot meet these requirements to look for consolidation opportunities.
    - Review and encourage the use of innovative billing rate structures for customer communities to be implemented by ALCOSAN and other centralized wastewater treatment systems.
    - Consider revising the rate structure to pro-rate sewer billings based upon the amount of flow being delivered for treatment in separate sewer areas.
    - Provide the County Health Department with the staffing and resources needed to continue to implement the Safe Drinking Water Program and take full responsibility for the implementation of the Safe Drinking Water Act.
    - Charge the Allegheny County Health Department with evaluating the capabilities of each of the public drinking water treatment and conveyance systems to provide safe and reliable water supply for the next 25 years.
    - Provide Regional leadership to encourage and incentivize local water distribution systems to proactively perform periodic maintenance (such as pipe lining) and replace service lines that are beyond their useful life before they fail.
    - Encourage municipal water systems to adopt an asset-management approach to prolong the system life and aid in rehabilitation, repair and replacement decisions through efficient and focused operations and maintenance.

- Charge the County Economic Development and Health Departments with developing countywide codes and regulations to assure appropriate and consistent requirements. Indicate that county funding such as CDBG and AIM should be contingent on municipalities' adoption and enforcement of these ordinances.

- Consider Storm water fee programs as an option to provide additional capital as they can provide equity in the distribution of wet weather compliance costs to the largest contributors of wet weather flows based on impermeable surfaces.

- Identify or create an appropriate institution(s)/entity(ies) capable of addressing storm water management on a comprehensive, equitable, hydrology (watershed) basis, which would also consider regulatory compliance, costs and incentives to promote effective and efficient storm water management best practices.

- Implement institutional changes at the Allegheny County Conservation District so that they will take a more active role in sustainable storm water management and education.

- Develop a county-wide model storm water ordinance that integrates the use of green infrastructure to the maximum extent practical (a requirement of the storm water Management Act 167).

- Commit to use or require low impact development practices and green infrastructure in all county-funded projects.

- Continue to provide for the development and management of Act 167 Storm water Management Plans for all watersheds in county.

- Advocate for federal appropriations to maintain and recapitalize these assets in order to protect pool levels for commerce as well as for drinking water.

- Initiate contingency planning to understand the impacts of pool loss on drinking water and other critical environmental, commercial and recreational assets.

- Provide technical assistance to companies interested in siting and permitting for new natural gas related facilities along the river.

- Work with the Port of Pittsburgh Commission and Carnegie Mellon University to develop applications utilizing the new broadband wireless network including the monitoring of bridges, dams, air and water quality, and sewage outflows.

- Initiate a working committee of the engaged organizations to develop the implementation plan for the recommendations of the ALCOSAN Regionalization Committee.

Vision Team Charge

The Infrastructure Vision Team was charged with looking at how the county addresses infrastructure needs, sets priorities and funds these needs including roads, bridges, dams, water, wastewater and sewer and infrastructure preparation of sites for future business investment. The team also considered whether countywide funding sources dedicated to those needs could be proposed or developed. The full committee met on March 30, 2012 to discuss the charge and establish subcommittees, and held a final meeting on Friday, Aug. 17.

Scope of Work

The subcommittees were:

- Roads, Bridges and Rail
- Site Development
- Water, Sewer, Locks and Dams

Summary of Methodology

The Roads, Bridges and Rail Subcommittee drew on information provided by several Allegheny County departments and the combined professional expertise of the subcommittee members.

The Site Development Subcommittee studied information provided by the Pittsburgh Regional Alliance, an affiliate of the Allegheny Conference on Community Development which markets sites and other regional amenities to businesses looking to relocate or expand in the 10-county Pittsburgh region. Additionally, it drew upon the expertise of the subcommittee members.

The Water, Sewer, Locks and Dams Subcommittee compiled an inventory of sewage and drinking water infrastructure from the Allegheny County Health Department, ALCOSAN and other public sources, and drew on the combined professional expertise of the subcommittee members.

Subcommittee on Roads, Bridges and Rail

Our transportation system impacts every resident, business and visitor to the county. However, it is becoming increasingly difficult for Allegheny County Department of Public Works (DPW) to maintain, improve and provide the infrastructure and services to meet the county's mobility needs.

The benefits of highway and bridge investments to private sector productivity and economic activity are well-document in the economic literature. Numerous studies have found positive correlation between transportation infrastructure investment and economic development. Although exact impact of the investment varies, the fact there is a positive relationship is widely accepted. In addition to the direct employment supported by highway construction activities, there are is also direct user benefits such improved quality of life in time saved and safety, as well as gains in business productivity.

The importance of our road and bridge network is even more apparent after access and mobility are compromised by natural disaster, system failures or other disruptions (i.e. Hurricanes Ivan, Andrew). It is difficult to measure the long-term economic impact of infrastructure disruption because of some redundancy in the system. Consumers and businesses will find alternative transportation routes and travel in response to a disruption; however often in the short term there are significant economic consequences following an unexpected shut down of a bridge or roadway.

ROAD AND BRIDGE NEEDS

According to the Federal Highway Administration, Allegheny County has 5,801 miles of paved roads owned and maintained by various entities including the Federal, State, County, and Municipal governments, etc. Of 1,595 miles of roadway rated for quality purposes, 8 percent are deemed "not acceptable" and need major repairs or placement. With respect to the County-owned roads, the Department of Public Works annually compiles a prioritized list after input from the five (5) divisions within the Department, the Parks Departments and municipalities.

Within Allegheny County, there are a total 2,232 bridges and 1,197 bridges are 20 feet or more in length. Of the bridges greater than 20 feet in length, PennDOT owns 804, the county owns 174, local municipalities and the City of Pittsburgh own 186. Other entities, such as the Port Authority of Allegheny County own and/or maintain 70 Transit bridges and 11 highway bridges.

Allegheny County also owns and maintains another 346 bridges less than 20 feet in length, for a total responsibility of 520 bridges throughout the county. The FHWA reports 33 percent of all bridges in Allegheny County are either "structurally deficient" (356 bridges) or functionally obsolete (376 bridges). It will cost an estimated $936.9 million to make all necessary bridge repairs in the county. Allegheny County has 75 structurally deficient bridge and 67 functionally obsolete bridges. That totals more than 1.3 million square feet of deck area that is either structurally deficient or functionally obsolete. The Pennsylvania Department of Transportation (PennDOT) estimates the average square-foot bridge replacement cost is $500 per square foot, for a total cost of $6.5 billion.

The following major river bridges are maintained by Allegheny County:

- Mansfield Bridge
- Homestead Grays Bridge - Rehabilitation Completed in 2007 – $38 million
- Rankin Bridge – Rehabilitation Completed in 2011- $48.4 million
- Glenwood Bridge
- Rachel Carson Bridge (Ninth Street) - Under Design
- Andy Warhol Bridge (Seventh Street) - Under Design
- Roberto Clemente Bridge (Sixth Street) - Under Design
- Sixteenth Street Bridge – Rehabilitation Completed 2003
- South Tenth Street Bridge - Under Design

The Glenwood Bridge is primarily owned by Allegheny County; however, PennDOT owns the pavement and the City of Pittsburgh owns the sidewalks. The bridge is jointly maintained by all. It is typical for Pennsylvania counties to own bridges. It is atypical for the counties to own major bridges.

In numerous locations throughout the county-owned system ownership is discontinuous. This discontinuity can result in inefficiencies in snow removal and general maintenance. An example is Imperial and Burgettstown Road at Robinson Road near Imperial. This 1.6-mile road segment is owned and maintained by the county; however, there are no other county-owned and maintained roadways within several miles of this area.

There are many areas where the county maintains a number of roadways in a continuous pattern. The most obvious is the county park roadway system. It is typical for Pennsylvania counties to own the roads in their county parks. It is atypical for them to own any other roads.

Allegheny County owns and maintains a wide range of roadways without regard to functional classification and Average Daily Traffic (ADT). The functional classification of county-owned roadways includes other Principal Arterials, Minor Arterials, Collectors, Local Roads and Park Drives. The ADT ranges from a high of over 60,000 (the Rankin Bridge) to roadways carrying only few hundred vehicles per day. The average ADT is 8,500 vehicles per day and the median\ADT for the county system is 6,900 vehicles per day. (Refer to the 2010 PennDOT Type 4 Traffic Volume Map for Allegheny County: ftp://ftp.dot.state.pa.us/public/pdf/BPR_pdf_files/MAPS/Traffic/Traffic_Volume/2010/Allegheny_2010_tv.PDF)

The county owns roads and bridges that would normally be owned by the state (and therefore would be shepherded through the road and bridge condition analysis and funding process by the state). This has ramifications related to TIP funds and state Bridge Bill funds. The state allocates state and federal funds for infrastructure to each region, based on TIP formulas. The formulas do not deliver funds to major roads and bridges owned by Allegheny County in the same manner as if they were owned by the state. The total funds come to Southwestern Pennsylvania Commission (SPC), with targeted amounts allotted to each of three PennDOT districts. However, no targeted amounts are permitted as set-asides for major county roads or bridges.

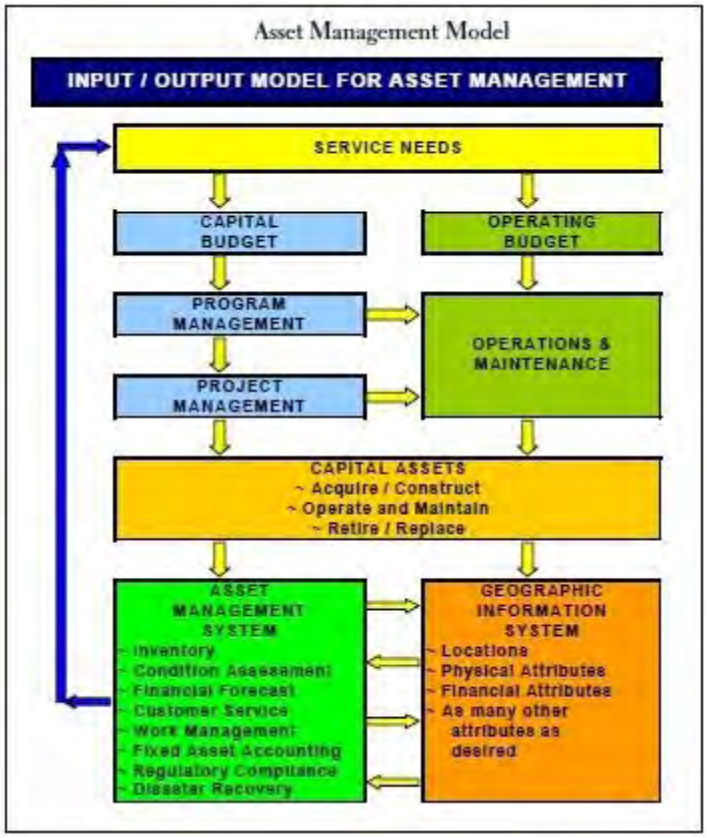
Therefore, county-owned roads that would normally be owned by the state effectively become “less equal” when funds are designated. It should be noted that facilities that should be state-owned were, in fact, state-owned, they would be prioritized within their proper class and category. Those projects would likely move more effectively through the maintenance/reconstruction process if they belonged to the most logical entity. In the current situation, all entities involved cooperate well -- within the parameters in which they must function. But when the larger agency lists priorities, and the smaller agency’s projects get tacked on at the end -- even though they are of equal magnitude and importance –

dependence on the largesse of the larger agency to "do the right thing" replaces a logical system in which priorities are determined as a whole by the facility owner.

ASSET MANAGEMENT

Asset management is a structured framework which addresses the life-cycle investment in roads and bridges. The framework is intended to:

- Be holistic, applicable to existing facilities and those that may be developed in the future;
- Provide the basis for making decisions across asset classes in an integrated manner and from a system-wide perspective about operation and maintenance as well as new construction and reconstruction; and
- Be easy to implement, cost-effective, and sufficiently beneficial for DPW.



Assets need to be managed collectively by asset type, as well as by segment, by corridor, by community, and for the system in its entirety. Recognizing that the current system of analysis has been used for approximately thirty years, the challenges only will grow greater as the system ages and there are more increases in vehicles miles traveled.

Transportation asset management is a developing field that provides a set of tools and techniques for managing infrastructure assets. Asset management is, at its core, a set of guiding principles and best practice methods for making informed transportation resource allocation decisions, and for improving the accountability for these decisions. AASHTO defined asset management as follows:

> *Transportation Asset Management is a strategic and systematic process of operating, maintaining, upgrading and expanding physical assets effectively throughout their life cycle. It focuses on business and engineering practices for resource allocation and utilization, with the objective of better decision-making based upon quality information and well-defined objectives.*

The county-owned bridges do receive the biannual NBIS inspection, which is coded into the PennDOT Bridge Management System. Improvements to bridges consider several factors that include bridge inspection rating, traffic volume, posting and available funding. Bridge are typically funded with federal Critical Bridge (FCB) funding whereby the county secures 80 percent federal, 15 percent state and only 5 percent county funds. This funding mechanism has stretched available county funds.

Roadway funding has been stagnant for several years with actual spending around $6.5 million per year. The prioritization of roadway project is established by staff at the county district level along with DPW technical staff. A pavement management system is not being used because previous attempt have resulted in unsustainably cost systems.

The county does have a GIS system which could be augmented to assist DPW in developing an asset management system for the roadway system.

CHALLENGES AND RECOMMENDATIONS

PROCESS

Challenge: Intergovernmental cooperation

Intergovernmental cooperation among state agencies, cities, counties, towns and villages often produces less expensive and more efficient local government services. Allegheny County has 130 municipal governments all working to deliver similar service to their citizens**.** Efficiency in delivery these services through a collaborative approach can be achieved and provide improve service delivery.

Recommendations:

- Efficiencies could be achieved through enhanced and expanded shared snow removal agreements, including reimbursement for services or the transfer of certain roadway snow removal responsibilities among the county, municipalities and PennDOT.

- Potential Ownership Transfers between the county and the state. Although a formal process does not exist for ownership transfers, the county could enter into discussions with the state on the transfer of high-functional classified/high-volume roadways and bridges from the county to PennDOT, while transferring some appropriate lower functional classified /lower volume roadways and bridges to the county.

Challenge: Delivery Process Improvements

One important factor in securing public confidence and support for infrastructure improvement is predictability. Greater certainty is needed in terms of when environmental clearance can be obtained, how long right-of-way acquisition will take, whether all the permits can be secured and whether construction funding will be available.

Recommendation:

Expand the role of the county's two design mangers to advance projects without securing PennDOT approval, or by greater coordination and synthesis between the county and PennDOT.

Challenge: Right-of Way Acquisition

On many projects, right-of-way acquisition has become the critical path element in the preparation of a project for lettings. This has been even acknowledged by MAP-21 (new two-year transportation bill) which allows right-of-way acquisition in advance of environmental clearance. Furthermore, based on a recent event, Allegheny County is not able to secure right-of-way for projects that have state and federal funding.

Recommendation:

The county should approach PennDOT to secure approval to secure right-of-way for road and bridge projects. The process needs to start as early as possible to ensure the right of clearance is secured prior to advertisement of project.

Challenge: Project letting and records

As a project nears the end of the design phase, the county receives the final plans and draft specifications from either a consultant or an in-house design squad. The county prepares a Plans, Specifications and Estimate (PS&E) package, which is subsequently forwarded to PennDOT for approval prior to letting and use the PennDOT ECMS system.

Recommendation:
Allow the county to develop the equivalent of ECMS to expedite project letting and record keeping.

Challenge: Permitting process
The county issues permits for highway occupancy permits and development and these permits must be issued in a reasonable timeframe for commence to proceed in a reasonable manner.

Recommendation:
The county should evaluate the development of an electronic permitting system to expedite permit approval.

Challenge: Project inspection/monitoring: Projects are being monitored by DPW and in some instances the comptroller's office. This leads to duplicative inspection/monitoring.

Recommendation:
One county agency should conduct the inspection/monitoring and share information with other county agencies.

FUNDING

The Commonwealth of Pennsylvania provides funds to each county for the construction, maintenance and repair of county roads and bridges through the Liquid Fuels Tax Act of 1931. This act provides all counties with semi-annual allocations in June and December of each year. The act also allows the counties to allocate monies from this fund to their political sub-divisions for these same purposes The county receives funding based on a formula established in the act.

The Commonwealth allocates one-half cent of the tax collected on each gallon of liquid fuels for distribution to the counties. The allocation formula is based on the ratio of a county's average gas consumption in the years 1927, 1928 and 1929 to the total statewide consumption in those long-ago years. The allocations are calculated semi-annually based on actual revenues as certified by the Department of Revenue and distributed by the Bureau of Municipal Services to the counties in June and December. Allegheny County receives $4.5 million annually under the Liquid Fuels Tax Act.

The Commonwealth also allocates liquid fuel tax revenue for roadway construction, maintenance and repair to the municipalities under a different act and formula. These funds go to local municipalities, but do not flow to Allegheny County. This act (the Liquid Fuels Tax Act 655 dated 1955, and as amended) allocates funds to municipalities, and is based on the ratios of mileage and population of the municipality to the state totals. That is, 50 percent of the funds are distributed based on a municipality's proportion of local road mileage to the total local road mileage in the state, and 50 percent on the proportion of a municipality's population to the total population of the state.

Challenge: Equity Issues with the Allocation Formula County allocations are based on the ratio of average gas consumption in the years 1927, 1928 and 1929 to the total statewide consumption in those years. Because of demographic shifts, fuel usage and other factors, a current-day ratio is likely to be dramatically different.

The county allocation system does not consider the size of the roadway system that the counties are responsible for. This is contrary to the municipal fuel tax allocation system, which considers the mileage of local municipality maintained roadways.

The county allocation system also does not consider the magnitude of the roadway system. Allegheny County maintains nine major bridges and many high-volume roadways. This is not taken into consideration in the current allocation system.

Recommendation:

Based upon the information collected and analyzed above, along with discussions with Allegheny Public Works and Department of Economic Development staff, the county should encourage the Commonwealth to revisit the allocation formula for liquid fuel tax revenue to the counties. A system based upon miles of roadway, lane miles of roadway, bridge deck area and/or Average Daily Traffic would provide a more equitable allocation system.

Challenge: Finding Other Sources of Revenue

Recommendations:

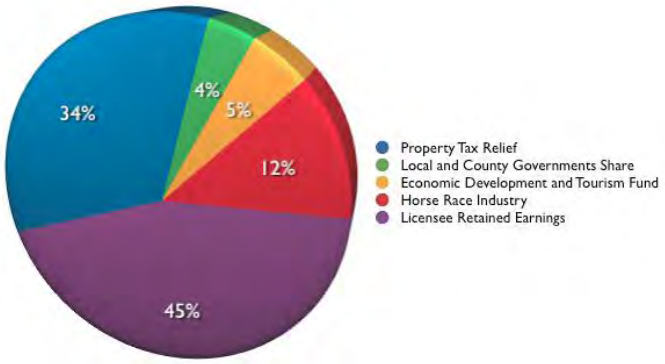
- Funding Sources Identification. The state and local programs available for transportation funding need continuous monitoring to optimize the counties position on securing available funds. The new two-year federal transportation bill (Map 21) has various programs and grants. The county should identify an individual or retain outside support to monitor state and federal programs for funding transportation improvements.

- Raise alcoholic beverage tax from 7 percent to 10 percent. Dedicate the additional funds towards sustainable transit funding.

  On Dec. 4, 2007, Allegheny County Council enacted an Alcoholic Beverage Tax for Allegheny County which was signed into law by the County Executive. On Dec. 2, 2008, Allegheny Council passed an amendment reducing the rate of the Alcoholic Beverage Tax from 10 percent to 7 percent effective **Jan. 1, 2009, which was** subsequently signed into law by the Chief Executive. Under state law, the county treasurer is the Tax Collector of all taxes levied in Allegheny County and thus responsible for the collection of this tax.

- **Gaming Revenue.** The County should consider a portion of the gaming revenue dedicated to infrastructure improvements.

  Act 71 of 2004 was designed to produce tremendous benefits for its citizens through the introduction of the slots gaming industry to Pennsylvania and in 2010, table games. Legalized gaming in the Commonwealth is creating thousands of new living-wage jobs, generating revenues that will improve the quality of life in local communities, reinvigorating of Pennsylvania horse racing industry, and lowering the property tax of homeowners. For every dollar produced as revenue from slot machine play, 55¢ is returned to Pennsylvanians. Here is a breakdown of this taxation:



- **Marcellus Shale Revenue.** The county should consider leasing large tract of land owned by the county (i.e. Airport, Parks) for Marcellus Shale exploration and a portion of the revenue dedicated to infrastructure improvement. Advocate for the enabling legislation that would allow local government to pass funding initiatives for local transportation needs, in accordance with the Governor's Transportation Funding Advisory Commission's (TFAC) recommendations.

  Pennsylvania Consolidated Statutes (Act 13 of 2012) was signed by Governor Corbett on Feb. 14, 2012 with some provisions going into effect upon signing and others will become effective on April 14, 2012. The law provides for the imposition of a gas well fee (also called a drilling impact fee), and the expenditure of the funds generated by that impact fee to local and state purposes specifically outlined in the law. The law also contains a mechanism as to how the fees shall be distributed. A significant portion of the fees generated will be used to cover the local impacts of drilling while several of state agencies will also receive funding for a variety of other purposes.

  The law specifically provides for the imposition of an unconventional well fee by county (or alternatively municipalities compelling the imposition of an unconventional well fee). A county may impose the fee if unconventional gas wells are located within its borders and it passes an ordinance within 60 days of the effective date of the act. A county that does not pass an ordinance imposing a fee shall be prohibited from receiving funds. This prohibition shall remain in effect until a county passes an ordinance imposing a fee.

- Public-Private Partnership (P3) Legislation. The County should consider this delivery method for infrastructure improvements and/or asset management. A broad-based committee (technical, financial, legal) should be established to evaluate P3 proposals.

  On July 5, 2012, by signature of Governor Tom Corbett, Pennsylvania joined 32 other states in the U.S. that authorize Public-Private Partnerships (also known as P3's), an innovative transportation financing and project delivery mechanism that is endorsed by the U.S. Department of Transportation and the Governor's Transportation Funding Advisory Commission (TFAC). The measure, Act 88 of 2012, will allow private sector enterprises to propose new highway projects, and give state and local governments more flexibility to use firms to design, build, finance, and manage roadways.

- Enabling Legislation for localities to impose tax. Advocate for passage of the Governor's Transportation Funding Advisory Commission (TFAC) recommendation, including legislation to allow local governments to initiate a funding initiatives to fund regional transportation improvements.

Challenge: Impact Fees

One-time impact fees from property developers to municipal, county or school district governments for off-site improvements necessitated by new development may be based upon square footage, number of bedrooms, number of bathrooms or other housing characteristics depending upon the use of the funds. These fees may be authorized by state-enabling statutes.

The Delaware Valley Regional Planning Commission (DVRPC) has promoted impact fees as one of its "Municipal Implementation Tools." A guide published in 2004 describes the status of impact fees at that time: Act 47 and Act 209 of 1990, which amended Article V of the Municipalities Planning Code (MPC), provide for the use and management of impact fees for transportation capital improvements. Act 47 allows municipalities to delineate a Transportation

Development District (TDD), following the completion of a comprehensive transportation study that assesses the existing conditions of the district and identifies necessary improvements.

***Recommendation**:*
A transportation improvement program must be prepared and impact fees can then be imposed for transportation capital improvements, but they must be based on (1) the total costs of the road improvements; (2) included in the capital improvement plan; and (3) be located within a given transportation service area affected by new development.

Challenge: Value Capture (Assessment Districts and Tax Increment Financing)
Value capture attempts to capture some of the increase in value due to the improvements which benefit the properties impacted. Assessment districts are special property taxing districts where the cost of infrastructure is paid for by properties that are deemed to benefit from the infrastructure.

***Recommendation**:*
These assessments can be applied to the full value of the subject property, or use a Tax Increment Financing (TIF) technique in which bonds are issued to finance public infrastructure improvements and repaid with dedicated revenues from the increment in property taxes as a result of such improvements.

Challenge: Community Facilities Districts (CFD)
CFDs are creative funding mechanisms for infrastructure projects where residential and commercial property owners are charged an annual fee for the benefit of specific infrastructure needs in their area. CFDs seem suited to regional projects and programs as they are not tied to a specific facility as is the case with most other beneficiary charges. They have been used in California and to a lesser extent in Arizona, Illinois, New Mexico, and Hawaii. Although they have seen limited use for transportation to date, there may be larger potential in the future. Pennsylvania's equivalent to CFDs is the municipal authority. An authority can be organized by any governing entity, acting singly or jointly, within two general categories: operating and leaseback An operating authority is totally on its own, selling bonds to finance its projects, operating the project and paying off its debt from project revenues. Municipal officials have no role in operating or paying for the project. Authority personnel operate the project and collect user charges directly.

A special type of business district authority is the Transportation Improvement Authority. Transportation improvement authorities operate under the provisions of the Transportation Partnership Act, 53 P.S. 1621, as well as the Municipality Authorities Act. Transportation improvement authorities build transportation improvements and fund them through property assessments, with the prior approval of the elected municipal officials. This allows creation of public-private sector partnerships to fund projects where benefits are restricted to a small area.

Recommendation:
The county should investigate CFDs and municipal authorities further for possible use as funding mechanisms for regional infrastructure maintenance.

Subcommittee on Site Development

Two key factors are impeding investment to attract and expand business in Allegheny County. Our topography provides unique challenges in developing real estate. Also, the public sector lacks the financial resources to make the improvements to infrastructure that are needed.

Excessive costs, uncertain timetables and the lack of public investment in infrastructure all stand in the way of attracting private investment in business sites. By pooling investment into a fund with regional matches, we could develop and market sites cooperatively and leverage regional expertise to address site development challenges. In addition, site developers have expressed frustration with multiple points of contact – at both the county and municipal levels – when it comes to permitting.

Streamlining this process could cut costs and investment delays, foster economic development in diverse communities and strengthen intergovernmental cooperation.

CHALLENGES AND RECOMMENDATIONS

Challenge: Lack of Financial Resources

The public sector lacks the financial resources to make the improvements to infrastructure (roads, water and sewer) that are needed.

Recommendations:

- By pooling investment into a fund with regional matches, we could develop and market sites cooperatively and leverage regional expertise to address site development challenges. We recommend that the Allegheny County Executive's Office support a Site Development Fund, as envisioned by the Power of 32 initiative, to help prepare pad-ready sites for office and industrial development. Investors would have a position in a professionally managed, limited partnership fund. Due diligence teams would play key roles in ensuring money is disbursed fairly to sites with immediate market viability.

  Patterned after the Strategic Investment Fund and Pennsylvania's Business In Our Sites program, such a fund would have long-term amortization, invest in sites that have demonstrated marketability, offer attractive interest rates, leverage private investment and help developers/land owners carry projects until absorption begins. Among good examples that should be prioritized are the Almono/Hazelwood site; the Buncher site in the Strip District; sites around the Pittsburgh International Airport; certain MonValley Brownfields; and the vacant 28 acres adjacent to the CONSOL Energy Center.

- The County Executive should advocate for re-capitalizing of Business In Our Sites and RACP funding from the state for site development. The County should assist private developers in securing these grants and loans.

- We recommend that some portion of the revenues generated by natural gas drilling on Allegheny County Airport Authority land be used to help capitalize the site development fund.

Challenge: Multiple Points of Contact/Overlapping Jurisdictions

Site developers have expressed frustration with multiple points of contact – at both the county and municipal levels – when it comes to permitting.

Recommendations:

- The county should re-institute a planning function to plan for future development and for preserving a sustainable, high-quality environment.

- Permitting procedures related to site development should be coordinated by a single office. We recommend that efforts to coordinate with the Allegheny County Economic Development and its counterpart at the city of Pittsburgh be maintained and expedited.

- We recommend that pad-ready site development be focused on Brownfields and Grayfields.

- We recommend that pad-ready site development be focused on locations that can be developed as mixed-use communities in order to foster live-work-play nodes that minimize environmental and quality-of-life costs imposed by commuting.

Subcommittee on Water, Sewer, Locks and Dams

INVENTORY OF SEWAGE AND DRINKING WATER INFRASTRUCTURE

- Sewage Treatment Infrastructure (Source: Allegheny County Health Department)
    - 71 sewage treatment plants
    - 48 publicly owned treatment works
    - 23 private treatment facilities
    - 120+ municipal sewage collection system owners.

- Drinking Water Infrastructure (Source: Allegheny County Health Department)
    - 16 publicly owned water treatment plants
    - 1 investor-owned water treatment plant
    - 19 consecutive municipal water distribution systems
    - 6 commercial treatment facilities (bottled water and other)

- Municipal Stormwater Infrastructure
    - Stormwater system mapping and assessment is being developed under the municipal separate storm sewer system (MS4) state and federal permit requirements

- Locks and Dams
    - Seven lock systems are located in Allegheny County
        - Monongahela River
            - Lock and Dam #3, Elizabeth
            - Braddock Locks and Dams, Braddock
        - Allegheny River
            - Lock and Dam #4, Brackenridge
            - C.W. Bill Young Lock and Dam, Harmer
            - Lock and Dam #2, Highland Park
        - Ohio River
            - Emsworth Locks and Dam, Emsworth
            - Dashields Locks and Dams, Crescent Twp

CHALLENGES AND RECOMMENDATIONS

1. Sewage conveyance and treatment systems

1.1 Challenge: Wet Weather Plan Implementation

All 83 ALCOSAN service area communities and many of the remaining 47 municipalities and authorities are under some form of consent order and agreement or permit requirement with Allegheny County Health Department, the Pennsylvania Department of Environmental Protection (DEP) or the U.S. EPA to prepare wet weather plans to address sanitary and combined sewer overflows. Implementation of the Regional Long Term Wet Weather Control Plan will require extensive regional capital programs.

ALCOSAN's Recommended 2026 Plan will result in approximately $1.5 billion in new capital expenditures for ALCOSAN and an additional $0.5 billion in expenditures for the municipalities in current dollars. Accounting for inflation, ALCOSAN and the municipalities will face capital expenditures of approximately $2.8 billion for the Recommended 2026 Plan. ALCOSAN's Selected Plan will cost approximately $3.6 billion in current dollars and would meet established goals to not preclude the attainment of water quality standards and to eliminate SSOs (sanitary sewer overflows). However, implementing a $3.6 billion program through 2026 is unaffordable. As a result, ALCOSAN is proposing a phased course of wet weather controls. Preliminary analysis by ALCOSAN has indicated that annual ALCOSAN rate increases ranging from 10 percent to 12 percent through the implementation of the Recommended Plan may be necessary.

The draft ALCOSAN wet weather plan was made public at the end of July 2012 with an 80-day comment period that ends Oct. 19, 2012. The final ALCOSAN Wet Weather Plan is due in January 2013, while the municipal wet weather plans are due in July 2013. It is anticipated that the ALCOSAN and municipal wet weather planning will be integrated over the following year with subsequent approval of the regional wet weather plan in 2014. Under the ALCOSAN consent decree, the municipal obligations must be implemented through an enforceable order so new orders from the regulatory agencies are anticipated, but negotiation of 83 separate municipal orders with long-term compliance obligations is not practical, cost-effective or sustainable. Coordination is essential in order to achieve regional compliance by the 2026 deadline established by the ALCOSAN consent decree.

There are a series of challenges related to wet weather planning facing municipalities including increasing requirements to improve water quality, particularly wet weather impacts caused by sanitary and combined sewer overflows and stormwater. EPA has developed a new integrated watershed management strategy that will require holistic planning beyond municipal boundaries to allow flexibility in wet weather planning. Competing regulatory requirements such as the Municipal Separate Storm Sewer Systems (MS4) permits, total maximum daily load (TMDL) as well as combined sewer overflow/separate sewer overflow (CSO /SSO) compliance can all be considered when developing wet weather plan priorities under this new policy.

Wet weather planning and CSO/SSO compliance is not limited to the ALCOSAN communities. Most of the older towns along the rivers also have combined systems and are under either permit obligations or consent orders to develop wet weather plans as well. Although these costs are not yet defined, we estimate that there is several hundred million dollars in additional liability.

Recommendation:

The leadership of the County Executive Office should guide and coordinate the multiple parties involved with the ALCOSAN and Municipal Wet Weather Planning Process to provide the focus and vision needed to assure a cost effective and sustainable wet weather plan. Integrated water planning will help prioritize water quality improvements, including implementation of the regional wet weather plan.

This can be accomplished through the creation of a water advocacy coordinator in the County Executive's office to develop and coordinate an integrated watershed management plan for Allegheny County watersheds. This strategy will set priorities for water management including regional wet weather planning, Act 167 Stormwater Planning (county level planning for the major watersheds), Act 537 Sewage Facilities planning (required municipal planning for sewer infrastructure), and water quality planning for waterways where TMDL has been established for "impaired" waterways. The cost for this coordination would be very small when compared to the potential costs to the ratepayers for failure to coordinate wet weather planning. As an example, a surcharge of $.01 per thousand gallons of water consumption across 500,000 households in Allegheny County will produce more than $300,000 in revenue annually. (Domestic consumption @ 60,000 gal/yr/household).

1.2 Challenge: Wastewater System Management

In Allegheny County, the ownership of most of the sewer infrastructure is distributed across more than 100 municipal councils and 34 municipal authorities. The prevalent governance model is similar to ALCOSAN's with a centralized sewage treatment authority and collection system ownership by the customer municipalities. Historically, systems were underfunded to fully cover the level of operation, maintenance and capital improvements needed to maintain the systems. Although little has happened to change this model, through the municipal consent orders the ALCOSAN communities have significantly improved their knowledge of their system assets and liabilities which will help facilitate the discussion of future management options. It should be expected that after approval of the wet weather plan there will be new enforcement orders to the municipalities to implement the plan requirements. Continued ownership of the sewer infrastructure under this model is not cost effective or sustainable.

ALCOSAN has initiated a study of eight potential alternatives for regionalization of the ALCOSAN service area municipal systems and options that include the sewer systems outside of ALCOSAN and regional stormwater management within the county. The study is served by a steering committee of 36 stakeholders created by the Allegheny Conference for Community Development chaired by Carnegie Mellon University President Jared Cohen. The process is being facilitated with the consultants provided by ALCOSAN. A final report is scheduled for completion in December 2012.

Consolidation of municipal systems into regional authorities could provide for a more cost- effective and professional management approach. Regional authorities could also be involved in the management of storm sewer, stormwater management and flood reduction. Regional authorities provide many opportunities for more cost effective and professional system management.

Recommendation:

The County Executive's office should initiate an implementation team of stakeholders with the charge to carry out the leading regionalization recommendation(s) of the study including legislative (state and local) solutions to incentivize system consolidation and sustainability.

1.3 Challenge: Sustainable Funding

Historically municipal wastewater rates have not reflected the real cost of providing service that has resulted in decades of deferred maintenance. The level of capital improvements and operation and maintenance through the distributed ownership of the wastewater infrastructure in more than 100 municipalities and authorities has triggered county, state and federal enforcement actions against the great majority of Allegheny County municipalities.

The ALCOSAN contracts with their original member municipalities were developed and executed in the 1950s and provide little incentive to control flow from these communities. The agreements do, however, hold the municipalities responsible for all delinquent sewer use accounts which assure ALCOSAN's bond rating through guaranteed revenues.

Recommendation:

Allegheny County funding programs such as Community Development Block Grants (CDBG), Community Infrastructure & Tourism Fund (CITF) and others should require demonstration that the community sewer rates are adequate to provide the real cost of service including comprehensive operation and maintenance (O&M) programs or at least at an affordability level of 2 percent of Median Household Income (MHI) before providing grant funding. Funding decisions should leverage management changes to assure continued sustainability of the system or promote regionalization.

Allegheny County Health Department Regulation, Article XIV, Sewage Disposal, should be revised to require full funding of approved wet weather plans and adequate operation and maintenance programs and to require communities that cannot meet these requirements to look for consolidation opportunities.

1.4 Challenge: Incentivizing Municipal Wet Weather Flow Reduction

In ALCOSAN and all other Allegheny County sewer systems, the rate structure is based on consumer water usage. Therefore there is little incentive to customer municipalities to provide source reduction techniques to address inflow and infiltration or implement green infrastructure. There are several communities that joined the ALCOSAN system in the 1980's and 90's (Robinson Run communities, Collier and Penn Hills) that are charged a wet weather penalty for excessive flow. In these communities the surcharge is returned to them through an escrow account for the dedicated purpose of system improvements and rehabilitation for removal of excess flow.

Recommendation:

Review and encourage the use of innovative billing rate structures for customer communities to be implemented by ALCOSAN and other centralized wastewater treatment systems. For example, the city of Philadelphia has revised their billing structure for sanitary sewer treatment to reflect the amount of impervious area that customers have connected to the combined sewer system. The philosophy distributes the cost to the owners of large impermeable areas such as parking lots and other facilities that are contributing significant peak flows to the system resulting in wet weather overflows. The large cost of wet weather programs is in creating the capacity for these peak wet weather flows.

This type of rate structures provides an economic incentive to remove or reduce flows to the sewer system by rewarding those who remove storm water from the combined sewer system by reducing the impervious cover fee after corrective actions have been made.

In separately sewered areas, consideration should be given to revising the rate structure to pro-rate sewer billings based upon the amount of flow being delivered for treatment. This increase in billing due to wet weather infiltration and inflow would encourage investment in the system and result in reduced flow over time. This concept of source reduction may be more sustainable by directing some resources to address current systems problems, rather than investing the majority of the available funds to construct new facilities at the downstream end of the system. This emphasis of the sustainability of our current sanitary and combined sewer system will also help to address existing areas of basement flooding and future bacteria TMDL's that are due to overflows well above the points of connections with ALCOSAN.

2. Public Drinking Water Systems

2.1 Challenge: Changing Drinking Water Regulations

The Phase II regulatory treatment requirements under the Safe Drinking Water Act will require continual operator training, process modifications and capital improvements. Regulatory oversight includes “capability enhancement” studies by the DEP and an eight-step sanitary survey by the EPA. Allegheny County Health Department staff expertise may be lost through anticipated retirements and staff turnover in the next few years.

Recommendation:

The Allegheny County Health Department should be provided with the staffing and resources needed to continue to implement the Safe Drinking Water Program and take full responsibility for the implementation of the Safe Drinking Water Act.

2.2 Challenge: Source Water Quality

Source water quality continues to be a challenge to both surface and ground water treatment plants.

Recommendation:

The County Executive should charge the Allegheny County Health Department with evaluating the capabilities of each of the public drinking water treatment and conveyance systems to provide safe and reliable water supply for the next 25 years. All systems should be required to be able to provide a minimum of three days of continual safe supply through storage, system interconnects and/or alternate sources in case of source contamination or other system failures.

2.3 Challenge: Aging Water Distribution Infrastructure

Just as with the sewage conveyance systems, portions of the county’s water distribution infrastructure are approaching/exceed an age of 100 years. The same budgetary constraints have led to deferred maintenance and lack of proactive life cycle replacement resulting in aged and deteriorated pipelines that have failed and may at any time fail catastrophically. Failure of a major distribution line or river crossing could leave thousands if not tens of thousands of people without water for an extended period of time. As the system continues to age, failures will likely become more common and more significant.

Recommendation:

Regional leadership is needed to encourage and incentivize local water distribution systems to proactively perform periodic maintenance (such as pipe lining) and replace service lines that are beyond their useful life before they fail. Municipal water systems should be encouraged to adopt an asset-management approach to prolong the system life and aid in rehabilitation, repair and replacement decisions through efficient and focused operations and maintenance.

3. Stormwater Management

3.1 Challenge: Local regulations

There are numerous historic and conflicting land use and zoning regulations that need to be revised or repealed to allow the appropriate use of green infrastructure and encourage accepted stormwater best practices to promote sustainable low-impact development. 3 Rivers Wet Weather and the Environmental Law Clinic at the University of Pittsburgh are currently conducting an assessment of municipal codes and ordinances to identify the regulatory barriers to green infrastructure, low impact development standards and steep slope protection.

Recommendation:

Allegheny County Economic Development and Health Departments should be charged with developing countywide codes and regulations to assure appropriate and consistent requirements. Community Development Block Grants (CDBG), Authority for Improvement in Municipalities (AIM) and other county funding should be contingent on municipalities' adoption and enforcement of these ordinances.

3.2 Challenge: Increasing stormwater management requirements

Municipalities with separate storm sewer systems (MS4) are required to renew their NPDES permits in 2012. These permits require the implementation of six minimum control measures (MCM) as described in the federal registry:

1. Public Education and Outreach,
2. Public Participation and Involvement,
3. Illicit Discharge Detection and Elimination,
4. Construction Site Runoff Control,
5. Post-Construction Stormwater Management in New Development and Redevelopment, and
6. Pollution Prevention and Good Housekeeping for Municipal Operations and Maintenance

Owners or operators of regulated small MS4s in Pennsylvania's designated urbanized areas must implement a Stormwater Management Program that contains Best Management Practices (BMPs) to satisfy each one of these MCMs. In addition, for those small MS4s located in, or discharging to a waterbody for which a TMDL has been set, permittees must develop and implement control measures consistent with the wasteload allocation in the TMDL. These measures may include techniques such as reducing impervious areas, planting trees, constructing or upgrading recharge/infiltration facilities, retrofitting stormwater basins, restoring stream banks, establishing or re-establishing stream buffers and installing green infrastructure.

There are a number of streams in Allegheny County that have a TMDL currently or in development:

Saw Mill Run
Chartiers
Pine Creek

Recommendation:

Municipal stormwater fee programs based on impermeable areas are beginning to be used in many cities to assist in reducing wet weather overflows in combined sewer systems and to address water quality and flooding impacts in separate storm sewer systems. Under the current economic programs, federal and state assistance to the county or municipalities cannot be anticipated for implementation of the regional wet weather plan as the costs will be borne by the ratepayers. Stormwater fee programs should be considered as an option to provide additional capital as they can provide equity in the distribution of wet weather compliance costs to the largest contributors of wet weather flows based on impermeable surfaces.

3.3 Challenge: Implementation of Green Infrastructure

Changes in policy, regulations and codes will help accelerate the implementation of green infrastructure (GI) in Allegheny County to reduce combined sewer overflows, improve water quality, and decrease the costs of controls needed for the wet weather plans being developed by ALCOSAN and local municipalities (when the use of GI is cost effective and appropriate). Implementation of green infrastructure and low impact development techniques require significant economic and regulatory incentives.

Recommendations:

- Identification or creation of an appropriate institution(s)/entity(ies) capable of addressing stormwater management on a comprehensive, equitable, hydrology (watershed) basis, which would also consider regulatory compliance, costs and incentives to promote effective and efficient stormwater management best practices.

- Implementation of institutional changes at the Allegheny County Conservation District so that they will take a more active role in sustainable stormwater management and education (such as is being done in neighboring Westmoreland County).

- Development of a county-wide model stormwater ordinance that integrates the use of green infrastructure to the maximum extent practical (a requirement of the Stormwater Management Act 167).

- Commitment to use or require low impact development practices and green infrastructure in all county-funded projects.

3.4 Challenge: Chronic Flooding

Chronic stream flooding continues to impact a number of urban downstream communities including Etna, Millvale, Pitcairn, Carnegie and Washington Boulevard in the City of Pittsburgh.

Recommendation:

The Allegheny County Department of Economic Development should continue to provide for the development and management of Act 167 Stormwater Management Plans for all watersheds in county. This update should address both new and existing development. Stormwater fee programs based on impermeable area for both private and public properties should be considered at the county or local level to provide the capital resources needed to address the priority flood areas. The stormwater rates should be structured to provide incentive to property owners to reduce or control stormwater runoff from impermeable areas.

4. Locks and Dams

4.1 Challenge: Deteriorating Infrastructure

Stable pools of water, created by our locks and dams (L/Ds), provide for commercial navigation, recreation, drinking water, firefighting water and sewage dispersal. Their role can no longer be taken for granted. Conditions at the L/Ds have declined severely and maintenance continues to be cut.

There are 11 surface drinking water intakes located in these pools that serve 90 percent of the residents of Allegheny County. There are also numerous industrial intakes used for manufacturing processes and cooling. They depend upon these stable pool levels to withdraw the water based on the elevation of the intakes.

A danger exists due to the increasing deterioration of the locks and dams. The concern is not only for the dams in Allegheny County but the dams just outside the county as well. Of particular concern are the locks and dams at Emsworth, Dashields and Montgomery on the Ohio; Braddock, Elizabeth and Charleroi on the Monongahela; and Allegheny 2, C.W. Bill Young and 4 on the Allegheny. Of these, only the dams at Braddock and Emsworth are not major concerns for stability.

The consequences of a failure at any one of these dams could impact on the availability of drinking water for tens of thousands of residents. While the responsibility to maintain the locks and dams is a federal one, improvements of river banks, including terminals is a state and local responsibility.

Opportunities for the transport of water, sand and chemicals related to the Marcellus Shale and natural gas developments are only beginning to be felt. Expertise and technical assistance will be necessary to assist with site locations, facility and environmental development.

Moreover, the Port of Pittsburgh Commission and Carnegie Mellon University have initiated a program to bring broadband wireless network infrastructure to the waterways, beginning with an interoperable test bed in the Pittsburgh Pool in Allegheny County. The network is expected to be built out along the three rivers in all of Allegheny County by December 2012. The test bed promises to provide opportunities not only for navigation, but also public safety, security and environmental monitoring as well.

Recommendation:

The county should advocate for federal appropriations to maintain and recapitalize these assets in order to protect pool levels for commerce as well as for drinking water.
The county should initiate contingency planning to understand the impacts of pool loss on drinking water and other critical environmental, commercial and recreational assets.

The county should provide technical assistance to companies interested in siting and permitting for new natural gas related facilities along the river.

The county should work with the Port of Pittsburgh Commission and Carnegie Mellon University to develop applications utilizing the new broadband wireless network including the monitoring of bridges, dams, air and water quality, and sewage outflows.

5. Consolidation

5.1 Challenge: Water and Waste Water Consolidation

Over the past decade there have been a number of studies and reports evaluating the region's water and waste water systems that have all concluded that there are too many providers of wastewater services, which has led to inefficient management and regulation of those services. This problem of "water governance" was most recently summarized in the University of Pittsburgh's Institute of Politics report developed by the Regional Water Management Task Force, chaired by CMU president Jared Cohen. In Allegheny County, distributed ownership and management is primarily a problem of our wastewater systems as drinking water services are already provided and managed more regionally.

There have been a couple of recent initiatives to assess consolidation or regionalization of wastewater systems should be in consideration of the ALCOSAN wet weather plan and the municipal consent agreement required feasibility studies on their wastewater alternatives. 3 Rivers Wet Weather funded six sub-regional consolidation studies in 2011 and as discussed previously, the ALCOSAN regionalization study is ongoing with a report expected in December 2012. In addition, as the issues of stormwater and green infrastructure continue to evolve, regional leadership or coordination of those activities will also be critical. There are a number of organizations that are playing roles in either sorting through these associated issues or providing a broader (multi community) management of wastewater and/or stormwater services.

There are three major water-related activities that are facing the region now and in the future: wastewater collection and treatment, stormwater management (runoff, flooding, water quality) and green infrastructure/source reduction. All of these come together in the wet weather planning and implementation the region is mandated to move forward with by the EPA and DEP. Wastewater treatment, stormwater and green infrastructure/source reduction have typically been looked at as municipal responsibility. However, truly effective solutions require that these issues be evaluated from a multi community or regional view. A catalyst or facilitator will be needed to move the region forward into an era of professionally managed water resources. This role will also be crucial in anticipating future regulatory requirements and working with the affected stakeholders to make sure they respond appropriately. The county or its designated organization can work with the stakeholders to develop a more efficient system of managing the county's water resources.

There are a number of groups that are providing regional leadership on these issues which form a foundation to build from for future sewer system consolidations. These include:

Potential Regional Consolidation Candidates

ALCOSAN
Pittsburgh Water and Sewer Authority
McCandless Township Sanitary Authority
Girtys Run Joint Sewer Authority

Wilkinsburg Penn Joint Water Authority
Monroeville Water Authority
South Fayette Municipal

Consolidation Facilitators

3 Rivers Wet Weather
Allegheny Conference on Community Development
Pa Environmental Council
Council of Governments

Stormwater/Green Facilitators

3 Rivers Wet Weather
ALCOSAN
Clean Rivers Campaign
GTECH
Green Infrastructure Network
PWSA
PEC
Allegheny County

In addition, ALCOSAN and 3RWW have been working with the municipalities on the development of their wet weather plans and have been facilitators of the discussion on the need for consolidation. Recently the Allegheny Conference has also been working with ALCOSAN's Regionalization Committee chaired by CMU President Jared Cohen

Recommendation:

The County Executive should initiate a working committee of the engaged organizations to develop the implementation plan for the recommendations of the ALCOSAN Regionalization Committee.

Next Steps

The members of the Infrastructure Vision Team and its subcommittees appreciate the opportunity to engage with the Allegheny County Executive's office in the important work of improving our region's infrastructure, and stand ready to assist further in any way possible.

Members

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Operating Engineers Local 66

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Intergovernmental Cooperation

VISION TEAMS

Imagining Allegheny County's Tomorrow

Moe Coleman, Chair

County of Allegheny

Executive Summary

Recognizing that intergovernmental cooperation facilitates efficiency and effectiveness, the Intergovernmental Cooperation Vision Team concluded that such outcomes would be best realized with the active engagement and leadership of the county. Although historically the County has served in this capacity, the Vision Team determined that a redesign of its interactions with municipal governments would enhance the economic vitality and sustainability for all.

In light of this, the County should:

Serve as a Communications Center

- Develop and implement a comprehensive communications package, including educational and informational forums
- Replicate the County Pension summit for other issues of concern
- Conduct municipal tours in collaboration with the Council of Governments, (COG) including officials from the Federal, State and local governments; assign a priority level to projects reviewed

Function as the Coordinated County Data Center

- Inform local governments on a continuous basis about the date resources available to them
- Provide best practices and consultation services
- Consider partnering with the Governor's Center for Local government Services for assistance and support in initiatives
- Develop an integrated comprehensive and compatible data information system between the county and local governments
- Spearhead community engagement via a branding campaign that promotes intergovernmental cooperation
- Designate a staff member in the Executive office to serve as a liaison or ombudsman to work specifically on intergovernmental cooperation issues.

Act as a Resource for Local Governments

- Offer a defined, voluntary service cooperation package to local governments by which municipalities would obtain services at a reduced rate, while the County would gain much needed revenue. Emphasis should be given to the consolidation of "back office" functions such as information technology, joint purchasing, tax collection, health insurance, pensions, road maintenance, County police, etc.
- Examine how COGs could work on a contractual basis with the County to perform service delivery functions.

Study Financing Options Related to Intergovernmental Cooperation

- Explore securing funds for such initiatives from the private sector (foundations and corporations) along with state and federal funding

- Investigate the possibility to leverage recently signed public-private partnership (P3) legislation as a potential means for financing local government projects, specifically related to transportation and infrastructure.

Explore Ways to Enable Voluntary Municipal Disincorporation for Municipalities

- Play a major role in assisting some of the most severely disadvantaged communities that lack internal and external capacity to be sustained.
- Work collaboratively with state officials to craft enabling legislation for voluntary municipal disincorporation.

Vision Team Charge

The Intergovernmental Cooperation Vision Team is charged with determining whether the mechanics are in place to encourage efficiencies and, if not, to make recommendations as to what the county should be pursuing to encourage and support intergovernmental cooperation efforts.

Each vision team, within its charge and conversation, is expected to address sustainability, intergovernmental relations (recognizing existing relationships and identifying potential new ones) and diversity/inclusion. Each of these items should be folded into the recommendations and report made by the team. Additionally, for each recommendation that is made, the scope must be within one of three fields for which the county has a role: the county performs, or should perform, an administrative function related to the recommendation; the recommendation pertains to a financial interest or financial support of the county; and, the recommendation lends itself to advocacy by the county. Those recommendations that do not fit within one of those three fields should not be a focus of the vision team.

Scope of Work/Summary of Methodology

Between March and July, 2012, members of the Intergovernmental Cooperation Vision Team met on a monthly basis to discuss tools and methods that would lead to intergovernmental cooperation between the County and surrounding local governments. These meetings, which lasted approximately two hours each, were held at various locations in an attempt to introduce vision team members to different examples of local government structure. For example, one meeting was held in Carnegie Borough, while another was held in South Park Township.

In addition to the vision team meetings, the chair and members of the vision team reviewed previous County Executive transition team reports, performed literature reviews, and conducted interviews with appropriate stakeholders.

Based on the conversations conducted during the vision team meetings and information obtained from literature reviews, vision team members assembled a framework of recommendations that the County should adopt in an effort to increase cooperation between the County and local governments.

The following framework is divided into four areas. The vision team determined that the County should serve as a communications center and a resource for local governments. The vision team has proposed a set of packages bundled under those two categories that the County should adopt. While the vision team recognizes that the County currently engages in providing communication and resources to local governments, the recommendations found in this report are intended to enhance the efforts already underway.

Lastly, financing options and legislative changes were also discussed and are included in the recommendations.

1. County as a Communications Center

- The County understands and accepts the role of a communications center. To this end, the vision team has developed a comprehensive communications package, which should include the following items:

  - *Educational and Informational Forums*: The County should sponsor educational and informational forums for various elected officials. This should be done in conjunction with other local government organizations' efforts, such as those of the Local Government Academy (LGA), Allegheny League of Municipalities (ALOM), Councils of Governments (COGs), University of Pittsburgh Institute of Politics (IOP), labor unions, etc.

    These forums should be structured and include a pre-determined agenda designed to address a specific issue(s).

    These forums should expand on some of the models currently in use by the County, such as the County Pension Summit.

  - *Municipal* Tours: The County Executive should utilize the eight COGs to schedule and coordinate municipal tours throughout the County. These tours will offer the County Executive and his department heads the opportunity to meet one-on-one with local government officials to discuss issues impacting their municipalities. These tours should be used as an initial tool and if they are shown to be effective, the administration should continue these tours on a monthly or otherwise frequent basis.

    The local municipalities being visited will collaborate with the County on an agenda prior to the tour that both parties are comfortable with and agree to. Recognizing the limited resources of the County, there will be no expectations placed on the County Executive in terms of financial support for projects discussed during these tours. However, the agenda agreed upon by the local municipality and the County will include discussion and/or visits to projects that promote economic development and to large scale projects that have long-term impacts for the municipality in question.

    The day will conclude with a meeting between the County Executive, his team, and elected officials, where all parties can discuss their actual needs in an informed setting. This allows the County Executive and his staff to get to know the representatives of local governments and their concerns, as well as offers the County Executive the ability to assign a priority level to the array of projects that are viewed throughout the day.

    All elected officials from the area, including federal, state, and local should be invited. This includes the County Council member from the district where the tour is taking place, as well as the two at-large council members. Lastly, this not only allows the County Executive to interact with local elected officials, but also allows local elected officials from different municipalities to demonstrate what projects, if any, they are working on collaboratively.

  - *Coordinated County Data Center:* The County should be the main link for local governments to learn what data and information are available to them. The County should perform the following functions regarding data information:

- ✓ The County should continually inform local governments about the data resources that are available to them.

- ✓ The County should provide best practices and consultation services to local governments in an effort to have local governments improve and better utilize the data systems available to them. One suggestion is for the County to partner with the Governor's Center for Local Government Services, which provides local government officials with assistance and support in a variety of areas. One of their programs that would be related to data services is the Peer-to-Peer Management Program, which provides on-site professional peer consultants with special knowledge to assist municipalities with specific issues, such as data collection and services. This service is available at no cost to the municipality.

- ✓ As a long-term goal, the County should move toward the integration of data systems so that the County and local governments have a comprehensive and compatible data information system.

- *Dedicated Staff:* The County Executive should designate a staff member in his office to serve as a liaison or ombudsman to work specifically on intergovernmental cooperation issues. The dedicated staff member should promote the County as a forum for additional coordination between local government organizations, such as ALOM, LGA, COGs, Congress of Neighboring Communities (CONNECT), as well as state level organizations, such as PA League of Cities and Municipalities (PLCM), Pennsylvania State Association of Township Commissioners (PSATC), PA State Association of Township Supervisors (PSATS), PA Association of Boroughs (PSAB), and County Commissioners Association of Pennsylvania (CCAP), etc. The focus of this coordination should be on developing "best practices" for good government at the local level. This should include the County researching ways to help facilitate functional consolidation of services among municipalities.

  - *Specific Issues:*

    - Delinquent Property Owners – Municipalities need to be able to track and monitor property through technology. Code enforcement should be digitized. The County should assist in this regard by facilitating the coordination of delinquent property offenders and the locations in which they own property. By collecting and tracking this data, municipalities should work together to bring offenders to justice. This is yet another example of the County acting as a data sharing resource. Additionally, the County should revise the current system by permitting a municipality to search property listings by the owner's name on the assessment website, which would aid in finding delinquent property owners.

      Many municipalities and organizations are beginning to work on the inventory of vacant properties. The County should help to facilitate the coordination and cooperation of these efforts.

  - *Community Engagement:* The County should brand this communications effort in an attempt to garner public support around increased communication and efficiency between the County and local governments. Getting the public involved and educated about why intergovernmental cooperation is important is paramount to the success of this endeavor. Currently, the "brand" that Pennsylvania has in regard to local governance is generally

viewed as fragmentation. Engaging the community around this project should focus on eliminating that perception and instead focusing on building a sense of the County as a cohesive community. The engagement strategy should highlight best practices that are already taking place, while building upon them with new, innovative ideas to raise awareness to the next level. The steps for a successful community engagement campaign should be the following: build awareness, engage the public, and advertise the initiative.

The County should start the education process early by reaching out to local school districts, colleges and universities to inform them as to what intergovernmental cooperation is and then to offer them a chance to get involved in naming a slogan for this communication branding endeavor.

2. County as a Resource for Local Governments

- The County should offer a service cooperation package to local governments. The package would be a) defined, b) voluntary, c) have the infrastructure needed for the success of the package in place before moving forward, and d) promoted (County should have a method of educating and promoting the package to the municipalities).

  The County should promote the eight COGs to facilitate this service cooperation package to local governments. Municipalities would obtain services at a reduced rate, while the County would gain much needed revenue. When creating this package, the County should work cooperatively with local municipalities to incorporate their suggestions and ideas on how to frame this incentive package in order to optimize the success of the package.

  The incentive package should look at the consolidation of "back office" functions. Some suggestions for functions that could be easily and logically combined include, but are not limited to, the following: information technology, joint purchasing, tax collection, employee health insurance, phone support, human resources administration, pensions, road maintenance, County police, detective services, etc. Those involved in crafting this incentive package should continue to look at ways to consolidate these types of functions for maximum efficiency and cost savings, including continual investigation of opportunities available for local governments to cooperate and share services.

  Cuyahoga County, Ohio has recently begun modeling their regional cooperation efforts after work done in Los Angeles. The Ohio County is looking at methods similar to the ones suggested above to eliminate duplicative services and to save money over the long run. Cuyahoga County has established a menu of offerings for consolidated services that their County Executive is currently promoting to cities located in the County. Out of 57 municipalities located in the County, 10 cities have already taken advantage of at least one of the services offered on the menu.

- The County should examine how COGs could work on a contractual basis with the County to perform service delivery functions. The County should look at specific services that could be contracted out. For example, municipalities could utilize the existing County sign shop for their purposes rather than contracting out to a private company.

3. Financing Options

- The Vision Team determined that financing options, while important, should be subject to further study. Until exact costs of programs around intergovernmental cooperation are determined, it is difficult to estimate how much funding is necessary. However, the Vision Team recommends that exploring funds from

the private sector, such as the foundation community and corporations, should be investigated, along with funding from state and federal government. The City of Pittsburgh has historically been very fortunate in having the private sector financially support local government and intergovernmental initiatives.

The recently signed public-private partnership (P3) legislation should also be investigated as a potential means for financing local government projects, specifically related to transportation and infrastructure. The legislation enables any government entity at the state or local level to enter into a P3 agreement. Approved projects can provide new capacity, as well as rehabilitate or modernize existing infrastructure/operations. At the end of the P3 agreement, the "facility" that the project is based on must be returned to the public entity in the partnership agreement in a condition that is either as good as or better than when the P3 agreement began.

4. Legislation Possibilities

- The diversity of municipalities within Allegheny County and across the Commonwealth of Pennsylvania range from those which are models of public service provision and fiscal capacity to those who face the challenge of severe fiscal stress and are only able to provide minimal services to their citizens. Allegheny County should play a major role in assisting some of the most severely disadvantaged communities. One means of enabling the County is to explore ways to enable voluntary municipal disincorporation to municipalities that want to pursue that option.

  Voluntary disincorporation is not a new idea here. In 1994, former Allegheny County Controller Frank Lucchino directly addressed the lack of enabling legislation in Pennsylvania that would allow citizens to identify opportunities for disincorporation despite the fact that the Commonwealth was provided with the authority to form and disincorporate municipalities in the 1968 Pennsylvania constitution.

  Voluntary disincorporation is not about an attempt to usurp any powers of municipal governments within Pennsylvania, but a means to give citizens options to reform their local government should they so choose. As the Lucchino report *Reclaiming Hope, Voluntary Disincorporation in Allegheny County* (1994) summarized:

  > *Voluntary disincorporation means giving municipal residents the power, if they wish to use it, to dissolve ineffective municipal governments which would then become unincorporated territory within the County with municipal services temporarily administered by Allegheny County.*

  Any effort at municipal disincorporation would only be effective in coordination with an expanded capacity at the County level to coordinate the provision of essential public services to certain municipalities. As it stands now Allegheny County, as with all counties in Pennsylvania, is limited in how it can address the situation in the most distressed municipalities. Efforts to work with state legislators to craft enabling legislation for voluntary municipal disincorporation should then lead to Allegheny County providing an example of a new and effective path to address situations of municipal distress. Counties across Pennsylvania should be the effective intermediary in coordination with, or even in the place of, Act 47 recovery efforts at the municipal level.

Next Steps

Members of the Intergovernmental Cooperation Vision Team have expressed interest in continuing to meet as a group after this initial Vision Team report is released. They view the recommendations found in this report as the beginning to a larger conversation around intergovernmental cooperation.

Members

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University of Pittsburgh Institute of Politics

Sam Abatta
Robinson Township

The Honorable Jim Brewster
Senate of Pennsylvania

Chris Briem
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David Buchewicz
South Park Township

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Bill Miller
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Bill Peduto
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The Honorable Joe Preston
PA House of Representatives

Karen Rafalko

George Scarborough
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Patricia Schaefer
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Joel Tarr
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Orelio Vecchio
Pitcairn Borough

Parks, Recreation & Trails

VISION TEAMS

Imagining Allegheny County's Tomorrow

Dave Fawcett & Meg Cheever, Co-Chairs

County of Allegheny

Executive Summary

The Parks, Recreation & Trails Vision Team espoused the belief that the county's abundance of parks, trails and riverfronts is an important component of the region's economic development while simultaneously acting as a mechanism to preserve the integrity of the environment. Furthermore, the team recognized that the County's park system is a major component of the regional value proposition will enhance the region's ability to promote itself as "green" which gives it a strategic and competitive edge in the race to recruit companies, families, individuals, and students to move here.

Using these fundamental beliefs as a point of departure, the team recommends the following:

- **Adopt a Comprehensive Vision of a world-class system of interconnected parks and trails, including a Countywide Riverfront Park, serving residents and visitors throughout Allegheny County**
    - Define our park system not just our traditional county parks, but also our significant trail system and our efforts to develop lengths of linear park along our riverfronts.
    - Include Development of a Countywide Riverfront Park, as contemplated by County Ordinance (No. 52-07-OR) enacted into law in 2006 in the comprehensive vision.
    - Define the system as uninterrupted trails and linear parks running, to the greatest extent possible, with bridge connections and amenities along the way.
    - Endorse the vision of a comprehensive network of trails that, to the greatest extent possible, connect to existing trails, communities, traditional county parks and the riverfronts.
    - View the park system as a substantial competitive advantage for the Pittsburgh region in attracting new business and new residents and boosting recreational tourism.
- **Develop a Unified and Accountable Management Structure, Including Moving Parks Maintenance Crews from the Department of Public Works to a newly-reconstituted Department of Parks and Recreation**
    - Embrace "best practices" in park management which contains all functions directly related to parks management and maintenance.
    - Provide accountability and permit strategic deployment of resources via a unified management structure.
- **Immediately Establish a Woodland Management Program**
    - Commit resources and acquire professional assistance to manage the 9,000 acres of woodlands.
    - Recognize park trees reap environmental and economic benefits.
- **Maximize Revenue from Park Operations and Protect the Dedicated Allegheny Regional Asset District (ARAD) Funding Designated for the County Parks**
    - Establish a county park cost accounting and budgeting system.
    - Revise and modernize policies regulating annual fees and charges for park facilities, programs and services.

- Develop and administer a year-round marketing and public relations plan.
- Review current operations to determine additional sources of revenue.
- Preserve and increase dedicated ARAD funding.

- **Promote a Focus on the "User Experience" including a Coordinated Universal Navigation/Information System**
  - Give primary focus to developing a coordinated universal signage and online/mobile guidance system.
  - Convene a stakeholder group to develop and implement a coordinated system with universal appeal.
- **Implement Development of Countywide Riverfront Park and Connectors**
  - Create a "Trail Ombudsman" within the Unified Park Structure.
  - Develop a List of Priorities and Opportunities for Property Acquisition for the Enhancement of Existing Parks and for Development of Linear Parks, Trails and Related Amenities.
  - Negotiate with Railroads and other Riverfront Property Owners to Acquire Property Interests consistent with Development of a Comprehensive Network of Trails and a Countywide Riverfront Park.
  - Develop Trails and Linear Parks, and Prioritize Bicycle and Pedestrian Improvements, as Part of Transportation Initiatives.
  - Encourage Municipalities with Riverfronts to Adopt Local Zoning Regulations to Protect and Restore Riverfronts and to Facilitate Development of Riverfront Linear Parks, Trails and Amenities.
- **Propose a Referendum to Add to Dedicated Funding for Parks and Trails**

Vision Team Charge

The Parks, Recreation & Trails Vision Team is charged with reviewing the current efforts to address these portions of the county's quality of life experience, to identify coordination of efforts and to make recommendations as to how that coordination can be improved and a process put forth to integrate and collaborate on these efforts as much as possible in order to further the county's overall development

Each vision team, within its charge and conversation, is expected to address sustainability, intergovernmental relations (recognizing existing relationships and identifying potential new ones) and diversity/inclusion. Each of these items should be folded into the recommendations and report made by the team. Additionally, for each recommendation that is made, the scope must be within one of three fields for which the county has a role: the county performs, or should perform, an administrative function related to the recommendation; the recommendation pertains to a financial interest or financial support of the county; and, the recommendation lends itself to advocacy by the county. Those recommendations that do not fit within one of those three fields should not be a focus of the vision team.

Recommendation # 1(a): Comprehensive Vision

The Allegheny County Vision Team for Parks, Recreation and Trails endorses the vision of a comprehensive world-class system of interconnected parks and trails, including a Countywide Riverfront Park, serving residents and visitors throughout Allegheny County. Thus, our park system should be defined as not just our traditional county parks, but also our significant trail system and our efforts to develop lengths of linear park along our riverfronts.

Recommendation # 1(b): The Vision Should Include Development of a Countywide Riverfront Park, as contemplated by County Ordinance enacted into law in 2006 (County Ordinance No. 52-07-OR attached)

The Team endorses the vision of a Countywide Riverfront Park, defined as uninterrupted trails and linear parks running, to the greatest extent possible, along one side or the other of every major river in the County – the Allegheny, the Monongahela, the Youghiogheny and the Ohio – with bridge connections and amenities along the way. The Team also endorses the vision of a comprehensive network of trails that, to the greatest extent possible, connect to existing trails, communities, traditional county parks and the riverfronts. When combined with the many wonderful traditional parks in the region, this system would be a substantial competitive advantage for the Pittsburgh region in attracting new business and new residents and boosting recreational tourism.

Recommendation # 2: Develop a Unified and Accountable Management Structure, Including Moving Parks Maintenance Crews from the Department of Public Works to a newly-reconstituted Department of Parks and Recreation

The Vision Team endorses a management recommendation made in earlier studies, namely:

> *Allegheny County should adopt an integrated management structure to manage, restore, maintain, budget and operate the system.*

A full ten years have passed since this recommendation was first made to the County. A management study completed in 2005 by Wallace, Roberts & Todd, reminded readers that:

> *The 2002 Allegheny County Parks Comprehensive Master Plan…recommended numerous changes to help the park system achieve its full potential. Establishment of a new organizational structure to enable a greater focus on the success of the park system was identified as the highest priority recommendation.*

The current occupants of the positions of Allegheny County Director of Parks and Recreation and Allegheny County Director of Public Works, who share responsibility for current operation of the existing county park system, attended the Vision Team meeting on April 25, 2012. It was evident that these individuals enjoy excellent communication and work as cooperatively as possible in a "partnership" mode to further the interests of the county park system. Nonetheless, as stated in the 2005 Wallace, Roberts & Todd Report, "Park and recreation functions are not wholly integrated within the new department, with Public Works retaining responsibility for parks maintenance and purchasing". The "best practices" in park management would be for the Parks & Recreation Department to contain all functions directly related to parks management and

maintenance. Thus, for example, the park maintenance work crews should be transferred from the Department of Public Works to the Parks Department and supervised by the Parks Department on an ongoing basis.

A unified management structure would provide accountability and permit strategic deployment of resources.

Management Objectives Should Be To:

1. Restore and develop the physical and ecological infrastructure of the entire park system.

2. Implement programs that provide a range of activities for people of all ages and interests and that encourage the development of future generations of park and trail stewards.

3. Preserve, interpret and disseminate the history of the parks, respecting the historic character and design of the parks and the social and ecological history of the parks and the region.

4. Upgrade park operations, including enhancement of security, through the development of a park ranger corps.

5. Develop and execute a marketing plan. Advertise and promote to the general public, particularly Allegheny County residents, the entire park system as a unified, comprehensive system, including its traditional parks, trails, linear parks and associated amenities.

6. Determine a prioritized list of capital projects and improvements needed to reach stated objectives, including access agreements and/or acquisition needed for trail gaps.

7. Establish a level of sustainable and consistent financial and volunteer support for park and trail operations, development and restoration.

Recommendation # 3: Immediately Establish a Woodland Management Program

The nine existing County parks currently contain 12,000 acres of parkland – approximately 75% (9,000 acres) of which is woodlands—yet there are not significant resources currently going into woodland management presently, for example, there is no forester, no certified arborist, no tree crew and essentially no Woodland Management Program whatsoever. During the Vision Team Process we learned that about 10-20 acres of South Park is infected with oak wilt, a contagious disease. Without professional assistance, diseases such as oak wilt will spread and woodlands will suffer.

Park trees provide important environmental and economic benefits. In addition to reducing air temperature and absorbing solar radiation and providing bird habitat, they help to keep storm water out of the sewer system, saving the expense of treatment. They also stabilize hillsides, preventing landslides that can close roads and undermine park ecology.

Recommendation # 4: Maximize Revenue from Park Operations and Protect the Dedicated ARAD Funding Designated for the County Parks

A. Maximizing Revenue

The 2007 Study of Allegheny Parks by the American Leisure Institute contains detailed recommendations for maximizing revenue from park operations through the creation and staffing of a marketing and revenue development unit within the parks department to function under the overall leadership of the Parks Director.

The Vision Team urges that these recommendations from the 2007 study be implemented as follows:

1. Establish a county park cost accounting system as a first step.

2. Revise and modernize policies regulating annual fees and charges for park facilities, programs and services, to reflect both the market value and the cost of providing the facility/program. Update the fee and charge schedule every 3-5 years.

3. Develop and administer a year-round marketing and public relations plan.

4. Review golf course operations to determine if contracting for management services is an option for enhancing revenues.

5. Analyze the potential of constructing cabins in North and South Parks for overnight camping as a revenue generator.

6. Analyze the potential for increasing revenue from shelter rental by enabling park users to complete and pay for shelter rentals online.

7. Analyze the potential for increasing usage of and revenues from parks through development and rental of spaces for recreational vehicles (RV's).

B. Protecting Revenue

An additional concern of Vision Team members is the apparent erosion of the dedicated ARAD funding for the Allegheny County Parks. Although the total funding supplied by ARAD has actually increased in the last three years, the portion of the funding designated for "indirect costs, debt service and police" has increased by over 40% in the last three years, leaving less and less for direct services.

Trail groups in Allegheny County currently participate in a joint application prepared by the Allegheny Land Trust (ALT) to the ARAD for funding to complete the riverfront trail system including both land and water trails. The ALT application has been consistently funded; however, funding for this application is not secure and does fluctuate from year to year. This funding is very important for property acquisition and development of the riverfront trail system and provides non-profits and municipalities with valuable match to state and federal grant applications. It should be preserved and increased as much as possible in future years.

Recommendation # 5: Promote a Focus on the "User Experience" including a Coordinated Universal Navigation/Information System

Considerable focus should be placed on strengthening the "User Experience" of those enjoying trails, linear parks, existing county, municipal, and state parks. The Vision Team urges the County Executive to focus on this user experience to promote park system unification that appears seamless to parks users. The first, key element of the strategy should be coordinated universal signage and online/mobile guidance system. Realizing that different parks of the envisioned unified park and trail system are under different municipal managements and that some even belong to disparate trail system hierarchies, team members nonetheless felt that agreement could and should be reached quickly on coordination of signage and other navigation standards so that all future efforts could further this goal.

The Team suggests that the County Executive convene a group of local officials and park groups to discuss, with the goal of reconciling differences and developing and implementing a coordinated system with universal appeal.

Recommendation#6(a-e): Implement Development of Countywide Riverfront Park and Connectors

Recommendations 6 (a-e) are specific recommendations that will bolster the effort to create the Countywide Riverfront Park. These are tools that are drawn from the experiences of Allegheny County, non-profits and local municipalities who are actively working toward this goal.

Recommendation # 6(a): Create a "Trail Ombudsman" within the Unified Park Structure

The County Executive provides leadership related to the development of Allegheny County's riverfront trail system. Allegheny County is currently partnering with several non-profit groups and with municipalities to add ever-increasing mileage to the riverfront trail system. Team members conveyed the information that 100% of the County riverfronts had been studied and that some percentage of the trail system has been completed *(See Appendix A)*. Many of the areas where trails have been constructed could be widened and developed into linear parks that would include standard design features and multiple opportunities to enhance the user experience for walkers, bikers, hikers, joggers, inline skaters and commuters.

Those currently working on completing the riverfront trail system would welcome additional assistance from Allegheny County. A Trail Ombudsman within the unified Parks & Recreation Department could provide the crucially important function of serving as a central repository of all the myriad legal agreements concerning trail segments. The Trail Ombudsman, perhaps in conjunction with a non-profit partner, should maintain a GIS based map of all existing and prospective trail sections, noting who owns relevant parcels, the nature of the ownership interests (e.g., easement or ownership in fee), maintenance requirements and responsibilities, and an estimate of maintenance costs and/or acquisition costs. A Trail Ombudsman also could provide a centralized knowledge base and support for additional land acquisitions, such as furnishing model agreements. It also is necessary for Allegheny County to continue to have robust Land Bank funding available as a revolving fund for emergency land acquisition. The Trail Ombudsman could also encourage usage of the coordinated universal navigation system by providing funding for appropriate signage as a "carrot" to any newly completed trail segments.

One very important tool that is available to Allegheny County is the development of public private partnerships with non-profit organizations and local municipalities related to trail development and maintenance. The Trail Ombudsman could also propose and institutionalize these agreements thereby strengthening partnerships

between local non-profits and municipalities and the county to grow and strengthen our riverfront trail system. This system would reduce the County's maintenance responsibilities, allowing the County to use its limited resources to promote completion of the trail system, to serve a central coordinating and support function, and to centralize information.

Recommendation # 6(b): Develop a List of Priorities and Opportunities for Property Acquisition for the Enhancement of Existing Parks and for Development of Linear Parks, Trails and Related Amenities

Since the county acquired the property for Boyce Park and Settlers Cabin Park over 50 years ago, there have been few major property acquisitions to enhance our existing parks. More recently, Allegheny County has participated in key acquisitions along the Monongahela River as part of completion of the Great Allegheny Passage and key properties along the Allegheny River were acquired as part of completion of the trail connection to Armstrong County, but there is still a substantial amount of property that is needed to complete a continuous system. Although significant opportunities continue to present themselves for acquisition of properties to enhance our park system, significant segments of riverfront property are under-utilized or could be enhanced by being included, in whole or in part, as part of the Countywide Riverfront Park. Certain properties adjacent to our parks and along pathways could be acquired for development of trails or linear parks. These opportunities should be listed and prioritized so that the appropriate party (county, local municipality, non-profit partner) is in a position to acquire property or property interests when the opportunity presents itself.

Recommendation # 6 (c): Negotiate with Railroads and other Riverfront Property Owners to Acquire Property Interests consistent with Development of a Comprehensive Network of Trails and a Countywide Riverfront Park

The Vision Team recognizes a need to bring together resources from our political, business and non-profit communities to negotiate with those entities, mainly railroads, that own large swaths of property, parts of which could be used to complete the vision of a comprehensive network of trails and linear parks into the Countywide Riverfront Park. When negotiations with railroads are contemplated, the personal intervention of the Allegheny County Executive is a necessary prerequisite for success. The additional corporate support which the County Executive can enlist will further enhance the chances for success.

Recommendation #6(d): Develop Trails and Linear Parks, and Prioritize Bicycle and Pedestrian Improvements, as Part of Transportation Initiatives

The Vision Team recommends that Allegheny County take a leadership role in developing linear parks – including trail, bike and pedestrian improvements – as part of new transportation initiatives that are undertaken in the county. Whether it is the reconstruction of major roadways, rehabilitation of a bridge or underpass improvements, these are all projects that are connectors between communities. Often these transportation projects occur along or near planned trail corridors. The Route 28 project is a good example. With some advance planning and partnership with local municipalities and non-profits, partners were able to work with PennDOT to construct a trail connection between the City of Pittsburgh and Millvale Borough. Without this construction as part of the Route 28 reconstruction, this opportunity would have been lost.

Identifying transportation projects and opportunities requires collaboration with other agencies like PennDOT, and require the strong support of local municipalities to make sure that the inclusion of bike and pedestrian improvements is a priority for development in project budgets. The Team recommends that Allegheny County

take the lead in identifying these opportunities and bringing partners together to incorporate the goals of completing the riverfront trail system.

Recommendation #6(e): Encourage Municipalities with Riverfronts to Adopt Local Zoning Regulations to Protect and Restore Riverfronts and to Facilitate Development of Riverfront Linear Parks, Trails and Amenities

Municipal zoning can be an effective way to promote a comprehensive network of riverfront parks, trails and amenities. Draft ordinances presently exist which seek to protect, preserve and/or restore area along our riverfronts and set backs for the development of riverfront parks, trails and amenities consistent with the vision of a Countywide Riverfront Park. The County should incentivize or otherwise encourage widespread adoption of such ordinances.

Recommendation # 7: Propose a Referendum to Add to Dedicated Funding for Parks and Trails

Carnegie Library of Pittsburgh was recently successful in passing a binding referendum to add 0.25 mills to real estate taxes in the city with the proceeds going to support maintenance and operations of the Library. Allegheny County should propose a similar referendum to assist efforts to acquire and maintain properties to benefit parks, trails, bikeways, and the development of a Countywide Riverfront Park. Park resources, like libraries, are critical components of a region's vitality and economic viability.

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References

LIST OF VALUABLE PAST STUDIES:

1989 – The Plan for the Pittsburgh Riverfronts – prepared by Environmental Planning and Design for City of Pittsburgh Department of Planning
1990 – Riverfront Development Study of the Citizens League of Southwestern Pennsylvania
1993 – Allegheny County Riverfront Policy Plan – prepared by Allegheny County Planning Department for Allegheny County Board of Commissioners
2002 – Allegheny County Parks Comprehensive Master Plan – Wallace, Roberts & Todd, LLC[1]
2005 – Allegheny County Parks Management Research – Wallace, Roberts & Todd, LLC1
2007 – Revenue Sources Management Study of the Allegheny County Park System – American Institute for Leisure Resources1
2011 – Active Allegheny: A Comprehensive Commuter Bicycle and Pedestrian Transportation Plan for Allegheny County – Michael Baker Corporation1
2011 – The Community Trails Initiative for Multi-Municipal Trails & Greenways – McTish Kunkel & Associates (available at www.friendsoftheriverfront.org)

OTHER VALUABLE REFERENCES:

Alberts, Robert C., The Shaping of the Point (U. of Pittsburgh Press 1980)

Horsbrugh, Patrick, Pittsburgh Perceived: A Critical Review of Form, Features and Feasibilities of the Prodigious City (Pittsburgh City Planning Commission 1963)

[1] Available at www.alleghenycounty.us/parks/ Under "Development Plans"

Trail Development

Allegheny River – North Bank

City of Pittsburgh (Point) to Millvale – Trail Built.

- Trail system by city ordinance- Three Rivers Heritage Trail
- Three Rivers Park System through Riverlife from Point State Park to 31st -Three Rivers Park.
- Trail system part of the Erie to Pittsburgh Trail Alliance
- Trail system part of the Pittsburgh to Harrisburg Mainline Canal Greenway

Millvale to Freeport Borough – Plan completed for 26 miles (17 municipalities)

- Trail system by agreement with municipalities- Three Rivers Heritage Trail
- Trail system part of the Erie to Pittsburgh Trail Alliance
- Trail system part of the Pittsburgh to Harrisburg Mainline Canal Greenway
- Trail built as part of parks in Millvale(trail and park) , in parts of Sharpsburg, (riverfront park) Aspinwall (riverfront park) , O'Hara (trail along riverfront) , Springdale (park/trail) , Tarentum, Brackenridge (2 parks/trail side by side) , Harrison (park)
- Challenges – approximately 16 miles of railroad (Northfolk Southern) runs along the corridor and in certain areas the riverfront access is cut off.
- Challenges – in some municipalities s homes/apartments are part of the riverfront access.
- Challenges – in some municipalities riverfront is taken up by commercial/industrial access.
- Plan allows for riverfront access in areas as the preferred method and guides the trail system into the communities allowing for community access where necessary.

Allegheny River – South Bank

- Trail system by city ordinance- Three Rivers Heritage Trail
- Three Rivers Park System through Riverlife from Point State Park to 31st -Three Rivers Park.
- Point to 26th Street – Trail Built
- 40-43rd Street - Trail Built
- Trillium Trail built through Oakmont

Green Boulevard Planning in process from the Strip District to the Highland Park Bridge.

- From near Highland Park Bridge (City of Pittsburgh) to New Kensington / Arnold/Freeport Plan completed in 2001 by TriLine Associates. 7 municipalities. This corridor follows the Allegheny Valley Railroad corridor. This system would connect to both the Pittsburgh to Harrisburg Mainline Canal in Freeport and then the Erie to Pittsburgh System.
- Challenges – private railroad corridor.

Monongahela River – North Bank

- Trail system by city ordinance- Three Rivers Heritage Trail (Duck Hollow)
- Three Rivers Heritage Trail and Three Rivers Park through Friends of the Riverfront and Riverlife from Point State Park to Hot Metal Bridge.
- Great Allegheny Passage from Point State Park to Hot Metal Bridge in Southside
- Trail built from Eliza Furnace (along 2nd Avenue) through ALMONO site to Hazelwood Avenue in Hazelwood.
- Trail built in Duck Hollow section along the riverfront to Carrie Furnace site. (there is a segment not built due to city legal concerns. At this time the Hazelwood section and Duck Hollow segment do not connect due to property ownership and railroad issues)

- Trail planned through the Carrie Furnace site. Access to Braddock and Rankin Bridge planned; access across the Rankin Hot Metal Bridge planned.
- No planned trail as of yet from Braddock through Turtle Creek Valley.
- Please note: the Great Allegheny Passage cross the Mon at Duquesne (via the Riverton Railroad Bridge) to McKeesport

Monongahela River – South Bank

- Trail system by city ordinance- Three Rivers Heritage Trail (until Sandcastle)
- Three Rivers Heritage Trail and Three Rivers Park through Friends of the Riverfront and Riverlife from Station Square to Hot Metal Bridge.
- Great Allegheny Passage from Hot Metal Bridge to McKeesport (then to Yough River)
- Trail built from Station Square (with detour near 4th) through Baldwin Borough and all the way to McKeesport along the Mon River. At McKeesport the trail moves to the Youghiogheny River. Current construction: Keystone Metals in construction; Sandcastle will be in construction. Remaining Great Allegheny Passage Trail completed. (185 miles to Cumberland then meets with the C & O Canal Trail to DC)
- From McKeesport to Clairton – Steel Valley Trail (where it meets with the Montour Trail). Currently a road route.
- Clairton to Forward – needs to be reviewed. Industry dots this riverbank.

Youghiogheny River

- Great Allegheny Passage is built on the south side of the river. There is not currently a discussion about trail development on the other side of the river.

Ohio River - North Bank

- Trail system by city ordinance- Three Rivers Heritage Trail
- From Millvale to Northside (past stadiums, casino, up to ALCOSAN Plant) built
- At ALCOSAN and up to Leetsdale – no plan at this time
- Future Three Rivers Park development to West End Bridge

Ohio River – South Bank

- Trail system by city ordinance- Three Rivers Heritage Trail
- Trail at Station Square stops due to railroad and property issues. Future Three Rivers Park development to West End Bridge, linking to West End trail system
- Reconstruction of West Carson Street will include some accommodation for bike/ped to McKees Rock
- From McKees Rocks to Coraopolis – current planning for trail development in process. With 6 municipalities. This includes Allegheny County's Sports Legacy project. (at this junction the trail meets with the Montour Trail and the Ohio River Trail
- From Coraopolis to Crescent (and into Beaver County to Monaca) Ohio River Trail plan completed. Coraopolis has a small riverfront park

Local Organizations Engaged in Trail Planning – Riverfronts only

- Memorandum of Understanding between Allegheny County, Friends of the Riverfront and Pennsylvania Environmental Council to engage communities in planning and implementation of trail corridors throughout Allegheny County. Focus on transportation, recreation corridors and connections to the rivers.
- Friends of the Riverfront – Non profit trail organization. Management of trail system (Three Rivers Heritage Trail), administration and planning/implementation.
- Pennsylvania Environmental Council – Planning and implementation.

- Riverlife. Focus on the development of Three Rivers Park loop: West End Bridge to 31st Street Bridge to Hot Metal Bridge. Landscape management Guidelines for the Pittsburgh Pool.
- Ohio River Trail Council. Organization undertaking the planning and organizing of a trail from Ohio following the Ohio River corridors. Strong partnerships with Beaver & Lawrence Counties.
- Regional Trail Corporation. Consortium of 3 Counties (Allegheny, Westmoreland and Fayette) who work together to build and maintain trail along the Monongahela and Youghiogheny Rivers.
- ARTEZ-Allegheny River Towns Enterprise Zone-collaboration of communities along North Bank of Allegheny River.
- Allegheny Trail Alliance. Organization coordinating the efforts and raising the funds to build the Great Allegheny Passage

Public Health

VISION TEAMS

Imagining Allegheny County's Tomorrow

Chip Babst & Dr. Jeannette South-Paul, Co-Chairs

County of Allegheny

Executive Summary

Currently, the Health Department has a bifurcated responsibility of both general public health and oversight of ensuring the highest standards for the environment. Due to this charge, the Public Health Vision Team opted to develop recommendations with respect to the two different missions.

With respect to public health, emphasis was given to elimination of health disparities. From an environmental perspective, the team crafted recommendations that focused on air quality, water pollution control and engineering, public drinking water, plumbing protocols, and food safety.

By the following recommendations, the team concluded that the highest standards for public health and the environment can be achieved and sustained:

- **Promote the General Public Health through realignment with community entities, a reconfiguration of prevention programs, and redesign of strategies for community engagement.**

  Health Department Operations:

  - Partner with other health-related organizations in the region (e.g., health care organizations, health science education organizations, foundations with health priorities) to identify areas of importance and prioritize and distribute health-related efforts among these interested organizations.
  - Target and focus particular ACHD efforts and market these services to the public (e.g., surveillance and reporting of high risk conditions, health advocacy, etc.).
  - Monitor data collected through the community health needs assessments implemented by local hospitals and facilitate and coordinate plans for remediating identified needs.
  - Emphasize the importance of prioritizing and resourcing the ACHD for data acquisition, analysis, public reporting, and advocacy of County health status indicators.

  Health promotion

  - Establish a Pittsburgh Promise-like fundraising program to help support County health initiatives based in neighborhoods and communities.
  - Assess and develop a plan to address structural racism and its impact on community health (e.g., lack of clinical providers in neighborhoods such as dentists, uneven availability of pharmacy services, disparities in availability of primary care).
  - Increase the availability of community exercise and recreational programs through partnerships with private organizations such as the YMCA, YWCA, and local educational institutions and expansion of services through County-owned/managed resources (e.g., pools, parks, etc.).
  - Establish a community health advisory committee that meets every 2-3 months (similar to the Air Advisory Committee) to provide regular interchange between the community and the County Executive regarding important health-related issues.

- Identify resources and implement opportunities for improving oral health, nutrition (e.g., breastfeeding, obesity), and tobacco cessation.

Prevention

- Establish and promote partnerships between community health workers and health care organizations to promote prevention and encourage primary health care assessments in community settings (already deployed in several community organizations).

- Link mental health services with primary care services in communities – co-locating both types of services to promote broad utilization without stigma.

- Enhance focus on injury monitoring and prevention through public service announcements and incentives for involvement by local health organizations, businesses, and community organizations.

- Increase awareness of bullying and interpersonal violence through public awareness campaigns and enlistment of partnerships with schools, law enforcement, health providers, and community organizations.

- Develop a multi-sectarian commission (community organizations, faith based community, legislative and county leadership) to focus on community violence prevention that assembles community recommendations, develops capacity-building strategies, and coordinates policy, advocacy, and implementation of interventions to combat violence in the County.

- **Manage Environmental Programs that Preserve Public Health Ensures Accountability, Accessibility, and Financial Sustainability**

Organizational

- Conduct an assessment of the renovations and upgrades needed for each building be developed, together with a schedule for implementing the suggested changes that prioritize deficiencies that compromise the daily function of the individual programs.

- Develop a Strategic Staffing Plan be developed to identify each program's needs and the steps required to attract and maintain the professional staff needed to perform program responsibilities; Consider hiring a professional with grant writing experience to aid the Environmental Programs within the ACHD.

- Perform a Technology Assessment s to identify technology needs within the individual Programs.

- Promote needed accountability by transferring full responsibility for fiscal management from the administrative branch of the ACHD to the Program Director.

Air Quality/Pollution Control Program

- Fully populate the Air Advisory Committee to form a qualified, balanced committee.

- Fully comply with the recommendations set forth in the 2009 Air Task Force Report, including formally adopting DEP permitting procedures, Annually assessing the permitting function, Completing a full revision of the appeals process, revising Article XXI to adopt State regulations by reference, and adopting a separate Article to contain local provisions that are more stringent than State law.

- Respond fully to all comments submitted on the draft Air Toxics Policy (ATP).

- Where appropriate, update or modify the draft ATP to reflect the Air Program's legal authority to impose risk-based standards and to improve clarity, certainty for the regulated community, and to ensure adequate protection of public health.

- Pursue legal action that would force upwind sources of air pollution outside of Allegheny County and Pennsylvania to make more significant reductions than they have.

- Pursue opportunities that incentivize reductions from mobile sources.

- Maintain a public outreach program to discuss air quality in an objective and balanced manner.

Water Pollution Control and Engineering

Given that municipal feasibility studies will be submitted to the Health Department on or before July 31, 2013 in connection with the development of ALCOSAN's Wet Weather Plan, it is recognized that significant analysis and planning must occur within the Department to enhance its ability to respond efficiently and effectively to this process. As such, it is recommended that the Department:

- Assess the resources that will be needed to review and comment on each Feasibility Study on or before December 31, 2012.

- Develop a written plan to address all perceived deficiencies identified on or before January 31, 2013.

- Evaluate and promote cost effective, green infrastructure alternatives for ALCOSAN municipal customers.

- Work with the State Department of Environmental Protection (DEP) to coordinate an approach for evaluating green infrastructure alternatives.

Public Drinking Water

- Develop a mechanism to ensure adequacy of water supply system interconnects.

- Develop a disciplined, equitable, achievable and comprehensive capital reinvestment policy.

- Develop objective metrics that will lead to merging older underperforming systems with more financially stable, professionally operated systems.

Plumbing

- Update the current plan/permit application and evaluate online options to increase efficiencies.

Food Safety

- Complete evaluation of alternative ranking systems for restaurants.
- Periodically review the manner in which restaurant inspection reports are available to the public to ensure that it is being presented in an understandable form.
- Revise current County Regulations to incorporate the new FDA Model Food Code and update inspection procedures to reflect the new regulations.
- Immediately begin to train replacement trainers for the certificate programs to ensure that this revenue stream is preserved.
- Review the current fee structure for the certificate programs, the licensing fee structure, and other services for which fees might be assessed to determine if more revenue could fairly be generated.

Vision Team Charge

The Public Health Vision Team is charged with looking at the responsibilities currently under the purview of the Department of Health, reviewing what is done by the Department and how it is done, whether there are ways to improve those services and recommendations, and to make recommendations if there are outside opportunities for some of these responsibilities.

Each vision team, within its charge and conversation, is expected to address sustainability, intergovernmental relations (recognizing existing relationships and identifying potential new ones) and diversity/inclusion. Each of these items should be folded into the recommendations and report made by the team. Additionally, for each recommendation that is made, the scope must be within one of three fields for which the county has a role: the county performs, or should perform, an administrative function related to the recommendation; the recommendation pertains to a financial interest or financial support of the county; and, the recommendation lends itself to advocacy by the county. Those recommendations that do not fit within one of those three fields should not be a focus of the vision team.

Subcommittee on Environmental Programs

INTRODUCTION

The Subcommittee on Environmental Programs began its review by evaluating existing Allegheny County Health Department ("ACHD") program descriptions, reports, studies, plans, and data and researching available information regarding similar environmental programs in other urban areas. Interviews of Dr. Voorhees and managers and/or other key employees within each program were then conducted to develop the following summary of short and long-term recommendations.

AIR QUALITY/POLLUTION CONTROL PROGRAM

Overview

The ACHD Air Quality/Pollution Control Program has one EH Administrator III and approximately 50 positions with seven programs reporting to that position. They are as follows:

1. **Air Monitoring**: currently maintains 160 monitors in 22 locations for a number of pollutants.

2. **Planning & Data Analyses:** includes dispersion modeling, efforts to determine how such pollutants as PM 2.5 are specifically impacting Allegheny County, providing public outreach, and conducting voluntary programs, including diesel pollution reduction.

3. **Permitting:** responsible for authorizing existing, new, modified, reconstructed, and reactivated sources of air pollution in Allegheny County.

4. **Enforcement:** maintains a compliance program where inspections are conducted on over 1600 sources of air pollution at least twice annually.

5. **Abrasive Blasting/Asbestos:** maintains a program at the county level that is more stringent than the federal or state program.

6. **Legal:** one Assistant County Solicitor provides support to the program in all legal matters.

7. **Emergency Response/Indoor Air Quality:** provides support to the air program as appropriate within these categories, but is not operated within the program itself.

The ACHD's Air Program has been granted its authority by the federal Environmental Protection Agency and the PA Department of Environmental Protection, and currently enforces the County air program under Article XXI of Allegheny County. The program does not rely on any funding from the County; it is self-sufficient.

A great deal of program description and evaluation of the Air Program was performed by the Environmental Air Quality Task Force, and is summarized in a December 2009 report issued by that group. A copy is provided with this report

because many of its recommendations remain as relevant today as they were in 2009. *See* Attachment I. While some important progress has been made since that report was issued, a number of key recommendations remain incomplete, and are described below. Additional challenges have arisen since that time, which also are enumerated below.

Immediate Challenges and Recommendations

1. Staffing

Challenge: Attracting and maintaining a high caliber staff within the program continues to be a daunting challenge. Salary increases have been budgeted annually, but not approved in many cases despite having adequate funding to address them. The majority of staff within the program is non-union (80%), which is different than most other programs within the ACHD. And while most union employees have seen modest increases in the recent past, other personnel have not. Some salary levels were adjusted in isolated cases during the previous administration, but the problem of high staff turnover and key positions going unfilled continues to plague the program. The Air Program Director has relied on contractors to fill some key roles, and has gone without some staff functions being fulfilled that are critical to an effective program, including a dedicated IT professional.

Recommendations: The following recommendations are not for basic overall improvement to the quality of work product or professionalism of the staff, but rather recommendations on tools and resources. As is consistent with other areas within the ACHD, an overall strategic staffing plan is needed. This plan should address:

- Fill all vacant positions currently existing, and ensure adequate salary and benefits are being provided.
- Implement a Performance Review System that includes annual reviews, career pathway support, and transition plans for all core positions to assure sustainability.
- Consider implementing a Performance Based Bonus System within the existing system.
- Conduct a review of the union system and all other employee positions, and ensure that there is parity in terms of salary increases and benefits.

2. Funding

Challenge: The Air Program has significant funding available to it through Title V permit fees and the Clean Air Fund, but those funds are restricted. Despite being self-sufficient, the Air Program has had to go through the ACHD Director's office for all purchasing decisions, no matter how insignificant. This often results in delays and, historically, decisions have at times been arbitrary.

Recommendation: Promote needed accountability of the Air Program Director by transferring full responsibility for fiscal management from the administrative branch of the ACHD to the Bureau of Air Quality.

3. Scope

Challenge: The ACHD has been successful in attracting some additional grant support for its work, but is unable to devote the time and resources it would like to administering grants. The grants are time-consuming and difficult to pursue without dedicating staff resources to that area of development. Moreover, grants are often

expensive to administer. As such, very little new funding and expansion of the scope of the Air Program's work into new areas has occurred.

Recommendations: Hire a professional with public sector grant writing and administration experience to aid the Environmental Programs within the ACHD. Ensure that appropriate program management and staffing resources are available to expand the depth and scope of the Air Program's capabilities in accordance with a completed ACHD Strategic Plan.

4. Facilities

Challenge: The October 1, 2009 Report of the Air Quality Task Force included the following findings regarding Building No. 7 in the ACHD's eight-building campus in Lawrenceville.

- In reviewing the physical conditions of the Air Bureau, the Task Force concluded that the current facility is challenged by numerous technological and health and safety issues.
- The facility, while targeted for renovation, currently does not reflect the professional ambiance that generally is experienced in many offices charged with these types of activities.
- More importantly, while efforts have been made to address fundamental health and safety issues, challenges remain in the areas of routine maintenance of the facility, adequate and reliable fire and safety equipment, emergency lighting, and updated and reliable telephone systems.

The other ACHD programs located in the Lawrenceville campus suffer from similar facility deficiencies that negatively impact program performance on a number of fronts, including the ability to attract and maintain high quality employees and to efficiently perform the work needed to carry out the functions and goals of each program.

Recommendation: Recognizing the high level of professionalism that exists within the programs located in the Lawrenceville campus, it is recommended that an assessment be made of renovations and upgrades needed for each building, and that a plan be developed to address the needed changes. Aspects of the facility that compromise the daily functioning should be addressed immediately. Such changes not only would cure fundamental technological and health and safety deficiencies, they would promote a level of professionalism required for such activities.

5. Resources and Tools

Challenge: All resources and tools need to be reviewed and updated.

Recommendations:

- All software should be reviewed and tracking systems updated. All equipment needs to be on a maintenance and replacement plan.
- A dedicated IT professional that is not shared within other programs of the ACHD should be hired, as the demands of this program are highly technical in nature.

6. Governance

Challenges: The Air Advisory Committee was designed to play a key role in advising and approving recommendations and policies for the Air Program. However, although the Committee is authorized to include nineteen (19) members, for years the Committee has consisted of less than ten (10) members. The lack of appointed members dilutes the potential value of the Committee.

The Committee recently was by-passed in considering and commenting on the proposed Air Toxics Policy, further calling into question the purpose and value of the Committee.

The interface between subcommittees of the Committee can also be a source of delay and confusion.

Recommendations:

- Minimum standards for Committee membership and participation should be established and made public.
- To the extent possible, open seats should be filled as soon as possible, in order to maintain a diverse, qualified, and balanced Committee.
- Maintain a publicly-accessible list of all subcommittees, their scope, current members, and an application form/process for all open committee seats.
- An annual board, committee and staff retreat that reviews strategic goals and provides board and committee training should be considered.
- Processes and procedures of the various subcommittees should be made public.

7. Permitting

Challenge: The Air Bureau's permit program, at a minimum, lacks procedures to consistently ensure prompt processing of permits and lacks the level of transparency that is available under the State program. The absence of any timelines for processing installation permit applications is a detriment for encouraging the construction of new sources and the modification or reconstruction of existing sources in Allegheny County, and the lack of transparency prevents meaningful public involvement and in-put.

Recommendations:

- The Air Program should adopt DEP permitting procedures designed to promote efficiency and transparency (i.e., Money-Back Guarantee Program). Although the Air Program Director maintains that such a system is informally in place, it is not possible for the regulated community or the public to track the permitting process with any certainty, and the causes for delay in permitting are not always readily apparent.
- The use of outside contractors should be terminated once any permitting backlog is cleared.
- Evaluation of c the permitting function should be assessed annually by the ACHD and the County Executive. Inability to remain current with at least 90% of all major and minor source operating permits and all installation permits and Requests for Determination should be deemed unacceptable, absent extenuating circumstances.

8. Appeals

Challenge: The County's appeals process is set forth in Article XXI of the ACHD Rules and Regulations. The process differs significantly from the appeals processes adopted by the State. These differences result in a process that is more difficult to access and less transparent, and provides less certainty in terms of timing and results. The ACHD reportedly has been working since the recommendations of the Environmental Air Quality Task Force (2009) were released to update the appeals process. There is a recognition that the time for filing appeals should be extended to 30 days (rather than 10 as laid out in Article XXI) and that the appeals should not go directly to the ACHD Director, but rather a neutral arbiter with experience in these legal matters. The Environmental Air Quality Task Force recommended that efforts be made in Harrisburg to modify existing state law to allow appeals to go directly to the Environmental Hearing Board ("EHB"). However, changing the appeals process for the Air Program apparently has raised a perceived need to do so uniformly throughout all areas the ACHD maintains jurisdiction.

Recommendations:

- Complete the full revision of the appeals process as soon as possible, to ensure that the appeals go to a balanced and objective board of at least three members, with legal and technical expertise in the areas covered by the ACHD. Update Article XXI to reflect the changes, and to inform the public what the processes and timelines are for appeals.

- Continue efforts to modify state law to enable Air Program appeals to go directly to the EHB.

9. Air Toxics Guidelines

Challenge: The existing Air Program Air Toxics Guidelines are believed by many to be outdated and have been under review by a Committee appointed by the former County Executive for a number of years. Certainty for the regulated community and adequate protection of public health are important objectives for the final guidelines to achieve.

Recommendations:

- Any guidelines presented to the ACHD for approval should be clear, legally defensible, and should, at minimum, comport with all conditions of the authority granted to the County under the PA Air Pollution Control Act.

- Air Program staff should respond in full to all public comments submitted on the draft guidelines, and all viewpoints and arguments should be thoroughly reviewed and considered before any action is taken by the ACHD.

- Where appropriate, the guidelines should be updated or modified to reflect changes that reflect the Bureau's legal authority and improve clarity, certainty for the regulated community, and ensure adequate protection of public health.

Short-Term Goals

1. Regulations

Challenge: The existence of separate sets of State and County air quality regulations creates burdens for the regulated community and the public to deal with in connection with construction and operating permitting and in determining what is required for purposes of maintaining a compliant facility. The lack of a cross-referenced document to guide the regulated community, the absence of a delineation of County regulations that substantively differ from State regulations, and the lack of a defined process to ensure compliance with both standards may, in some cases, create a burden which results in permit delays and causes uncertainty in determining compliance. The County's ability to adopt regulations that are more stringent than State standards based upon a need to meet the public health requirements of the County is a recognized element of the County's air management program that should not be undermined. However, consistency wherever possible and clarity in all cases is essential.

Recommendations: The Environmental Air Quality Task Force recommended in 2009 that Article XXI be revised to adopt the State regulations at 25 Pa. Code, Sections 121-129 and 131-145 by reference; and that a separate Article be adopted that would contain County provisions that are more stringent than State requirements. The Air Program has maintained that this recommendation is onerous and unnecessary, and has instead worked to adopt state regulations by reference wherever possible. Program staff believe that the comparative guide would require too much staff time and that there are areas where legal interpretations are very difficult.

- A comprehensive evaluation designed to implement the recommended change should be contracted to a third party, which should be followed by a public hearing and public comment period before being submitted to DEP for approval.

- One of the important objectives of this process would be to ensure that this restructuring of the County regulations would not result in "backsliding," as that term is defined by USEPA.

Long-Term Goals

1. Compliance Standards

Challenge: Stricter health-based standards for air pollution will likely be put into effect within the next few years for a variety of pollutants. Continued compliance with those standards will be a significant challenge for Allegheny County. This is due, in part, to the stringency of the standards, the concentration of sources in the county, but also due to the unique topography of the area.

Recommendations: A number of potential approaches may be necessary to help demonstrate compliance with new standards. These could include:

- Pursuit of legal action that would force upwind sources of air pollution outside Allegheny County and PA to make more significant reductions than they have (i.e. a Section 126 petition to the EPA under the federal Clean Air Act). This strategy is something that the regulated community and the public interest community have had joint interest in pursuing in the past, and EPA may be more inclined to consider such a petition than it has in the past.

- Dealing with mobile sources of pollution, which are currently not regulated by the ACHD would help to decrease local sources of pollution that contribute to levels of pollution in the county. The County

should pursue opportunities that incentivize reductions from mobile sources, despite the Air Program's lack of authority to regulate them. A number of policy approaches and enhancements are possible. Expertise in this region exists, and a comprehensive strategy could help to cut pollution, improve public health, and create a number of important economic opportunities.

2. Public Education and Environmental Health

Challenge: The ACHD currently does little to integrate its public health focus areas and public education around the environmental connections to public health. Being better positioned to do so will require additional resources, expertise, cooperation between departments and with organizations and institutions outside the Department. However, the public health impacts of doing so could yield many positive results, both quantifiable and intangible.

Recommendations:

- Improving the ACHD and Air Program's ability to expand its scope through additional grant funding will help to increase resources needed to expand into this area. Formal, strategic partnerships with institutions of higher learning and fuller, active participation in board committees and subcommittees may also serve to help in this area.

- The ACHD also should maintain a public outreach program to discuss air quality in an objective and balanced manner, acknowledging challenges, but also recognizing improvements and progress.

WATER POLLUTION CONTROL AND ENGINEERING

Overview

The Allegheny County Health Department (ACHD) Division of Public Drinking Water and Waste Management have one EH Administrator III and approximately 48 positions with six programs reporting to that position. They are:

- Operators Section
- Recycling Program
- Engineering Section
- Plumbing Section
- PH Administrator III
- EH Compliance Officer

Within those six areas there are eight programs or offices:

- Drinking Water and Solid Waste
- Water Pollution
- On Lot Sewage
- Clack Office Plumbing Inspection
- Clack Office Plans Examiner / Plumbing
- Carnegie Office Plumbing
- McKeesport Office Plumbing
- Sprinkler Systems

The Water Pollution Control Section has one EH Supervisor and 4 staff positions, three EH Specialist II and one clerk Typist II. The Engineering Section has an EH Engineer III and an EH Engineer II. The two sections partner on projects.

The Water Pollution Control Section is responsible for the inspection and oversight of all sewage treatment plants and sewage collection and conveyance systems in Allegheny County. These plants process raw sewage, then discharge the effluent into a waterway for which they have received a National Pollutant Discharge Elimination System (NPDES) permit from the Pennsylvania Department of Environmental Protection (DEP). Many of these discharges are to the Ohio, Allegheny, Youghiogheny and Monongahela Rivers, although some are to streams, creeks, or tributaries. Ninety percent of all drinking water in Allegheny County is drawn from the three rivers. There are 67 sewage treatment plants and 208 pump stations under this section's jurisdiction. In addition to conducting regular inspections of permitted treatment facilities, program staff investigates water quality complaints pertaining to stream pollution, malfunctioning on-lot sewage systems, and public sewer problems. Combined sewer overflow requirements are also evaluated in 4 NPDES permits for combined sewer communities. All combined systems are maintained by the Department of Environmental Protection Agency (EPA) and all On-Lot Systems general issues are monitored by the On-Lot Section.

INSPECTIONS

Each of the 67 permitted sewage treatment facilities are inspected annually, during which time all aspects of the operation are checked for compliance with the federal, state, and country regulations governing them. During these inspections, samples of treated effluent are taken for analysis. In addition, approximately 70 of the 208 pump stations are inspected annually to determine compliance with the applicable regulations governing them. The facilities are provided a written copy of the conditions noted and, if violations are noted, are given a specified amount of time in which they must achieve compliance. If upon reinspection, the violations are still found, further action will be taken to enforce the regulations.

CSO EVALUATIONS

Staff evaluate CSO control requirements in 4 NPDES permits for combined sewer communities, identify areas of non-compliance, and ensure that non-complying communities meet permit requirements.

PLANNING MODULE REVIEW

Planning modules for land development by public sewerage or on-lot sewage disposal systems are reviewed and a recommendation is made for approval or rejection and then sent to DEP for approval.

PERMIT REVIEW

Permit amendments, variance requests, or exemption requests are sent to this office for review and comment, and then forwarded to DEP for final approval.

SELF-MONITORING REPORT REVIEW

All of the 67 permitted sewage treatment facilities are required to submit monthly self-monitoring reports. These reports provide information on effluent quality and quantity. Any level that significantly or chronically exceeds the permitted levels could be cause to issue orders for corrective action.

COMPLAINTS

In the course of a year, between 200 to 300 complaints are received and handled by the Water Pollution Control Section. Most of the complaints concern sewer overflows, sewer line breaks or blockages, odors from permitted facilities, sewage backups into home, stream pollution, drainage from an unknown source, and malfunctioning on-lot sewage systems. While most complaints are resolved quickly, approximately 15% require long-term effort to abate.

ON-LOT SEWAGE SYSTEMS

These are individual sewage systems, also known as septic systems, located on a piece of property and serving a specific structure. Permitting activities are carried out by the Public Drinking Water & Waste Management's Plumbing Section.

TRAINING (OUTSIDE OF DISCUSSION)

Training is provided, on request, to wastewater industry personnel and municipal officials on topics such as laboratory analysis methods, confined space entry, treatment technologies, and any other relevant subjects. Technical assistance is also provided to aid in the development of a variety of plans needed to operate and maintain the wastewater facility.

EMERGENCY RESPONSE

Emergency situations actually or potentially affecting one or more wastewater facilities are investigated on a 24-hour basis. Emergencies involving the failure of a plant or pump station will take precedence over all other activities.

SPECIAL PROJECTS

A limited number of special projects are undertaken each year. These projects include stream surveys centered on sampling and analysis with identification of pollutant sources, and intensive work with other regulatory agencies and municipalities to solve severe or wide-ranging problems with specific sewerage collection and conveyance systems.

The major special project that the engineering section has taken on is the oversight on the EPA Consent Orders for the ALCOSAN area watershed. This includes working with ALCOSAN on their Long Range Treatment Plan and the 55 separate municipal Consent Orders. The ACHD Engineer's Section deals with all municipalities with Separate Sewer Systems while DEP oversee all the Combined Sewer System Consent Orders. All Administrative Consent Orders (ACO) are tracked for compliance with the schedule included therein. In addition the Section must assure that all submittals from the Consent Decree with ALCOSAN entered into with USEPA, PADEP and ACHD regarding ALCOSAN's sewage treatment and conveyance system are reviewed, commented, and a recommendation determined.

ENFORCEMENT

A variety of enforcement tools are used to achieve compliance with the regulations. These enforcement tools include issuing notices of violation, the filing of criminal complaints, execution of Consent Order & Agreements, and instituting equity actions.

APPLICABLE LAWS AND REGULATIONS

Pennsylvania Clean Streams Law; Pennsylvania Sewage Facilities Act; Pennsylvania Department of Environmental Protection Rules and Regulations, Chapters 71, 72, 73, 92, 94, and 95; and the ACHD Rules and Regulations Article XIV, "Sewage Management," as amended are all laws the ACHD must adhere to.

Challenges and Recommendations

1. Staffing

Challenge: The Health Department has experienced difficulty in maintaining qualified employees to fill the numerous positions that it must maintain and has not developed succession plans to address the foreseeable retirements of key personnel. The Department needs to review the reasons for staff leaving for the private sector or prepare for those facing retirement.

Recommendations: The recommendations for the Section are not for basic overall improvement to the quality of work products or professionalism of the staff but rather recommendations on tools and resources. An overall strategic staffing plan is needed. This plan should:

- Fill all vacant positions currently existing.
- Ensure that all current positions provide adequate salary and benefits.
- Explore new positions based on work load and changing needs.
- Performance Review Systems – All employees should have annual reviews and their career paths should be discussed and supported by upper management.
- Creating a Transition Plan for all positions to assure sustainability within the Section.
- Consider a Performance Based Bonus System and see how it could be integrated with the existing system.
- Review the union system and all other employee positions to ensure each position is adequately funded.

2. Administrative Consent Orders (ACOs)

Challenges: The Allegheny County Sanitary Authority ("ALCOSAN") currently is required under a federal Consent Decree to develop and implement a Wet Weather Plan that will eliminate all sanitary sewer overflows ("SSOs") by 2026, control combined sewer overflows ("CSOs") consistent with U.S. EPA's Combined Sewer Overflow Policy by 2026, and accommodate anticipated growth through 2046. As part of the process to develop the Wet Weather Plan, ALCOSAN's customer municipalities are required, by July 31, 2013, to submit Feasibility Studies to either the ACHD (SSO Systems) or the Pennsylvania Department of Environmental Protection ("DEP") (CSO Systems) that evaluate a range of alternatives for addressing this regional water pollution issue.

Because the local municipalities are the entities to enforce flow-reduction green infrastructure programs, the ACHD could play an important role in evaluating the environmental benefits and financial viability of green infrastructure alternatives. To its credit, the Public Drinking Water and Waste Management Program published a Feasibility Study guidance document on April 27, 2012 that recognizes and encourages green infrastructure projects. See p. 6, paragraph 12.

Recommendations:

- Because of the short period of time between the July 31, 2013 due date for the Feasibility Studies and the scheduled approval of the final Wet Weather Plan (January 31, 2014), on or before December 31, 2012, the ACHD needs to assess the resources that will be needed to review and comment on each study in a coordinated fashion with DEP's review of the CSO municipalities.

- A written plan to address all perceived deficiencies identified in the assessment should be developed on or before January 31, 2013.

- The ACHD should work with the DEP to coordinate an approach for evaluating green infrastructure alternatives.

3. Training / Mentoring

Challenge: An overall strategic training/mentoring plan is needed to address the needs of current employees and any additional employees added to the work force.

Recommendations: The overall strategic training/mentoring plan should address:

- What is the current level of training and mentoring provided for all staff?

- What training/mentoring is needed for technical aspects, supervisorial, and transition?

- Succession planning for all key positions, with immediate focus on those positions currently held by people who are likely to retire in the next 5 years.

4. Budget

Challenge: The overall budget system needs to be reviewed and updated.

Recommendations: The Division Chair needs to be involved in the creation of the budget and the monitoring of the budget. The Division Chair needs to be able to control the budget once assigned to the section. Additional funding is needed for staff salaries and benefits.

5. Facilities

Challenge: The October 1, 2009 Report of the Air Quality Task Force included the following findings regarding Building No. 7 in the ACHD's eight-building campus in Lawrenceville.

- In reviewing the physical conditions of the Air Bureau, the Task Force concluded that the current facility is challenged by numerous technological and health and safety issues.

- The facility, while targeted for renovation, currently does not reflect the professional ambiance that generally is experienced in many offices charged with these types of activities.

- More importantly, while efforts have been made to address fundamental health and safety issues, challenges remain in the areas of routine maintenance of the facility, adequate and reliable fire and safety equipment, emergency lighting, and updated and reliable telephone systems.

The other ACHD programs located in the Lawrenceville campus suffer from similar facility deficiencies that negatively impact program performance on a number of fronts, including the ability to attract and maintain high quality employees and to efficiently perform the work needed to carry out the functions and goals of each program.

Recommendation: Recognizing the high level of professionalism that exists within the programs located in the Lawrenceville campus, it is recommended that an assessment be made of renovations and upgrades needed for each building, and that a plan be developed to address the needed changes. Aspects of the facility that compromise the daily functioning should be addressed immediately. Such changes not only would cure fundamental technological and health and safety deficiencies, they would promote a level of professionalism required for such activities.

6. Resources and Tools

Challenge: All resources and tools need to be reviewed and updated.

Recommendations: All software should be reviewed and tracking systems updated. All equipment needs to be on a maintenance and replacement plan.

PUBLIC DRINKING WATER

Overview

The Public Drinking Water Division (PDW) is responsible for the inspection and oversight of 78 public water systems in Allegheny County, which serve 99% of the County's residents. Systems regulated include facilities such as the City of Pittsburgh Water Treatment Plant, to small systems serving less than 50 people, to water vending machines. All of these facilities are regulated under the Pennsylvania Safe Drinking Water Act, the primary purpose of which is to assure that proper water treatment is being performed and to reduce the threat of biological and chemical pollutants through proper treatment and monitoring.

The public water systems are permitted by the state and inspected by PDW. All public water systems receive an annual comprehensive inspection. All equipment and components of the facility are visually examined and water samples from various stages of treatment are collected for analysis. Additional investigations throughout the distribution and storage facilities may also be conducted to evaluate construction activities, respond to a complaint, or for other specialized investigations

Sanitary information is collected as it pertains to the infrastructure, which comprises the larger water systems and is a tool that may aid in identifying potential problems. Inventories include both drawings and narrative information such as population served, treatment schematics, locations of storage and treatment facilities, distribution network, and location of valves, hydrants, and emergency interconnects as well as other pertinent information that describes that water system.

The Environmental Protection Agency (EPA) continues to promulgate new regulations, which subsequently require public water suppliers to perform additional monitoring, reporting, and may require additional treatment modification.

Emergencies are handled on a 24-hour basis and take precedence over routine inspections and monitoring.

Immediate Challenges and Recommendations

1. Staff Retention

Challenges: This is a continuous challenge for the PDW. This challenge has three basic components, Compensation, Workload and Training.

- Compensation - Because of the existing salary structure the PDW hires staff who are entry level thus commanding lower salaries which are not competitive with those offered by other regulatory agencies (PADEP and EPA), the private consulting sector or in some cases the regulated providers.

- Workload - The PDW is currently staffed by 1 supervisor and 3 staff. As stated in the overview, this number of staff is inadequate to fulfill the mission of the PDW especially since their duties require a fairly high degree of technical competence which the staff can only gain through rigorous training and actual hands on experience. The field staff also has little or no back office support to assist them with data analysis and management.

- Training/Continuously changing regulatory landscape - The inspection and regulation of public water systems is increasingly complex due to the constantly changing regulatory landscape. Staff is required to understand and implement these regulations for their client systems. This adds to staff workloads and also affects the PDW's ability to keep staff that is highly trained, experienced and competent.

Recommendations:

- Compensation – The ACHD will need to make salaries and benefits more competitive with other government agencies (PADEP and EPA) in order to improve retention. The ACHD should evaluate its staff structure and develop a strategic compensation plan that includes a formalized performance evaluation system that sets clear performance metrics. High performing staff needs to be recognized and incentivized. The ACHD should clearly communicate this plan to staff, which would instill confidence and improve overall morale, thus reducing turnover.

- Workload - Increase field staff size from 4 staff to 5 staff to better balance work load. Add 2 back office staff to assist in data management and analysis of inspection results.

- Training – The ACHD should develop agreements with local engineering and environmental schools to provide low or no cost training to ACHD staff to keep them abreast of regulatory requirements . This would also act as a budget offset that could be rolled into a compensation incentive package.

2. Current budgetary practices do not facilitate efficient operations

Challenge: PDW has little or no budgetary input or flexibility. PDW has had to go through the ACHD Director's office for all purchasing decisions, no matter how insignificant. This often results in delays and, historically, decisions have at times been arbitrary.

Recommendation: Increase budgetary flexibility and accountability. Promote needed accountability and responsibility of the PDW by transferring full responsibility for fiscal management from the administrative branch of the ACHD to the PDW.

Intermediate Challenges and Recommendations-2-5 years

Background

As stated in the overview, Allegheny County has 78 systems regulated by the ACHD/PDW, and they are a mixture of large (several hundred thousand customers) and small (fifty customers) systems. They also are a mix of old and often underperforming systems and newer more professionally managed ones. The water sources for these systems are primarily surface water intakes (about 90%) which are potentially at risk due to a variety of causes (oil spills, sanitary overflows, floods, etc.) The remaining 10% are groundwater systems primarily in the Allegheny and Ohio River basins. These systems are at some potential risk as well, but, according to the Allegheny County Wellhead Supply plan, are less likely to be subject to immediate compromise in the event of a man made or natural disaster.

In 1987 there was a large oil spill in the Monongahela River that corrupted many of the intakes for numerous water systems along the Monongahela and Ohio Rivers. This spill coincided with a major winter storm hampering containment efforts. The situation resulted in many residents of Allegheny County having to be reliant on containerized water. It also became apparent that the series of interconnects between systems was inadequate. As a result of this event, the Pittsburgh District of the U.S. Army Corps of Engineers ("USACE") and the Allegheny County Planning Department created a "skeletonized" model of the County's water systems in order to better understand how the interconnects could and should function. Unfortunately, that project was never fully realized.

In the early 1990s, the Allegheny County Planning Department undertook another initiative by developing a Comprehensive County Water Supply Plan. This plan, while useful in providing a detailed descriptions of the numerous systems within the County, fell short in proscribing solutions to the numerous problems that plague many of our underperforming systems, specifically in the area of rate normalization, unaccounted for water, and water loss.

3. Interconnects are still inadequate, especially in terms of emergencies

Challenge: System interconnects need to be identified, exercised, actively managed, and maintained. Inter-municipal agreements are often out of date or non-existent, with many dating back to the 1930s. System managers and owners are reluctant to share information due to security concerns.

Recommendations: Develop a mechanism to ensure adequacy of water supply system interconnects.

- There are many professional organizations comprised of engineers, planners, and legal and financial experts that could be approached to act in an advisory manner to the County to set up an objective mechanism to oversee this project and recommend management alternatives.

- Concurrently, the ACHD should reach out to the USACE as a local sponsor (thus reducing the overall cost to the County) to recover as much of the 1987 interconnect study as possible, and then rebuild, test, and validate the "skeletonized" model. The ACHD/PDW, in conjunction with the regulated systems, should review all existing inter-municipal agreements and bring them current.

- At the conclusion of these steps, the ACHD should then implement the recommendations of the advisory group in terms of interconnect management.

4. Uneven performance of client systems/ Aging Infrastructure

Challenge: Many of our systems are over 100 years old. Thus, there is a dire need for infrastructure capital investment. However, as is widely recognized, funds for these types of projects are limited and the environment for securing low-cost loans and grants is extremely competitive. Additionally, there are some systems that underperform so badly that they need to be combined or merged with larger more efficient systems. Otherwise, the issues of water loss, unaccounted for water (unmetered or lost), and non-uniformity of rates will continue. The issue of rates is especially important to the poorer communities who often have the highest rates due to system inadequacies.

Recommendation:

- Develop a disciplined, equitable, achievable and comprehensive capital reinvestment policy.
- Develop objective metrics that will lead to merging older underperforming systems with more financially stable, professionally operated systems. Use those metrics as a guide for recommending funding support (PennVest, RUS, etc.).
- Update the existing Countywide Comprehensive Water plan to prioritize funding recommendations.

PLUMBING

Overview

The Plumbing Section of the ACHD is responsible for permitting and inspecting all new and modified plumbing installations in residential and commercial structures within Allegheny County; administering a licensing program for plumbers; accepting and investigating complaints, and enforcing the County plumbing code.

- Inspections: Approximately 40,000 inspections are conducted on an as-requested basis each year.
- Plans/Permits: A plumbing plan/permit application must be submitted to the ACHD for any plumbing that is to be installed or altered prior to commencing plumbing work. Once the plan is approved and a permit obtained, plumbing work can proceed with inspection(s) conducted as work proceeds. A final inspection is required of all plumbing plan/permits issued. Approximately 13,000 plan permit applications are filed, reviewed, and issued annually.
- Licensing of Plumbers: Apprentice Plumber Cards, Journeyman Plumber Licenses, and Master Plumber Licenses are issued by the ACHD.
- Complaints, Referrals, and Service Requests: Complaints, referrals, and service requests are handled by the ACHD, and notices of violation are issued and enforcement actions are initiated, where necessary, to ensure that plumbing violations are corrected and abated.
- Applicable Laws and Regulations: Allegheny County Health Department Rules and Regulations, Article XV, “Plumbing” and the Pennsylvania Uniform Construction Code Act (Act 45 of 1999).

Challenges and Recommendations

1. **Facilities**

Challenge: The October 1, 2009 Report of the Air Quality Task Force included the following findings regarding Building No. 7 in the ACHD's eight-building campus in Lawrenceville.

- In reviewing the physical conditions of the Air Bureau, the Task Force concluded that the current facility is challenged by numerous technological and health and safety issues.

- The facility, while targeted for renovation, currently does not reflect the professional ambiance that generally is experienced in many offices charged with these types of activities.

- More importantly, while efforts have been made to address fundamental health and safety issues, challenges remain in the areas of routine maintenance of the facility, adequate and reliable fire and safety equipment, emergency lighting, and updated and reliable telephone systems.

The other ACHD programs located in the Lawrenceville campus suffer from similar facility deficiencies that negatively impact program performance on a number of fronts, including the ability to attract and maintain high quality employees and to efficiently perform the work needed to carry out the functions and goals of each program.

Recommendation: Recognizing the high level of professionalism that exists within the programs located in the Lawrenceville campus, it is recommended that an assessment be made of renovations and upgrades needed for each building, and that a plan be developed to address the needed changes. Aspects of the facility that compromise the daily functioning should be addressed immediately. Such changes not only would cure fundamental technological and health and safety deficiencies, they would promote a level of professionalism required for such activities.

2. **Plumbing Plan/Permit Applications**

Challenge: Approximately 13,000 plumbing plan/permit applications are filed each year using forms and procedures that have not been updated in many years. A thorough review of the information needs for processing applications and the potential for increased online options should be considered.

Recommendation: Update the current plan/permit application and evaluate online options to increase efficiencies.

FOOD SAFETY

Overview

The ACHD's Food Safety Program conducts a comprehensive surveillance, monitoring, and complaint investigation program. Facilities regulated by this program include restaurants, retail markets, food processors, caterers, warehouses, mobile vendors, and temporary food establishments. All such facilities must obtain an ACHD permit prior to operating in the County.

The focus of the inspection program is to prevent the occurrence of conditions that pose the greatest risk of causing a foodborne illness. Food facilities are prioritized and surveillance and monitoring activities are heightened for those which pose the highest risk.

The Food Safety Program also is responsible for investigating consumer complaints, including foodborne illness and emergencies affecting food facilities such as fires, flooding, or utility shutoff, and to educate operators on important food safety issues.

Another important part of the Food Safety Program is to review construction and modification plans submitted by regulated food facilities and to issue permits for approved plans.

Challenges and Recommendations

1. Staffing

Challenge: The Food Safety Program has experienced difficulty in recent years maintaining qualified employees. For example, the Department's approved staffing for inspectors contemplates sixteen (16) full-time equivalents ("FTEs"). Currently, there are only twelve (12) FTEs, and only seven (7) have more than two (2) years' experience.

Recommendations:

- An internal study should be conducted to determine the factors contributing to the Department's inability to retain qualified inspectors, and to identify steps that can be taken to address this concern.

- See Plumbing recommendation 1.2.

2. Ranking System

Challenge: Over the past year, the ACHD has debated whether to adopt a new "A-B-C" or numerical rating system for restaurants. The challenge in developing such a system is to address the need for adequate consumer information without imposing impractical and burdensome standards that do not reflect the condition of the restaurant or the attitude of the owner. Whatever system is adopted, it is important that the general public is provided with an adequate understanding of the system and that the ACHD website provides access to ranking results and background information.

Recommendations:

- The Food Safety Program currently makes inspection results available on the ACHD webpage. The manner in which the data is provided should be periodically reviewed to ensure that it is being presented in an understandable form.

- Revise current County Regulations to incorporate the new FDA Model Food Code and update inspection procedures to reflect the new regulations.

3. Revenue Generation Options

Challenge: The Food Safety Department maintains a Manager Certificate Program and a Food Protection Certificate Program. These certificate programs generate income of $150,000+ per year. Two experienced employees currently run the programs, one of whom is retiring, and the other recently announced that she also is considering retirement. Currently there is no one trained to replace these individuals.

Recommendations:

- Immediately begin to train replacement trainers for the certificate programs to ensure that this revenue stream is preserved.
- Review the current fee structure for the certificate programs, the licensing fee structure, and other services for which fees might be assessed (*e.g.*, re-inspection charges, sampling lab fees, etc.) to determine if more revenue could fairly be generated for Food Safety services.

HOUSING & COMMUNITY ENVIRONMENT

Overview

The ACHD monitors housing and community environment in three critical areas: tenant complaints, community environment complaints, and planned programs.

1. Tenant Complaints

Challenge: Tenants who feel they are being subjected to slum-like conditions can call the ACHD and file a complaint. This is largest area of ACHD's Housing and Community Environment department. ACHD responds to an average of 2,300 tenant complaints per year. The issues ACHD may address in a tenant complaint range from major water or plumbing deficiencies, a lack of heat or animal and pest control.

Currently ACHD feels it is meeting its requirements on tenant complaints in a timely and efficient manner. ACHD does not foresee issues in tenant complaints in the future that the department is unable to handle.

Recommendation: None.

2. Community Environment Complaints

Challenge: ACHD also responds to health issues or complaints from homeowners. ACHD receives about 1,400 of these types of complaints per year. These include vector and pest control, standing water and mosquito control, waste and garbage issues, and unlawful dumping.

The recent expansion of the threat of West Nile Virus has required the county to adopt the short-term goal of addressing standing water and mosquito control on a larger level than in years past. Currently, ACHD feels it is meeting its requirements on community environment complaints in a timely and efficient manner. ACHD does not foresee issues in community environment complaints in the future that the department is unable to handle.

Recommendation: None.

3. **Planned Programs**

Challenge: ACHD also operates a number of planned programs out of the Housing and Community Environment Department. These programs include inspections of pools, bathing houses, nursing homes, and hotels. Currently, small rooming houses and nursing homes are considered a priority and these types of establishments are inspected on a yearly basis. Larger hotels and national chains are inspected every three years.

Currently ACHD feels it is meeting its requirements on its planned programs in a timely and efficient manner. ACHD does not foresee issues in planned programs in the future that the department is unable to handle.

Recommendation: None.

Subcommittee on Public Health

INTRODUCTION

This report responds to the charge from the County Executive, Rich Fitzgerald, to assess the state of public health in Allegheny County, Pennsylvania. In order to gather the maximal input from as many of those most knowledgeable about behavioral and physical health in the region in the short 4 months the committee was together, we followed a process of interviewing key leaders in the community, gathered available data from academic and municipal sources, and discussed key issues with our diverse, experienced, and knowledgeable health subcommittee. A separate subcommittee assessed environmental health issues and the structures and processes in place to ensure maximum protection of County citizens. Thus, this report represents a discussion of the prominent issues contributing to the health of Allegheny County residents and presents recommendations to improve the health status of the region.

1. Status of Health and Health Care Services in Allegheny County in Comparison to its Peers

Allegheny County, PA was one of the 34 counties of greater than 1,000,000 whose health status was compared to peer counties in 11 categories and reported in the Community Health Status Indicators (CHSI) report. The CHSI analyzed population health data according to life stage, injury, cancer, adult behaviors, preventive services, environment-food, and health care access, all-cause mortality, average life expectancy, health status, and unhealthy days (Kanarek N, Tsai HL, Stanley J. Health ranking of the largest US counties using the community health status indicators peer strata and database. J Public Health Management Practice 2011;17(5):401-405) and found health disparities in a number of areas.

The National Association of County and City Health Officials (NACCHO) periodically surveys local health departments to assess the availability of public health activities and services at the local level. The 2010 questionnaire examined 87 separate activities in the following groups: immunization services; screening for diseases and conditions; treatment for communicable diseases; maternal and child health services; other health services; epidemiology and surveillance activities; population-based primary prevention services; regulation, inspection, and licensing activities; other environmental health activities; and other public health activities (http://www.naccho.org/topics/infrastructure/profile/resources/2010report/upload/2010_Profile_main_report-web-pdf). (Figures 7.1, 7.2, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12 from the NACCHO report are attached at

the end of this report). Although, no single factor emerged as reflecting overall county health, Allegheny County ranked consistently below its peers.

Chronic diseases substantially influenced by personal behaviors constitute the epidemic of modern times – in contradistinction to the burden of infectious diseases that were largely controlled in the 20th century. Municipal approaches to health – usually implemented through health departments – have tended to focus on infectious diseases. Most attention to infectious disease in recent times has focused on HIV/AIDS. In this region, the bulk of HIV testing is done by the Allegheny County Health Department (ACHD), through funding two local agencies to manage HIV/AIDS patients – Allegheny General Hospital and UPMC – Infectious Disease Division in Oakland. There is currently no overall Infectious disease surveillance done – only case-by-case monitoring.

In addition to physical health, oral health has also gained more prominence as a poorly addressed public health issue. A recent analysis of utilization of dental care in the US revealed the downward trend in use of services related not to the economic downturn, but rather to an earlier decline from 2003 to 2008 (Wall TP, Vujicic M, Nasseh K. Recent trends in the utilization of dental care in the United States. J Dent Educ. 2012;76(8):1020 – 1027). The growth in utilization among children coincided with a shift away from private insurance to enhanced public coverage and a significant drop in uninsured children. Utilization among non-elderly adults has been declining since 1997 among all groups except the most wealthy. In the case of these adults, the decrease in utilization seems to coincide with the decrease in private insurance coverage and an increase in public coverage. These declines in adult utilization of dental services are likely to continue.

Following recognition that approximately 30% of children have untreated dental disease, the ACHD became involved in delivering dental services to a number of communities in the County. They employ 1 ½ dentists and 2 dental hygienists and rotate through all the schools in the County approximately once every three years.

2. 2009–2010 ACHS: Measuring the Health of Adult Residents

The most detailed analysis of specific acute and chronic diseases in the County is available through The Allegheny County Health Survey (ACHS). The ACHS is a telephone survey that is done every few years to assess the health of citizens in the County (Documet PI, Bear TM, Green HH. Results from the 2009-2010 Allegheny County Health Survey (ACHS): Measuring the Health of Adult Residents. ACHD. University of Pittsburgh, Graduate School of Public Health, the Evaluation Institute. 2012). The recent data obtained from the 2009 -2010 survey clearly demonstrated that health disparities persist and confirm what had been suggested through the national studies mentioned above.

Data shows significant health disparities for many indicators by education, household income, and race, including: general health, disability, emotional and mental health, health care access, physical activity, diabetes, cholesterol awareness, hypertension, and cigarette smoking. African American residents, as well as those with lower household incomes or less education fared worse on these indicators.

The health of Allegheny County adults has improved in several factors.

- A significantly larger proportion of adults 65 and older reported having received recommended flu and pneumonia immunizations in 2009–2010 than in 2002.

- Across all population subgroups, there were significant decreases in the proportion who said they were physically inactive, and who said they were current tobacco smokers.

- There was a significant increase in reported colorectal cancer screening, especially among women.

However, the health of Allegheny County adults has worsened in other ways.

- The proportion of people who said they had a disability increased significantly.
- A significantly larger proportion of women were determined to be overweight or obese.
- The proportion of adults who had been told they had diabetes increased significantly, as did the proportion who had been told they had asthma. The increase in asthma was especially high for African American adults.
- A significantly smaller proportion of adults said they had been tested for HIV. The percentage of HIV tests decreased most among whites and women.
- The proportion of women who said they had a clinical breast exam or mammogram also decreased significantly.
- Significantly more adults reported having had no routine checkup in the past year and not being able to see a doctor because of cost.

The well-being of Allegheny County adults was assessed for several new indicators.

- Cancer survivorship: 11% of adults said they had been told by a health care provider they had cancer.
- Caregiver status: 41% of adults said they were caregivers of a friend or family member.
- Financial distress: 27% of adults said they were worried about their ability to pay their rent or mortgage, and 19% worried about buying nutritious food in the past year. Significantly higher proportions of women, blacks, and people with less education said they worried.
- Unemployment: 7% said they were unemployed; significantly more blacks (16%) than whites (6%) reported being unemployed.
- Adverse childhood experiences: 13% of adults said they had suffered physical, mental, or sexual abuse during childhood. Additionally, 16% said there was domestic violence in their home, and 33% said an adult with mental illness or substance abuse was there.

The results of this survey highlight health disparities in our region and can be used to guide prioritization and implementation of interventions to address these disparities.

3. Health Disparities

The Pittsburgh Urban League and the University Center for Social and Urban Research of the University of Pittsburgh joined efforts in 2000 to publish the first analysis of health disparities related to race (focusing on African Americans) in Allegheny County and called the *Black Papers*. Since that publication, significant disparities

in health between African American and Caucasian American citizens persist. Recognition of the specifics of those health disparities has spurred projects to better describe why there are disparities and to pilot programs to eliminate them. The second edition of these analyses, now entitled *Allegheny County in Black and White*, included additional conditions in an attempt to understand where progress has been made and where the disparities have persisted or even widened. The National Institutes for Health defines health disparities as "the differences in the incidence, prevalence, mortality and burden of disease and other adverse health conditions that exist among specific population groups in the United States" (http://www.achd.net/biostats/pubs/Gabe/disparities.html). In 2007, George Kaplan described health status as having much more to do with how we live—with the social and economic conditions that shape our lives—than with the medical care we receive or with what public health authorities do to control contagious disease (http://www.wilsoncenter.org/index.cfm?topic_id=116811&fuseaction=topics.event_summary&event_id=224806). Furthermore, David Williams, professor of African and African American Studies, Public Health, and Sociology at Harvard University, has said, "race does matter" when looking at health disparities. The income disparities between races, exposure to social and economic adversity over the life course and experiences of discrimination and institutional racism can affect the health of minority groups in multiple ways. Although some Americans believe racism is a thing of the past, racial disparities do exist and have been persistent over time, as can be seen when viewing disparities between 1950 and 1998 (http://www.wilsoncenter.org/index.cfm?topic_id=116811&fuseaction=topics.event_summary&event_id=224806). Both the influence of living conditions and socioeconomics as well as aspects of health and health care services are explored in this new edition of the Black Papers.

The African American population in Pennsylvania grew by 12.4 percent between 1990 and 2000 to reach more than 1.2 million. By 2007, the Black population numbered 1,328,630, which is 8.5 percent higher than the 2000 figure. The overall result is a net growth of 21.9 percent between 1990 and 2007 (http://www.dsf.health.state.pa.us/health/cwp/view.asp?A=175&Q=240950). In 2006, in this time of population growth, the age-adjusted rate for total deaths in Pennsylvania was almost 30 percent higher for African Americans (1,083.1) compared to Whites (837.8). The mortality rate for HIV/AIDS among African American residents (15.8) was over 10 times higher than the rate for Whites (1.5). The homicide rate was over 14 times higher for African American residents compared to Whites. Furthermore, the homicide rate with firearms for African American residents (29.2) was 20 times higher than Whites (1.4). The death rate for viral disease among African American residents (19.5) was over six times higher than the rate for Whites (3.2). The death rate for prostate cancer among African Americans (61.9) was more than twice the rate among Whites (25.0) (http://www.dsf.health.state.pa.us/health/cwp/view.asp?A=175&Q=240950).

Allegheny County in Black and White focuses on many of the conditions in which dramatic racial and ethnic disparities in outcomes are seen. Overall, African Americans are less likely to have health insurance—and less likely to access health care services—than White Americans in the U.S. African Americans face health challenges that are complex and multi-layered and superimposed upon a core of misunderstandings and lack of recognition of cultural influences that influence responses to these issues.

Child and adolescent health disparities in Allegheny County are evidence that the health issues facing our population begin as early as during infancy (R. Hanson). From birth, African American children in the United States and Allegheny County fare worse than their white counterparts. According to 2005 data, in Allegheny County, the percentage of African American babies with low birth rate is roughly double that of white babies.

Disparities are also seen relative to diabetes mellitus in African Americans in Allegheny County (Siedel, Bettencourt, and Zgibor). Projections for diabetes indicate that approximately 29 million people will be affected by the disease by the year 2050 [5]. The largest increase in prevalence is expected to occur in African American males +363% (2000-2050) and females +217% (2000-2050). The lifetime risk of developing diabetes is even higher among minority populations where non-Hispanic blacks and Hispanics have a 2 in 5 chance of developing diabetes as opposed to a projected rate of 1 in 3 among whites [6].

The socio-demographic factors of education, race, and socioeconomic status (SES) have been shown to directly impact the mortality rates of a population. Minorities have higher mortality rates for multiple reasons, most notably because of adverse social conditions hindering access to health care, disparities in educational attainment and poverty (Woolf, 2007). Irrespective of race, individuals from a lower SES experience a higher prevalence and mortality from cancer than individuals from a higher SES (Siminoff, 2005). Cancer is the second leading cause of death in Pennsylvania. Progress has been made in reducing the numbers of individuals who die from cancer yearly, however in Pennsylvania the mortality rate is higher than for the nation as a whole. In addition, there is a marked disparity between the death rates for African Americans and whites in the state. As the number of cancer survivors increases, resuming normal routines remains a significant challenge for a growing number of cancer survivors and their families in Pennsylvania. The 2003 cancer incidence rate for African Americans was 7.1 percent higher than the rate for whites, and 5% higher than the rates recorded by the National Cancer Institute's SEER Program.

Obesity in Allegheny County largely mirrors national trends (G. Rao). In 2002, 69% of African American adults (men and women combined) were either overweight or obese, compared with 58% of whites. That same year, 70% of African American adults in Pennsylvania, and 69.8% of African American adults nationwide were either overweight or obese.

African Americans are again disproportionately represented among people living with HIV/AIDS in Allegheny County (Deb McMahon). From 2000 to 2005, black non-Hispanics, ranged from 44% to 46% of people living with AIDS in Allegheny County despite representing only 12% of the population. Whites in the county accounted for 49% of all AIDS cases compared to their share (75.6%) of Allegheny County population.

When reflecting on the substantial burden of disease seen in African Americans, primary care remains the foundation of health for every citizen, but remains of utmost importance to the most vulnerable citizens in the nation – children, the disabled, racial/ethnic/social minorities, the poor, and the medically uninsured (South-Paul, Yonas, et al). Publically funded clinics remain a major component of primary care in the United States. The so-called federally-qualified health centers (FQHCs) are designed to have one of five areas of focus – community health centers, migrant health centers, homeless health centers, school-based clinics, or public housing health centers. They are non-profit, community-directed clinical entities designed to provide care by serving communities which otherwise confront financial, geographic, language, cultural and/or other barriers (National Association of Community Health Centers. Pennsylvania Health Center Fact Sheet 2007.

4. Violence in Allegheny County and Impact on Health

More than one third of high school students reported being in a physical fight during the previous 12 months. Almost one third of children between 6th and 10th grades report being bullied. More Americans were murdered in the US in one year than American soldiers in Iraq and Afghanistan combined. (Byrdsong TR. *A public health approach to mitigating interpersonal violence and institutional structural impediments for the city of Pittsburgh and Allegheny County*. July 10, 2011.)

Community violence has become a major public health concern in the United States and within many urban, impoverished communities of color. An essential element to effectively addressing and preventing community violence is the use of strategic intervention and prevention activities in the local area. The chapter (Dalton, Yonas et al) illustrates the characteristics of community violence in Allegheny County, Pennsylvania and specifically examines the racial disparity of this public health epidemic. Although homicides and drive-by shootings tend to receive the most media coverage, they occur far less frequently than aggravated assaults with firearms. Pittsburgh's murder rate (4.8 per 100,000 in 2005) is lower than the national average and that of many benchmark cities like Detroit, St. Louis, Baltimore, and Richmond. However, examination of violence trends among different demographic groups shows that, in particular, Pittsburgh's young African American men are at risk of homicide victimization; the homicide rate for this group was 284.2 per 100,000 – 60 times the city-wide average and more than 50 times the national average. Thirty percent of homicide victims reside in just 5 percent of Pittsburgh's neighborhoods, 67 percent of which are designated as severely distressed according to the Annie E. Casey Foundation distressed neighborhood criteria.

Where did violence occur?

- Violence was heavily concentrated in specific neighborhoods in the City of Pittsburgh, as well as in municipalities bordering yet outside the city limits, such as Penn Hills, Wilkinsburg, West Mifflin, and McKeesport.
- Within the City of Pittsburgh, 75 percent of homicides were clustered in just 25 neighborhoods. Homewood, the Hill District, and the North Side had the highest levels of victimization.
- Nearly all communities with high homicide rates have higher-than-average concentrations of African American residents and of residents living in poverty.

In the city of Pittsburgh, over 8,000 violent crimes annually impact citizens. In the first nine months of 2010, the total number of homicides exceeded the total for the entire 2009 – a 41% increase. Adults reporting exposure to violence as children showed an increased prevalence of chronic diseases, to include heart disease (2.2X), cancer (1.9X), stroke (2.4X), chronic obstructive lung disease (3.9X), diabetes (1.6X), and hepatitis (2.4X). Furthermore, those who have been exposed to interpersonal violence are more likely to engage in behaviors that contribute to chronic illnesses, such as smoking, eating disorders, substance abuse, and decreased physical activity.

A coalition of community advocates have encouraged the development of a public health approach to reducing interpersonal violence for the city of Pittsburgh and Allegheny County (Byrdsong TR. A public health approach to mitigating interpersonal violence and institutional structural impediments for the city of Pittsburgh and

Allegheny County, July 2011, Pittsburgh). This coalition promotes and intervention process of (1) community leadership and partnership development; (2) capacity building; (3) surveillance; (4) research; and (5) communication.

5. Poverty in the County and Impact on Health

There is a close link between socioeconomic status and health. Socioeconomic status is a critical factor to consider when assessing the status of public health in a region because of the impact of both personal and neighborhood poverty on individual health. Neighborhood poverty is associated with wear and tear on physiological systems and is mediated through psychosocial stress (Schulz AJ, Mentz G, Lachance L, et al. Associations between socioeconomic status and allostatic load: effects of neighborhood poverty and tests of mediating pathways. Am J Public Health 2012;102:1706-1714. Doi:10.2105/AJPH.2011.300412).

The recent recession has contributed to the current level of poverty seen in Allegheny County and the region. In 2010, 1 in 8 residents (12.1% or 280,000 people) in Pittsburgh region had incomes below the federal poverty line [DeVita CJ, Pettijohn SL, Roeger KL. *Understanding Trends in Poverty in the Pittsburgh Metropolitan Area*. Urban Institute. May 12, 2012 – now referred to as the Poverty Report]. This number represents an 8.5% increase above the number seen in 2007 when the recession began. Although demographic factors such as new immigrants and the growth of single-parent households are present, this increase in poverty largely relates to changes in the economy. The robust labor force in Pittsburgh (20% of whom are employed in the health care and education sectors) has helped mitigate the effects of the national economic downturn in this region. In 2010 Allegheny County had the largest number of people in poverty (150, 600) compared to the adjacent counties – Westmoreland, Fayette, and Beaver counties. The populations at greatest risk for living in poverty are children under 18, women heading households, the elderly and the near poor.

The Pittsburgh Poverty Report notes that the seven county Pittsburgh region has 1450 non-profit organizations that provide services in the health and human services sector and which have provided extensive services to the public for many years, augmenting services provided by governmental agencies and for profit entities. Those focusing on health provide mental health treatment and pregnancy support, among other services. Approximately 2 in 5 non profits operate with budgets less than $250,000 per year and have been significantly affected by the recession. Revenues in these smaller non profits began to decline in 2010 signifying the beginning of a struggle with the national economic downturn. Between 2009 and 2010, two thirds of non profits in the health and human services sector experienced increased numbers of clients seeking services. During the past two years all of these non profits noted serving 85,800 clients – comprising approximately 30% of the region's poor. Thirty-six percent of the region's nonprofits noted in a recent survey that 75% or more of their revenues come from governmental resources. Another sixteen percent of nonprofits note that more than half of their revenues come from governmental funding. Thus, anticipated declines in governmental funding are likely to directly impact the ability of nonprofits to delivery services to citizens in southwestern Pennsylvania.

Furthermore, the percentage of children living in poverty has increased in the County as the overall poverty level has increased. These increases in poverty have resulted in increased numbers of children enrolled in Medicaid and the State Children's Health Insurance Program (S-CHIP). Both of these programs have reduced the number of uninsured children (increasing children's enrollment from 19% to 32% between 1999 and 2009) and increased access to primary care physicians (Patrick SW, Choi H, Davis MM. Increase in federal match associated with significant gains in coverage for children through Medicaid and CHIP. Health Affairs 2012;31(8):1796-1802).

6. Care of the Medically Underserved – Poor, Disabled, Mentally Ill, Rural

Although only 2.7 percent of the population in Allegheny County has been diagnosed with mental illness, in 2007, a high number of people with mental illnesses were incarcerated in the Allegheny County Jail (ACJ). Twenty-eight perc., Engberg, J., Greenberg, MD, Turner, S, DeMartini, C, Dembosky, J. W. (2007). Justice, Treatment, and Cost: An Evaluation of the Fiscal Impact of Allegheny County Mental Health Court. RAND Technical Report. Retrieved April 2, 2007 from http://www.rand.org/pubs/technical_reports/TR439/.). ACJ partnered with the Department of Human Services, the court system and other municipal organizations to identify and develop alternatives to using the jails and prisons to manage this population, many of whom had been arrested for minor crimes (Sniffen, M. J. (Sept 6, 2006). Prisons Lacking Mental Health Treatment. Washington Post. Retrieved April 2, 2007 from www.washingtonpost.com/wp-dyn/content/article/2006/09/06/AR2006090601629.html).

7. Tobacco and Health

"At a time when all eyes are focused on health care reform, escalating medical costs and child obesity, cigarette smoking remains by far the most common cause of preventable death and disability in the United States." (Schroeder S, Warner K. Perspective Don't Forget Tobacco. N Engl J Med July 8, 2010)

The negative impact of tobacco use on health has been well described for many years. In spite of substantial efforts to educate the public regarding the dangers of tobacco, many citizens continue to smoke. Those who continue to smoke are largely those is the lowest socioeconomic groups and with the least education, the chronically and persistently mentally ill, and substance abusers (Data compiled by Cindy Thomas of Tobacco Free Allegheny).

According to the CDC, smoking rates are higher among people under age 65 with Medicaid insurance (31%) and those without any health insurance (32%) than among US adults overall (19%) (www.cdc.gov/nchs/data/series/sr_10/sr10_252.,pdf). Thus, efforts to reduce tobacco use among these two populations could significantly reduce health care spending. States that have carefully monitored investments in tobacco cessation programs (California, Washington, and Massachusetts) have demonstrated a return on investment of between $3 and $50 for every $1 invested in tobacco control (Does curbing tobacco use lower health care costs? Health Policy Snapshot: Public Health and Prevention. August 2012. Robert Wood Johnson Foundation. www.rwjf.org/healthpolicy).

Available BRFSS data for Allegheny County compare 2002 and 2009. For all adults the smoking rate dropped between 2002 and 2009 - from 26.1% to ~18%. The biggest decrease (~10%) was among individuals with some college education and among higher income earners. The decreases were smaller in the lower income levels and among those with less education. In 2009, adult men smoked at a slightly higher rate (18.2%) than women (17.6%). Those in the lowest education and income categories smoke at rates between 36-38% as compared to those in the highest level categories where the rate is less than 8%. Smoking rates for African Americans are 26.3%, for Whites are 17.2%, and for Asians are 6% (*2009 Allegheny County BRFSS data analyzed by Christopher*

Damiano and Sarah Felter). Nationally - Allegheny County does better than the national median, but is worse in the lowest SES and among African Americans.

8. Teen Smoking

The Pennsylvania Youth Tobacco Survey (done biennially in the even years) measures smoking/tobacco use behaviors, access, knowledge and attitudes, media influence, and secondhand smoke. The 2010 Survey Results were largely unchanged from 2008 and showed that:

- 3% of middle school students smoked cigarettes (unchanged from 2008).
- 19% of high school students smoked (also unchanged statistically since 2008).
- Roughly 2% of middle school and 8% of high school students used smokeless tobacco.

A fairly dramatic decline in usage of tobacco products was seen from 2002 to 2008 and a leveling off of the decline – at approximately the time when funding for prevention activities in schools declined and then ceased completely in October 2009.

9. Allegheny County Health Department

The Pennsylvania Department of Health provides direct health services to approximately 60% of the state's population. The Local Health Administration Law (Act 315) allows counties and municipalities to establish semi-autonomous health departments. The Board of Health has the authority to appoint the Director, advise the Director and exercise rulemaking with the concurrence of County Council. The responsibilities of the ACHD are divided between human health and environmental health.

A major value of having a vibrant local health department relates to the prevention, surveillance, and health promotion functions originating from the department. The surveillance of acute and chronic diseases is a critical municipal health function that is at the core of ensuring the health of the community.

A large component of the human health program focuses on infectious disease management – immunizations, surveillance and tuberculosis control, HIV/AIDS testing and surveillance, sexually transmitted disease monitoring and control, chronic disease prevention, injury prevention, childhood lead poisoning prevention, and dental program. Additional programs are the maternal and child health programs, the Women, Infants, and Children's program (nutritional support and breastfeeding promotion) and the child death review.

Pittsburgh Health Corps (Americorps) and the Allegheny County Correctional Health Services also fall within the health programs managed by the ACHD. Prison health – specifically at the Allegheny County Jail – is contracted out to a separate organization (Allegheny Correctional Health) in an attempt to limit the ACHD's involvement in direct clinical care as well as to limit the financial liability such services bring to the overall ACHD budget. The total ACHD budget is $36 million + an additional $12 million devoted to this subcontract.

10. Community Health Needs Assessments

Analysis is needed to determine areas of greatest morbidity and mortality for the County and to provide accurate surveillance of these conditions to drive policy and resource allocation. The Patient Protection and Affordable Care Act now requires hospitals to conduct a community health needs assessment every three years,

identify gaps in health, and then prescribe and implement interventions. The National Association of County and City Health Officials (National Association of County & City Health Officials (NACCHO)) survey also assessed implementation of community needs assessments and noted that sixty percent of respondents reported that a community health assessment had been completed in the last five years.

Preliminary results from the community health needs assessment being conducted by the Graduate School of Public Health on behalf of UPMC reveal the top causes of mortality in Allegheny County are consistent with those seen in the state and the nation – heart disease, cancer, stroke, and chronic lung disease. There are greater numbers of mothers on Medical Assistance, smoking mothers, and unmarried mothers in Allegheny County than is seen in the state or the nation. Infant mortality rates for African Americans in the County are more than three times that seen for whites and a greater disparity than is seen in the state.

Several committee members noted the distrust of the community towards outside groups coming in to assess community needs without also reporting the findings to or collaborating with the communities that have been studied. Rather, using community-based participatory evaluation methods to engage the community at the beginning of such processes promotes the engagement of the assets communities bring to such endeavors and respects the communities.

Recommendations

When considering policies that impact the health of the public, the approach must be balanced by what is most cost-effective. Preventive care that decreases costs is cost-saving (e.g., many childhood immunizations) (Cohen JT, Neumann PJ). The cost savings and cost-effectiveness of clinical preventive care. The Synthesis Project: New Insights from Research Results. Research Synthesis Report #18. September 2009. RWJ Foundation. www.policysynthesis.org). The interventions are cost-effective if the benefits are sufficiently large compared to the costs – even if they do not save money. Cost–saving measures may slow the growth of health care costs, but may not be large enough to outweigh other cost increases. Some cost savings may be sufficiently large to reverse health care cost growth. Furthermore, cost-effective preventive care measures that do not save money may still be worthwhile because confer of the health benefits that result.

The National Commission on Prevention Priorities (NCPP) directed an update to a 2001 ranking of clinical preventive services using recommendations up to December 2004. The three highest ranking services were (1) discussing aspirin use with high risk adults, (2) immunizing children, and (3) tobacco use screening and brief intervention – the last two of which are better implemented when supported by public health initiatives (Maciosek MV, Coffield AB, Edwards NM, et al. Priorities among effective clinical preventive services: results of a systematic review and analysis. Am J Prev Med 2006;31(1):52-61).

Recommendations:

a. Allegheny County Health Department

(1) Partner with other health-related organizations in the region (eg health care organizations, health science education organizations, foundations with health priorities) to identify areas of importance and prioritize and distribute health related efforts among these interested organizations.

(2) Target and focus particular ACHD efforts and market these services to the public – e.g., surveillance and reporting of high risk conditions, health advocacy, etc.

(3) Monitor data collected through the community health needs assessments implemented by local hospitals and facilitate and coordinate plans for remediating identified needs.

(4) Emphasize the importance of prioritizing and resourcing the ACHD for data acquisition, analysis, public reporting, and advocacy of County health status indicators.

b. Health Promotion Efforts in the County

(1) Establish a Pittsburgh Promise-like fundraising program to help support county health initiatives based in neighborhoods and communities.

(2) Assess and develop a plan to address structural racism and its impact on community health – e.g., lack of clinical providers in neighborhoods such as dentists, uneven availability of pharmacy services, disparities in availability of primary care.

(3) Increase the availability of community exercise and recreational programs through partnerships with private organizations such as the YMCA, YWCA, and local educational institutions and expansion of services through the County-owned/managed resources – e.g., pools, parks, etc.

(4) Establish a community health advisory committee that meets every 2-3 months – similar to the Air Advisory Committee – to provide regular interchange between the community and the County Executive regarding important health-related issues.

(5) Identify resources and implement opportunities for improving oral health, nutrition (e.g. breastfeeding, obesity), and tobacco cessation.

c. Prevention Efforts in the County

(1) Establish and promote partnerships between community health workers and health care organizations to promote prevention and encourage primary health care assessments in community settings – already deployed in several community organizations.

(2) Link mental health services with primary care services in communities – co-locating both types of services to promote broad utilization without stigma.

(3) Enhance focus on injury monitoring and prevention through public service announcements and incentives for involvement by local health organizations, businesses, and community organizations.

(4) Increase awareness of bullying and interpersonal violence through public awareness campaigns and enlistment of partnerships with schools, law enforcement, health providers, and community organizations.

Members

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The Honorable John DeFazio
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Factors Influencing Public Health

Factors influencing Public Health – fraction of mortality by age graph: [LHD = Local Health Department]

Variable	Percent of LHDs
LHDs providing Adult/Child Immunization Services	N=260
Adult Immunizations	94%
Child Immunizations	88%

LHDs providing Screening for Select Diseases/Conditions	N ranged from 248-259
HIV/AIDS Screening	67%
Other STDs Screening	62%
Tuberculosis Screening	77%
Cancer Screening	45%
Cardiovascular Screening	38%
Diabetes Screening	43%
High Blood Pressure Screening	68%
Blood Lead Screening	64%

LHDs Providing Treatment for Select Communicable Diseases	N ranged from 256 to 257
HIV/AIDS Treatment	23%
Other STDs Treatment	58%
Tuberculosis Treatment	67%

LHDs Providing Select MCH Services	N ranged from 247 to 258
Family Planning	50%
Prenatal Care	26%
Obstetrical Care	13%
WIC	39%
MCH Home Visits	54%
EPSDT	27%
Well Child Clinic	42%

LHDs Providing Select Other Services	N ranged from 248 to 254
Comprehensive Primary Care	5%
Home Healthcare	19%
Oral Health Services	25%
Behavioral/Mental Health Services	14%
Substance Abuse Services	14%

Variable	Percent of LHDs
LHDs Providing Select Epidemiology and Surveillance Activities	N ranged from 252 to 261
Communicable/Infectious Disease Surveillance	98%
Chronic Disease Surveillance	46%
Injury Surveillance	25%
Behavioral Risk Factors Surveillance	37%
Environmental Health Surveillance	88%
Syndromic Surveillance	60%
Maternal and Child Health Surveillance	58%

LHDs providing Select Population Based Primary Prevention Activities	N ranged from 247 to 257
Injury Prevention	41%
Unintended Pregnancy Prevention	42%
Chronic Disease Programs Prevention	62%
Nutrition Promotion	66%
Physical Activity Promotion	53%
Violence Prevention	26%
Tobacco Prevention	68%
Substance Abuse Prevention	34%
Mental Illness Prevention	15%

LHDs Providing Select Environmental Health Activities	N ranged from 249 to 258
Indoor Air Quality Activities	45%
Food Safety Education Activities	81%
Radiation control Activities	18%
Vector control Activities	65%
Land Use Planning Activities	24%
Groundwater Protection Activities	56%
Surface Water Protection activities	52%
Hazmat Response Activities	28%
Hazardous Waste Disposal Activities	16%
Pollution Prevention activities	37%
Air Pollution Control Activities	31%
Noise Pollution Control Activities	33%
Collection of Unused Pharmaceuticals Activities	10%

Variable	Percent of LHDs
LHDs Providing Select Regulation/Inspection and/or Licensing Activities	N ranged from 249 to 259
Mobile Homes Regulation	41%
Campground and RVs Regulation	62%
Solid Waste Disposal Sites Regulation	28%
Solid Waste Haulers Regulation	30%
Septic Systems Regulation	78%
Hotels/Motels Regulation	62%
Schools/Daycares Regulation	85%
Children's Camps Regulation	83%
Cosmetology Businesses Regulation	18%
Body Art Regulation	59%
Public Swimming Pools Regulation	89%
Tobacco Retailers Regulation	51%
Smoke-Free Ordinances Regulation	86%
Lead Inspection Regulation	66%
Food Processing Regulation	35%
Milk Processing Regulation	20%
Public Drinking Water Regulation	49%
Private Drinking Water Regulation	72%
Food Service Establishments Regulation	89%
Health-Related Facilities Regulation	45%
Housing Inspections Regulation	38%

LHDs Providing Select Other Public Health Activities	N ranged from 249 to 254
Emergency Medical Services	6%
Animal Control	29%
Occupational Safety and Health	29%
Veterinarian Public Health Activities	28%
Laboratory Services	24%
Outreach and Enrollment for Medical Insurance (including Medicaid)	41%
School-based Clinics	32%
School Health	30%
Asthma Prevention and/or Management	23%
Correctional Health	10%
Vital Records	53%
Medical Examiner's Office	9%

Public Safety

County of Allegheny

Executive Summary

Recognizing that public safety is the most critical function of any government, the County has long served its citizens with dedicated public safety personnel, innovative programs, and strong partnerships with other local, state and federal agencies. However, the County faces the same obstacles that governments across the nation are struggling with - decreases in funding, increases in incarceration and a lack of diversity.

While technological advances have allowed for increased intergovernmental cooperation cost-saving, and consolidation opportunities, the age-old problems of crime prevention and rehabilitation still dominate discussions.

Because of this, the Public Safety Vision Team concluded that recommendations with respect to sustainability, intergovernmental relations and diversity should be crafted to address the three essential elements of the public safety infrastructure: the Allegheny County Police, the Allegheny County Jail, and the Department of Emergency Services.

- **Ensure a Diverse, Transparent, Accountable and Cost Efficient Police Force**
  - Create a Diversity Taskforce composed of various departmental heads to focus on data gathering, transparency and accountability; facilitate an increase in diversity through internship programs, classes and workshops, interface with organizations representing constituencies.
  - Conduct a financial analysis to measure the feasibility of restructuring and consolidating all Allegheny County municipal police departments under the Allegheny County Police.
  - Explore the feasibility of forming a Citizen Law Enforcement Review Board for Allegheny County.
- **Expand Strategies to Address Drug Addiction**
  - Acknowledging that drug addiction is of epidemic proportions, implement and/or expand various strategies such as a supplementary prescription drug drop-off program, “Turn your gun in” programs and use the leadership of the County Executive to raise awareness, and educate family members of addicts about existing treatment options.
- **Ensure Appropriate, Efficient and Cost Effective Practices are Used at the Jail**
  - Build on the nationally recognized Allegheny County Jail Collaborative and Identify a sustainable funding source to maintain, and increase the scope of existing re-entry programs.
  - Enhance the role of community corrections as cost-effective treatment options and safe alternatives to incarceration in the Jail.
  - Analyze the organizational design and the variables that contribute to significant turnover in leadership of the Warden; identify and implement policies and best practices that anchor the Jail during times of transition until stability is achieved.
  - Evaluate the relationship between the Allegheny County Health Department and the Jail including a review of all procedures and protocols to determine whether there is sufficient accountability, adequate regard for public safety, and whether services provided are cost-effective yet in the best interests of Jail inmates.

- **Assess Opportunities for Shared Emergency Services**
    - Recognizing that multiple agencies (Port Authority, Emergency Services, and Airport Authority) have emergency services components, assess the public safety responsibilities of each entity to determine duplication; opportunities to share functions and determine where funding sources can be leveraged to complement other funding sources and public safety service requirements.

Vision Team Charge

The Public Safety Vision Team is charged with reviewing and evaluating the current service delivery of services related to public safety in the county, determining whether the opportunities exist for cooperation or merger, identifying services that need to be improved or expanded upon and making recommendations as to what the county's role is in that plan or implementation may be moving forward.

Scope of Work/Summary of Methodology

Scope of Work

The Public Safety Vision Team addressed issues related to: sustainability, intergovernmental relations and diversity.

The Public Safety Vision Team scope of work included the following areas:

- General public safety
- Allegheny County Police
- Allegheny County Jail
- Department of Emergency Services

The Team's recommendations are within the scope of one of the three fields for which the county has a role: the county performs, or should perform, an administrative function related to the recommendation; the recommendation pertains to a financial interest or financial support of the county; and, the recommendation lends itself to advocacy by the county. Those recommendations that do not fit within one of those three fields will not be a focus of the vision team.

Summary of Methodology

Schedule of Meetings

April 6, 2012

April 19, 2012

May 8, 2012

May 12, 2012

May 22, 2012

May 29, 2012

June 5, 2012

June 28, 2012

July 17, 2012

August 2, 2012

Deadlines:

Final Report due August 6, 2012

Resources Utilized:

The University of Pittsburgh School of Social Work hosted the Public Safety Vision Team at its Oakland location.

The School also shared experts Dr. Hide Yamatani, Associate Dean for Research, and Dr. Ralph Bangs, Associate Director of the Center on Race and Social Problems.

The team watched the video: *"Broken on All Sides: Race, Mass Incarceration and New Visions for Criminal Justice in the U.S."*[1]

The Team also met with the following individuals:

- U.S. Attorney David Hickton
- Beth Pittinger, Citizens Police Review Board
- Bill Stickman, Allegheny County Jail Acting Warden
- Alvin Henderson, Allegheny County Emergency Services Chief
- Charlie Moffat, County Police Superintendent

[1] The team recommends watching this video. It is available at http://brokenonallsides.com/.

General Recommendations

Topic of Concern: Although the team had insufficient data to review diversity in all public safety departments, anecdotal evidence suggest that diversity continues to create a challenge for the various departments.

Recommendation: Create Diversity Taskforce[1]. A diversity taskforce, composed of various departmental heads, would focus on three items:

- Data gathering
- Transparency
- Accountability

The Taskforce would first establish a baseline of information on the employment process, hiring process, and promotion of minorities in public safety, and then identify where improvement is needed.

Law Enforcement Recommendations

Topic of Concern: Allegheny County and municipal police department structures are an antiquated and inefficient use of resources, and restrict the centralization of information that can assist local, state and federal law enforcement.

Recommendation: A financial analysis should be conducted to measure the feasibility of restructuring and consolidating all Allegheny County municipal police departments under the Allegheny County Police[2].

Topic of Concern: Allegheny County Police need to increase the number of minority officers.

Recommendations:

- Start internship programs with local schools to encourage law enforcement participation among youth.
- Disseminate information regarding recruit requirements to a wider audience using the internet, social media and other mediums.
- Create a handbook on diversity recruitment that can be shared with all municipal police forces.
- Meet with organizations like the National Organization of Black Law Enforcement Executives to identify strategies.
- Offer classes/workshops for those interested in becoming a law enforcement official.
- Solicit foundation money to help create a coordinated minority recruitment campaign.

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[1] Appendix A
[2] Appendix B

Topic of Concern: Currently, Allegheny County has no independent agency set up to investigate citizen complaints about improper police conduct.

Recommendation: Explore the feasibility of forming a Citizen Law Enforcement Review Board for Allegheny County.

Topic of Concern: Drug addiction has become a problem of epidemic proportions across the country and Allegheny County is no exception. Narco-homicides and other drug related crime have turned some communities into war zones.

Recommendations:

- Institute a prescription drug drop-off program to supplement the D.E.A. National Prescription Drug Take-Back Day that is held only twice a year. The program could over monthly or quarterly. Collection sites could be set up at the County Courthouse and other locations.
- Increase and expand "Turn your gun in" programs.
- County Executive can raise awareness, and educate family members of addicts, about existing treatment options. The stigma that accompanies drug addiction often prevents family members and loved ones from seeking help for the addicts in their lives. The County Executive could have an important role to play in reducing that stigma. Emphasize that addiction is a disease that can be cured, and that help is available. The solution to the drug problem must be a community solution.

Allegheny County Jail Recommendations

Topic of Concern: The County spends 22% of its tax revenues on criminal justice and corrections. Recidivism, substance abuse, and mandatory sentencing are the major drivers of the County's high rate of incarceration[3]. Seventy percent of Jail admissions are readmissions, and 80% of Jail admissions admit to a substance abuse history or issue. High recidivism drains the County's resources and wide-scale failed reintegration of ex-offenders into the community is a threat to public safety and productivity.

Recommendations:

- Identify a sustainable funding source to maintain, and increase scope of existing re-entry programs. Allegheny County has a program—the Allegheny County Jail Collaborative[4]—that is considered a national model. It has the potential to not only reduce recidivism, but save millions of dollars annually.
- Enhance the role of community corrections as cost-effective treatment options and safe alternatives to incarceration in the Jail. Governor Corbett recently signed prison reform legislation that will divert nonviolent addicted offenders from state prisons to county correctional facilities for treatment of their addiction issues. The County Executive ought to have a plan for dealing with the influx of additional inmates who will be remanded to this jurisdiction. The plan should address the re-entry needs of these inmates while posing no risk to public safety.

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[3] Appendix C
[4] Appendix D

Topic of Concern: The Jail has had 7 Wardens in the past 8 years. This constant turnover has greatly diminished the Jail's operational capacity and the effectiveness of its programs. The continuous vacuum in leadership thwarts the Jail's efforts to reduce recidivism so that, in addition to shouldering increasingly high incarceration costs, taxpayers have also been required to pay repeatedly for recruitment and transition costs.

Recommendations:

- The County Executive identify the factors that have resulted in this pattern and take action to address them; rather than view continued turnover in the top leadership position at the Jail as a "given."
- The County Executive identify and implement policies and best practices will anchor the Jail during times of transition, and continue to insure its smooth functioning after its leadership becomes more stable. This undertaking should include input from the current Warden and other key stakeholders in local corrections.
- Evaluate the relationship between the Allegheny County Health Department and the Jail with the assistance of key stakeholders-including the Warden. Evaluate all procedures and protocols that inform provision of medical services in the Jail to determine whether there is sufficient accountability, adequate regard for public safety, and whether services provided are cost-effective yet in the best interests of Jail inmates.

Department of Emergency Services Recommendations

Topic of Concern: The current Emergency Services model has multiple agencies duplicating effort without the amount of coordination that would drive efficiencies and interoperability. For example the Port Authority, Emergency Services, and Airport Authority all have various facilities, technology and operations dedicated to aspects of dispatch, Emergency Operations and response.

Recommendation: Assess the public safety responsibilities carried out by each agency related to County government[5] in order to determine: where effort is duplicated; which assets can be shared across agencies; and where funding sources can be leveraged to complement other funding sources and public safety service requirements.

[5] Appendix E

Next Steps

GENERAL PUBLIC SAFETY ACTION ITEMS

Immediate Changes

Outline scope of work and appoint members to a diversity taskforce.

Short term Goals

Identify departments lacking diversity and develop an action plan.

Long Term Goals

Implement policies that increase diversity in public safety departments.

LAW ENFORCEMENT ACTION ITEMS

Immediate Changes

Initiate conversations with local officials and the County Police regarding consolidation.

Meet with NOBLEE, Sheriff's office, and others to gather information on increasing minority recruitment.

Initiate discussions with the relevant stakeholders about a Citizen Law Enforcement Review Board.

Meet with US Attorney's office to discuss a prescription drug drop-off program

Short term Goals

Conduct a financial analysis of a police force consolidation plan.

Implement recommendations to improve police force diversity.

Appoint a taskforce to explore feasibility of a Citizen Law Enforcement Review Board.

Organize logistics for collection of prescription drugs and guns.

Long Term Goals

Consolidate Allegheny County Police departments.

Launch a Citizen Law Enforcement Review Board.

Have more frequent collections of prescription drugs and guns.

Create a more diverse police force.

ALLEGHENY COUNTY JAIL ACTION ITEMS

Immediate Changes

Plan County's response to changes in local corrections as a result of recent prison reform legislation in PA.

Identify steps to interrupt the pattern of constant turnover in the Warden's position.

Create a taskforce led by the current Warden to identify and plan implementation of best practices and policies.

Pursue continued foundation support for successful rehabilitative and reentry programs in the Jail and the community.

Initiate evaluation of the manner in which health care is provided at the Jail.

Short term Goals

Evaluate Best Practices taskforce findings

Extend the strategies in the current Allegheny County Jail Collaborative Plan beyond 2013.

Clarify the role of community corrections as an integral part of the Jail Collaborative Plan.

Complete evaluation of manner in which health care is provided at the Jail and issue recommendations.

Long Term Goals

Authorize the Warden to implement policies and best practices at the Allegheny County Jail.

Attract and retain effective leader in the position of Warden.

Create conditions in which the Warden can succeed.

Effectively deal with influx of inmates transferred to County from state prisons.

Accomplish the recidivism reduction goals of the Allegheny County Jail Collaborative

Implement recommendations concerning provision of health care at the Jail to insure accountability, public safety, cost-effectiveness, and appropriateness.

DEPARTMENT OF EMERGENCY SERVICES ACTION ITEMS

Immediate Changes

Initiate discussions with the relevant stakeholders about Emergency Services functional consolidation

Short term Goals

Assess the various agencies and their funding, operations, facilities, etc...

Long Term Goals

Consolidate ES service functions.

Members

Dr. Larry Davis (Chair)
University of Pittsburgh School of Social Work

Brian Bark
Mission Critical Partners

The Honorable Dom Costa
PA House of Representatives

Bob Cranmer
Cranmer Consultants

Vanessa DeSalvo-Getz
Greenlee Partners

Jim Hasara
Fraternal Order of Police

Carol Hertz
The PROGRAM for Offenders Inc.

Darrin Kelly
International Association of Fire Fighters Local 1

Bruce Kraus
City of Pittsburgh

The Honorable Bill Mullen
Allegheny County Sheriff

Sala Udin
Coro

Recommendation for Increasing Diversity in Public Safety Employment

Recommendation for Increasing Diversity in Public Safety Employment

Minority workers in Allegheny County are underrepresented in government, business and non-profits and in most occupations.

It is advocated that Allegheny County public safety departments make every effort to address the underemployment of minority workers.

One of the best ways to increase diversity in employment is to create a diversity task force composed of department heads. The task force would be charged by the County Executive with:

1. Documenting current employment by race and gender in public safety departments and identifying departments, occupations, and pay levels with underemployment of minorities and women
2. Developing and implementing strategies to address the underemployment of minorities and women in public safety departments

Some examples of possible strategies are:

- Implementing the Rooney Rule, which would require managers to recruit and interview qualified minority and women candidates for every job opening
- Requiring managers to report on the minority and women share of job applicants who were qualified for job openings, the share of new hires who were minority and women, and reasons why minorities and women were not hired if the minority share of hires was less than the minority share of job applicants
- Mentoring to help retain minority and women workers and promote them to higher level positions

The success of any employment diversity efforts could be measured by:

- Increases in the number and percentage of minorities and women among new hires by the County
- Increases in the number and percentage of minorities and women employed by the County
- Increases in the number and percentage of minorities and women in the highest paid job categories in the County
- Increases in the number and percentage of minorities and women in County job categories where minorities and women are most underrepresented

Allegheny County Police Force

Allegheny County Police Force

Issue: Allegheny County has approximately 118 police departments which dramatically multiplies the cost of public safety in the county. The effectiveness of many departments (especially in the Mon-Valley) is extremely limited due to jurisdictional boundaries and insufficient funding resources. Coordination of regional police operations is also hampered by the existence of so many departments.

Concept: Based upon the initial 911 answering regions the county will be divided into public safety sectors North, East, South, West and the Mon-Valley. Incrementally, starting with the Mon-Valley, municipalities will be given the option of dissolving their police department and transferring all public safety operations over to the Allegheny County Police.

One regional public safety facility station will be established in conjunction with a "number" of sub-stations dispersed throughout each region, as required, to facilitate optimal coverage and coordination. The number of sub-stations will be determined based upon coverage requirements; with these stations utilizing some of the existing police facilities "where practicable".

Based upon seniority, experience, and qualifications existing municipal officers will be absorbed into the new operation becoming county police officers. Some equipment and vehicles may also be transferred to the county based upon need and serviceability.

Financial: All operational cost for public safety in the regions (i.e. municipalities who choose to participate) will be borne by the county. Benefits and retirement proceeds for the officers transferred to the county police will be absorbed into the county pension plan managed by the retirement board.

Municipalities that choose to participate will "generally" experience an approximately fifty to sixty percent cut in their budgets and will be required to pass these savings on to their municipal tax payers.

The county will be required to address funding in order to implement these public safety operations. However, any increase will be carried by the entire county, which will serve to "encourage" municipalities to participate. Those that choose not to participate will continue to finance their individual departments while also having to bear the costs associated with the expanded County Police force.

As an additional measure, the County Executive may also want to explore the voluntarily partipation of the Sherriff's office in certain financial aspects of consolidation.

Implementation: A financial analysis will be conducted to measure the feasibility of this plan by the county. As with the implementation of the county 911 plan a consulting firm should be retained to assist the county in communicating, coordinating, and implementing this plan.

Regions with municipalities being most likely to participate will be addressed first, with the plan being offered to each region in subsequent stages.

Implementation should begin with the Mon-Valley, moving next to the Southern Region, the Western Region, the Northern Region and the Western Region.

The Allegheny County Airport Authority will be encouraged to create their own Airport Authority Police Department similar to the Port Authority, Housing Authority and ALCOSAN "stand alone" departments. This will relieve the County Police of this requirement in order to more effectively focus its efforts on the regional public safety mission.

Conclusion: It is expected that with time and as the County Police demonstrate that they can provide more efficient, cost effective public safety services, more municipalities will choose to participate in order to realize the significant governmental cost savings to pass on to their citizens.

Background on Allegheny County's Approach to Justice Collaboration & Reinvestment

Background on Allegheny County's approach to justice collaboration & reinvestment

1. **Even as crime rates have dropped, we continue to incarcerate men & women at high rates.**
   - We incarcerate people at far greater rates than other countries.[1] Over 2 million people in the U.S. are in prison or jail, at an annual cost of $44 billion[2].
   - The lock 'em up strategy, especially for drug offenders, is a costly vehicle with inconclusive results. [3]

2. **Pennsylvania mirrors the nation.**
   - PA's prison population increased by 14,000 beds between 2000-2010, joining other states in dramatically increasing the number of people it incarcerated.[4]
   - Secretary of Corrections Wetzel is committed to reducing number of prison beds, without reducing level of safety in the state.[5] The number of state prisoners is beginning to decline—here and in other states, too.
   - PA state budget (2010-2011) devoted to:
     - Corrections: $1.7 billion
     - Higher Education: $957 million[6]

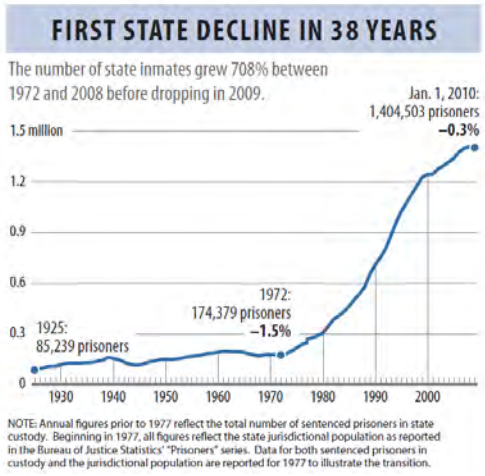
3. **Allegheny County's situation.**
   - Even though the population of Allegheny County declined by 4.6 percent in a decade, and violent crime has remained steady (or fallen by 12 percent, in the case of property crimes), the average number of inmates in the jail increased by 59 percent during the 1998-2008 period.
     - For the same period, New York City's daily jail population fell by 21 percent.
   - Cost to incarcerate someone for one year: $22,600
   - The County spends $144 million on criminal justice and corrections:
     - 22 percent of all county tax dollars are used to pay for these costs. Even a 5 percent reduction would reduce property taxes by $5 million.[7]

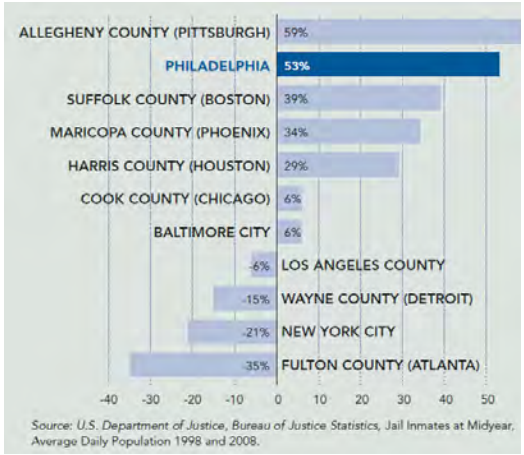
4. **What is driving the high incarceration rate in Allegheny County?**
   - Mandatory sentencing policies[8]
   - Recidivism:
     - Most of the people admitted to the Jail have been admitted before (Approximately 70 percent of all admissions to jail)

Incarceration rates

per 100,000

U.S.	743
Mexico	200
United Kingdom	152
Canada	117
World median	136





Profile of Allegheny County Jail (2012)

Avg. Daily Census	2497
Males	89 %
Females	11%
Race	
White	43%
African American	56%
Other Race	1%

- 80 percent of those admitted to the Jail admit to a substance use history/issue
- Defendants stay longer, awaiting disposition of their cases. The average length of stay increased by 33 percent between 2005-2010 (from 48 days to 64 days). Note: this figure has declined since 2010, through Court action, but is still a "driver" of the jail population.

5. What other parts of the country are doing.

- Investing in smart programs: Research shows that evidence-based probation, parole, and community corrections programs can reduce recidivism 10-50 percent.[9]
- Closing jails and prisons and redirecting inmates to rehabilitation programs.

6. What Allegheny County is doing: Reducing recidivism through the Jail Collaborative

- Doubling treatment and rehabilitation programs in the Jail
- Preparing inmates for release
- Linking inmates with housing, employment and family support programs
- Supporting and following inmates for 12 months after release

Results, Jail Collaborative

Annual savings per 300 inmates (RAND study)	$5.3 M
Cost:savings ratio (Yamatani)	6:1
Change in recidivism rate over comparison group (Yamatani)	-50%

7. What Allegheny County is doing: Saving money through Justice Reinvestment

- Saving money by:
  - Reducing time to case disposition
  - Reducing duplication in screening and assessment
  - Reducing recidivism
- Plan is to reinvest the money saved from improving efficiency in more treatment, probation, other preventive measures

8. Reducing recidivism saves money

Studies show that Allegheny County saved more than $5 million dollars per year/300 inmates who experienced Jail Collaborative programs. [10]

Jail Collaborative Re-entry Program: in the Jail & in the community

Service coordination	• Allegheny County (case managers, probation officers)
Employment & training	• Urban League • Goodwill • Springboard Kitchens
Housing	• Goodwill
D&A treatment	• Allegheny Correctional Health & other providers
GED, education	• Allegheny Intermediate Unit
Cognitive Behavioral Therapy	• Mercy Behavioral Health • POWER
Family support	• Family Services of Western PA • Amachi Pittsburgh • Lydia's Place

Information about the Jail Collaborative & Civic Advisory Committee

The Allegheny County Jail Collaborative:

- Formed in 2000 to improve public safety, restrain the growth in Jail costs, and prevent the disintegration of communities and families impacted by crime and incarceration.
- Led by President Judge and Administrative Judge for Criminal Court--Court of Common Pleas; Warden, Allegheny County Jail; Director, Allegheny County Health Department); and Director, Allegheny County Department of Human Services.
- Other members of the Jail Collaborative include the Civic Advisory Committee—community leaders who provide guidance and support for reentry programs—as well as dozens of agencies and volunteers.

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[10] Yamatani, Hide. Overview Report of Allegheny County Jail Collaborative Evaluation Findings.‖ University of Pittsburgh School of Social Work, January 3, 2008; and RAND: Justice, Treatment and Cost: An Evaluation of the Fiscal Impact of Allegheny County Mental Health Court, 2007.

Allegheny County Jail Collaborative: Three Year Plan

July
2010

Allegheny County Jail Collaborative

Three-Year Plan

July 2010 – June 2013

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1. Mission of the Allegheny County Jail Collaborative

The Allegheny County Jail Collaborative was formed to reduce recidivism and thereby improve public safety, restrain the growth in Jail costs, and prevent the disintegration of communities and families impacted by crime and incarceration.

The Jail Collaborative works with government and non-profit organizations, volunteers and other members of the community to meet this aim by:

- Coordinating reentry so that inmates and ex-offenders are able to follow a clear path to successful reintegration into society
- Expanding and coordinating programs that have been shown to reduce recidivism by offenders and ex-offenders; and monitoring the outcomes of these programs
- Making the changes in the system that are key to improving reintegration
- Sharing resources to advance common goals

2. Why Allegheny County needs a plan

Although Allegheny County has done much to reduce recidivism for a subset[1] of the Jail population, it is still the case that **47 percent** of the individuals released from the County Jail are booked again in the Jail within one year of their release. Several factors are driving this recidivism rate:

The number of people with substance use disorders. The increase in the Jail population is largely due to substance use and the policies that result in incarcerating ever-lower levels of people with substance use disorders:

- One-third of the Jail is filled with people who are being held for non-violent misdemeanor charges related to illegal substances.
- Driving under the influence and public drunkenness account for 21 percent of all charges
- 80 percent of men and 90 percent women screened for substance use at intake in the Jail said they had previously abused drugs or alcohol
- Because of substance use, thousands of men and women are cycling through the Jail repeatedly each year. Underlying these repeated returns to Jail are histories of trauma, mental illness, and self-injury through prostitution.

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[1] The Jail, Department of Human Services, Department of Health and the Courts have developed programs that are showing remarkable results for a subset of men and women in the Jail. (175 people per year through the "Reintegration Program," and 265 individuals with mental illnesses per year through diversion programs.) In both cases, the recidivism rate dropped to under 20 percent for participants. (Yamatani 2008; and DHS 2007)

(National studies have shown that over 50 percent of women who enter Jail report having been physically and/or sexually abused; and their rates of HIV infection are twice that of men.)

- In spite of the need for treatment, fewer than 10 percent of men and women in the Jail over 30 days ultimately receive substance use treatment because treatment capacity is limited.

The shortage of treatment and rehabilitation programs in the Jail. When the Allegheny County Jail was constructed in 1995, it was designed to include spaces for family support, education, and counseling, but these areas were never used because the surge in the jail population made adding more beds the priority. To this day, the decision to forgo an investment in rehabilitation and reentry influences the expectations of inmates and staff, the public, and families of the incarcerated:

- There is not a clear set of incentives for participating in educational programs and work, so too few inmates choose to do so; and
- At most, only 5 percent of people in the Jail for more than 30 days participate in a rehabilitation program in the Jail or a reentry program.
- There is no work release program or vocational education program within the Jail.

The disconnect between the people outside the jail who are poised to help—and the opportunity to do so. The community, including families and faith-based organizations, has a limited role in supporting inmates who want to change their lives because:

- Families currently have little role in developing a transition plan or "home plan," in spite of the fact that they are most often the people to whom ex-offenders turn to for housing and help in finding employment. And the conditions of visits to the Jail are difficult for children and adults alike[2].
- Communication with the Jail is complex and confusing for individuals, families, and many organizations, small and large.
- Coordinating volunteers (a potentially powerful resource for reentry) requires an investment in time and resources that has not been available.
- The link to community-based services is thin or non-existent if individuals are not on probation, part of a behavioral health program, or in the limited set of reintegration and diversion programs.

The lack of transition planning for most inmates. In spite of the fact that local and national studies[3] show that the first days and months after release are critical, the transition from Jail to home in Allegheny County is haphazard. There are a handful of staff handling case work for the Jail's 2,600 inmates, so most exit the Jail without a clear plan for where they will live

[2] The Vera Institute of Justice (1999) followed 49 ex-offenders' first month out of incarceration and found that "supportive families were an indicator of success across the board, correlating with lower drug use, greater likelihood of finding jobs, and less criminal activity."
[3] Kohl, Hoover et.al. Urban Institute (2008). Yamatani, University of Pittsburgh (2008)

or work. This lack of planning has been exacerbated by the lack of a known day and time for release, which has meant that men and women are being released from the Jail late at night, family members are waiting for many hours, and people sometimes leave the Jail in the clothing they entered it in, which may leave them without long pants or a coat in the winter.

The shortage of housing and employment services in the community. At least 10 percent of all inmates report an episode of homelessness in the year prior to arrest, which is four times the rate for the general adult population with characteristics that are similar except for incarceration. (Greenberg 2008) Even if individuals had relatively stable housing prior to their arrest, the likelihood of their losing housing grows with each month they are in jail awaiting trial or sentencing. Most men and women who are about to be released know that they have lost their apartment or no longer can be sure that they can live where they used to, and so report that housing is a primary concern.

Ex-offenders may have the income to qualify for public housing when they are released but are constrained by rules of housing authorities, which can make individual eligibility determinations based on relevance of criminal history, including arrests that never led to conviction. It is rare for an individual with a criminal record to secure public housing, including a Section 8 certificate unless an individual has advocacy and support from an experienced agency that can assist them in lodging an appeal.

3. What research shows makes a difference

In deciding how best to reduce recidivism, the Allegheny County Jail Collaborative looked at rigorous tests of what really works in addressing the roots of the recidivism problem.

The Washington State Institute for Public Policy collected studies that met a high standard for rigor: only those that had a non-treatment comparison group that is well-matched to the treatment group. Its 2006 report shows which work best in reducing crime; and its 2009 report showed which are the most cost-effective.

Those programs that have been demonstrated to reduce recidivism (in order of largest to smallest cost-benefit ratio) are listed in the table that follows. Note that most of these studies have been done with prisons and their application to jails may be limited.

Programs for people in Adult Offender System (number of studies)	**Change in crime outcomes**	**Net benefit** (savings/participant)
Vocational education in prison (4 studies)	-12.6%	$20,714
Intensive supervision: treatment-oriented programs (11)	-21.9%	$19,118
Washington's Dangerously Mentally Ill Offender program (1)	-20.7%	$18,836
General education in prison (basic ed or postsecondary) (17)	-8.3%	$17,636
Cognitive-behavioral therapy in prison or community (25)	-6.9%	$15,361
Correctional industries in prison or community (4)	-6.4%	$13,961
Drug treatment in prison (therapeutic community or outpatient) (21)	-6.4%	$12,715
Drug treatment in community (6)	-8.3%	$11,856
Adult drug courts (57)	-8.7%	$8,514
Employment and job training in the community (16)	-4.6%	$6,351
Sex offender treatment in prison with aftercare (6)	-9.6%	$4,064
Washington's Work Release program from prison (1)	-1.3%	$2,288
Electronic monitoring to offset jail time (12)	0%	$926
Intensive supervision: surveillance-oriented programs (23)	0%	-$3,869
Adult boot camps (22)	0%	Not estimated (n/e)
Domestic violence education/cognitive behavioral treatment (9)	0%	n/e
Drug treatment in Jail (8)	0%	n/e
Jail diversion for mentally ill offenders (11)	+5.3%	n/e
Life skills education program for adults (4)	0%	n/e
Restorative justice programs for lower risk adult offenders (6)	0%	n/e

The Jail Collaborative also considered the findings of these local studies:

- A RAND Corporation study of the fiscal impact of Allegheny County's Mental Health Court which used comparisons (Allegheny County vs. matched sample in other states) found that diverting individuals with mental illness from the Jail to treatment and services had a net benefit, starting in year two. The impact was particularly strong for individuals with the most serious mental illnesses. (This differs from results of 11 rigorous studies of jail diversion programs that are part of the Washington State analysis.)
- Dr. Hide Yamatani's study of the Reintegration Program found that this program, which serves 175 people per year showed a recidivism rate of 16.5 percent while a matched comparison group had a recidivism rate of 33.1 percent.

4. What the community says would make a difference

People who work in the Jail or with the Jail, or who have served time in the Jail agree: "Corrections" is not happening for most people in the Jail. The programs in the Jail can serve only a small percentage of the people, and there is no requirement to participate in a program (nor rewards/incentives for those inmates who choose to do participate).

This was one lesson learned by the Jail Collaborative during its meetings with over 300 people (community providers, ex-offenders, family members, faith community members, and others) during late 2008-early 2009. The Collaborative asked them two questions: What are the issues now (from arrest through reintegration); and What solutions do you suggest? Their issues are listed in Appendix 2 and many of the solutions they proposed are part of the Plan and incorporated in the long-term Vision, described in the section that follows.

5. Conclusion

After convening community providers, community members, family members and ex-offenders and reviewing the research, the Collaborative concluded that it must:

- Increase substance use treatment in the Jail and access to treatment in the community
- Increase educational services, including special education and literacy—in the jail and continuing into the community
- Increase vocational education, job readiness, and work experiences
- Provide transition planning for all inmates
- For inmates at the highest risk of re-offending, establish a reentry program that begins at least six months prior to release, that includes community/family support, and that provides different degrees of intensity, based upon risk of recidivism.
- Increase housing options in the community, particularly supportive housing
- Add a program of cognitive behavioral treatment addressing criminogenic factors

- Provide families with opportunities to support inmates; and provide support for children and families of people who are incarcerated
- Implement a system of rewards and sanctions that spans the Jail and community, in conjunction with probation and parole, when applicable
- Expand alternatives to arrest for low-risk and special needs populations
- Assess the risk of all individuals at booking, use this assessment for bail determination and to divert to community programs/jail alternatives
- Place individuals into housing units connected with programs that address their needs and strengths (as assessed)
- Over the next several years, convert most current Allegheny County Jail housing units to specialty/treatment units with trained staff, clear schedules, mandatory participation in programs
- Contract with only programs that measure results and show an impact on recidivism and that are delivered based upon level of risk.
- Support housing/work locations to serve as transition from the Jail to release
- Open a discharge office for individuals leaving directly from the Jail.

6. Goal and objectives

The Jail Collaborative's goal for the next three years is to reduce recidivism by 10 percent per year. Its objectives are to:

1. Provide reentry services to men and women in the sentenced population through: continuation of existing programs with demonstrated success [200 individuals per year]; and establishment of a new reentry program that focuses on the sentenced population [additional 200 individuals per year]. Impact: 1,200 individuals over three years.
2. For the sentenced population and others at high risk, expand services that have been demonstrated to impact recidivism, expand treatment and rehabilitation services in the Jail—and link these to community-based services. This includes:
    - Educational services
    - Employment services
    - Housing services
3. Integrate family support into reentry programs in the Jail and the community. [Impact: 600 individuals (half of group are parents); and their approximately 1,200 children]
4. Make the systems changes necessary to support successful reentry to home and society by developing a Discharge Center, developing real-time information for providers and families, changing the procedures in booking to support family

communication, and improving the conditions of visits. (Impact: 30,000 individuals over three years)

5. Evaluate each program's effectiveness and use this information to improve the system
6. Sustain the successful elements of the reentry system

7. Plan

For the July 2010-June 2013 period, the Jail Collaborative will: 1) support existing programs for reentry of demonstrated quality; and 2) make a set of concrete improvements.

Existing reentry programs

A set of reentry programs with demonstrated results will form the base of reentry during the next three years. The Jail Collaborative will endorse these programs, assist in coordinating these programs with the Jail, Courts, the Health Department, and Department of Human Services, and, to the extent possible, assist in supporting those programs that show the greatest reduction in recidivism. The Jail Collaborative's Program Committee will be responsible for convening these programs for:

- Coordination of services at the program level
- Information-sharing about obstacles and effective strategies
- Monitoring and reporting on results by program

Existing Programs:

Diversion of people charged with committing non-violent offenses who are at low risk of re-offending	Programs in the Jail	Community services & community supervision
Crisis Intervention Team (CIT) Pre-trial diversion program for mental health, co-occurring Mental Health Court Drug Court Pre-trial services	D&A treatment Mental Health treatment Medical treatment Education Anger Management Peer Support Parenting Domestic abuse counseling Specialty housing units Support by faith-based	Probation that provides support and supervision Reintegration program Treatment and services in communities, including mentoring and support groups Transitional Programs for inmates within six months of being released who are transitioning to community. These include education, work experience, job placement, housing assistance, counseling, links to substance use treatment, case management, coordination with probation

New: System improvements and programs

In addition to these core programs, the Jail Collaborative will address systemic issues and fill crucial program gaps by focusing on a distinct set of priorities each year. Taken together, the current and new projects aim to reduce the rate of recidivism by 10 percent for those who are served. The details of each strategy and their sequencing are provided in the Attachments. What follows is a summary of the key strategies (some of which will begin in year one, others in year two or three).

1. **Open a Discharge Center that coordinates release**
   - The Jail Collaborative will coordinate release for all inmates through a Discharge Center located in the Jail. People who are being released from the Jail will be able to make free telephone calls, receive information and referrals, and if needed, seasonal clothing, and free bus tickets.
   - Inmates and staff as well as family members and mentors will receive 48-hour notice of pending release from Jail to prepare, and this will be coordinated with notification of victims. They will know the scheduled time of the release. Release from the Jail will take place at scheduled times within the 9 a.m. – 9 p.m. time frame.

2. **Reentry Program**
   - The Collaborative will launch a reentry program to improve outcomes for the sentenced population. It will be tied to a consistent system of rewards and incentives that reinforce cognitive-behavioral changes.
   - Reentry Team (composed of inmate, sponsor, which may be family member, or mentor, and staff, including Reentry staff, and education and treatment staff) plans services and treatment in the Jail and develops a detailed Reentry Plan, based upon assessment of risk/strengths/skills. Program staff and Reentry Probation Officer will request Court approval of Reentry Plan and link to terms of probation. Case workers from alternative housing and the Jail will be invited to be members of the reentry team.
   - Reentry Team is based in "Reentry Center" on Level 1 of the Jail but works in the Jail, in the community, and in partnership with alternative housing.
   - Staff coordinates services with community providers and family member/sponsor--90 days prior to release through one year after release.
   - Collaborative expands education, employment, psychoeducation, D&A services.
   - Families are encouraged and supported in making visits to Jail, serving as sponsors and receiving necessary services to provide strong, safe homes for return to the community.
   - Peer, spiritual and other mentors serve as sponsors in and out of the Jail.

3. **Family Support**
   - Develop family support program that is integrated with the Reentry Program and that:
     - Delivers to inmates and family members an experiential curriculum in healthy relationships and parenting; leading psychoeducational groups in the Jail; and trains other jail staff (e.g. case workers) in this curriculum
     - Helps children learn about and prepare for visits at the Jail; and that prepares their parents, as well
     - Transports children and family members to visits, if needed; and supports them during visits
     - Connects children and families to community-based services, including family services
     - Supports parent-child connections by arranging for family-building activities
     - Connects the children and parents with community-based family services and family support centers.
     - For children in formal kinship and foster care, contacts CYF to use new protocol
   - Improve the conditions of the contact visit room and the activities available there.
4. **Expand educational and employment services**
   - The Jail Collaborative will expand the capacity of those in-Jail services that are linked most directly to reductions in recidivism: Adult Basic Education/GED, and employment skills development/job readiness;
   - It will add new educational program to widen the range: special education/basic literacy, and vocational education
   - It will expand opportunities for work in the Jail and tie the opportunity to work to an inmate's meeting a set of criteria (misconduct free, and consistent participation in treatment, reentry program, or an educational program)
   - It will expand opportunities for inmates to volunteer in the Jail (e.g. tutoring other inmates).
5. **Develop Transition Program**
   - Building upon the Discharge Center and Reentry Center, a Work Group will research the best practices in transition to prepare individuals with a clear structure of graduated rewards/incentives, paid work in the community, opportunity to attend faith services and recovery meetings in the community, and visits with family in the home. The aim is to acclimate individuals to positive life in the community.
   - The design for this program will include: objectives, evidence base, numbers to be served in each of next two years, expenses and revenue sources, timeline, and plan for integrating program with existing programs.

6. **Expand Treatment Pods**
    - Design and create at least one new Treatment or "specialty" pod per year that is significantly smaller than the average housing unit population (goal of no greater than 60 inmates) whose size, rules, supervision, and services support successful reentry. By year three of this plan, this will be an additional three specialty pods.
    - At least one of these will be a "reintegration pod" whose residents are engaged in the Reentry Center's services and other rehabilitation services in the Jail.
7. **Expand Assessment**
    - The Jail Collaborative will expand the use of needs/strengths/risk assessments to all inmates in a manner consistent with the behavioral health system transformation in the County (e.g. Adult Needs and Strengths Assessment); will use these assessments to help plan inmates' access to programs; and will automate these records.
8. **Increase Housing Options**
    - Provide rental assistance, if necessary, to individuals in the Reentry Program
    - Develop and create additional housing options for individuals in the sentenced and non-sentenced populations who are at high risk of homelessness.

8. How the Jail Collaborative is organized to reach its aims

The Jail Collaborative has reorganized its structure to streamline work and decision-making.

Cabinet: The leadership of the Collaborative continues to be the Cabinet, which is composed of:

- Warden of the Allegheny County Jail (Chair)
- President Judge, Allegheny County Court of Common Pleas
- Administrative Judge, Criminal Division, Court of Common Pleas
- Director, Allegheny County Department of Human Services
- Director, Allegheny County Health Department

Operations Committee: The month-to-month direction of the Collaborative is the responsibility of the Operations Committee. This is composed of a small number of individuals from each entity who report directly to the members of the Cabinet. The Operations Committee members will chair the Work Groups and the Program Committee.

Work Groups: To implement the work ahead and insert a level of accountability for its progress, the Jail Collaborative will organize 4-5 Work Groups each year—one for each project—that will be tasked with assignments and dissolve, once their tasks are completed. The chairs of these Work Groups will be members of the Operations Committee, who are

responsible for selecting the members of their Work Groups whom they believe have the understanding and responsibility accomplish the tasks for that year.

Program Committee: The Program Committee will have responsibility for coordinating existing programs, reporting on program results, and identifying issues that need to be raised to the Operations Committee. Members of this Committee are service providers who are part of the reentry system.

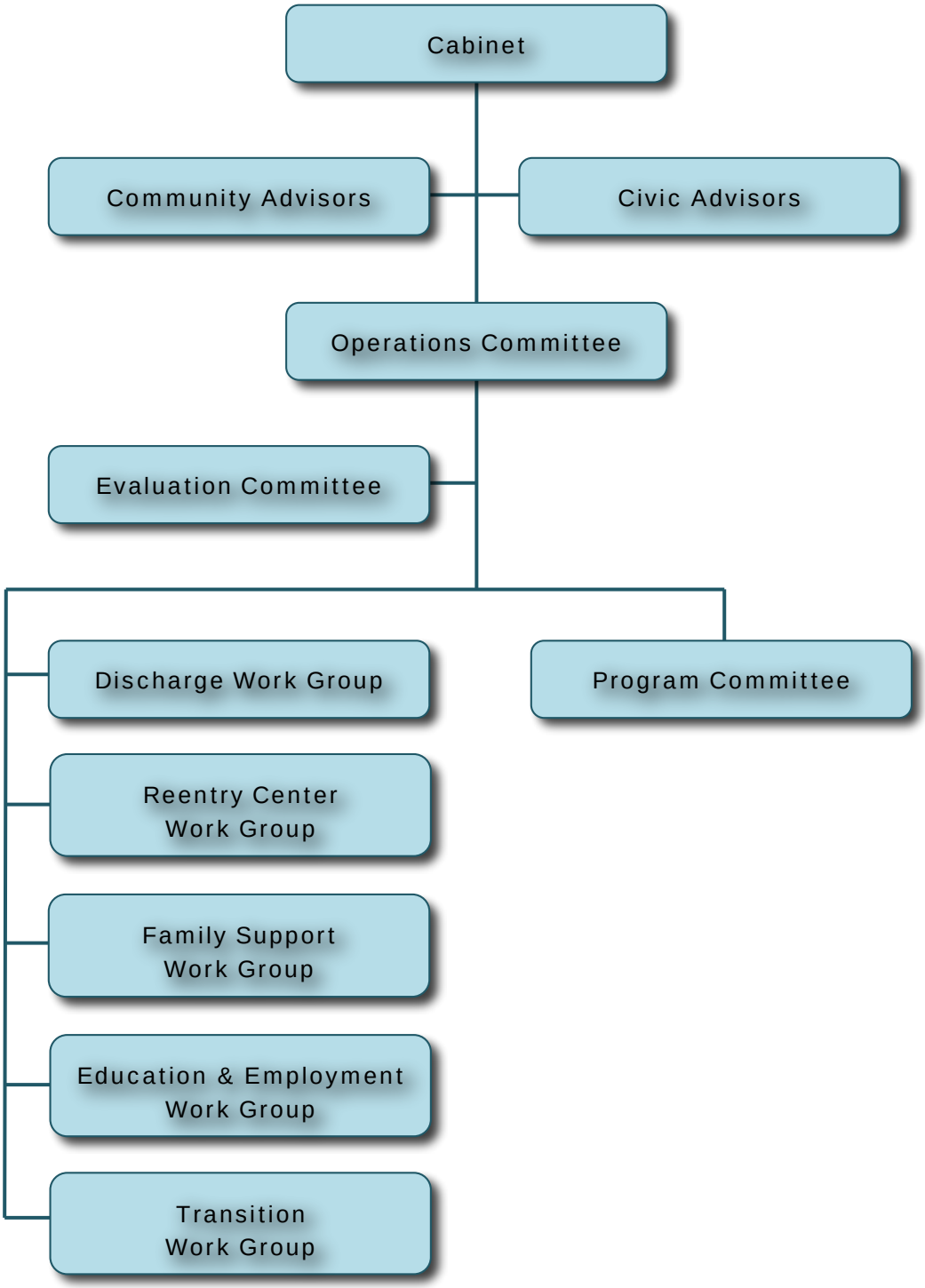
Evaluation Committee: This group is responsible for designing the evaluation of system-wide and program improvements, for identifying contractors to implement the evaluation, and for reporting on results to the Cabinet. It will commission the consumer survey and ensure that this information is provided to the Community Advisory Group.

Community Advisory Group: The Collaborative will invite a group of family members and ex-offenders to review the results of consumer surveys and inform the Jail Collaborative of areas that need to be improved or that have shown progress. The Evaluation Committee will ensure that this Group receives information in a timely manner.

Civic Advisory Group: The Collaborative Cabinet will invite leaders and content experts on whom the Jail Collaborative can call for guidance and report results, to gain assistance in instituting larger scale changes and building community support.

The Allegheny County Jail Collaborative: The combination of all of the individuals who serve on these groups and committees will form the Collaborative. All of the individuals who are involved with the Jail Collaborative will be assembled once/year for the annual report of the Jail Collaborative.

Allegheny County Jail Collaborative



9. Principles of operation

The Jail Collaborative has agreed upon these principles for their decision-making and to support collaboration:

- All Jail Collaborative activities will be governed by this Strategic Plan.
- The Cabinet will vote on changes in strategy and policies.
- Strategies that are selected will be based on rigorous research (at least one study with well-matched comparison group). If the Collaborative chooses to invest resources in a program with less that this standard of research, it will commit resources to studying the results of this effort.
- The Collaborative will tap community resources with demonstrated ability to deliver results; and if it chooses to invest in agencies that are untried, it will commit resources to monitoring the program and providing support if needed.
- It will invest in a few good services for the highest risk vs. diffuse ones for many.
- The Collaborative will open bid for services acquired using the funds raised through their pooled funds and the Human Services Integration Fund/reintegration subfund.
- The Collaborative will welcome faith-based and other volunteers. Any volunteer will agree to offer their services to individuals without regard to faith, gender, race or sexual preference.
- All volunteers will be trained, oriented, and supervised.
- Community-based services will target locations where the largest concentrations of ex-offenders live.

Appendix 1: Details of each strategy

1. Discharge Center with Known Release [Year 1]

Target Group: All inmates

Year 1 Objectives: By June 2011

- Establish Discharge Office
- Implement Known Release Protocol
- 50 percent of all people released from the Jail are able to call from their housing unit and the Discharge Office prior to release.
- 90 percent of people discharged from jail leave Jail between 9 a.m.- 9 p.m.
- 50 percent of people are released to someone for ride home; or receive bus ticket.

Resources Required:

- Two staff
- Clothing donations and coordination
- Discounted bus cards

Description: As part of a coordinated discharge process, the Courts will provide 48 hours notice of pending releases to the Jail, which will notify correctional officers on the housing units as well as the inmate being released, Probation, ACHS, Alternative Housing, and service coordinators. This will allow Jail and other staff to provide information and referral, to assist in coordinating transportation, housing, and other arrangements for the day of release, if necessary.

The Collaborative also will assist the Jail in establishing a Discharge Center that is staffed and coordinates release for anyone leaving the Jail; and where men and women being released can receive free telephone calls, information and referrals that by geographic area, seasonal clothing if required, and free bus tickets if they do not have transportation.

Release from the Jail will take place at scheduled times within the time frame of 9 a.m. – 9 p.m.

When individuals are released, they will receive the remaining balance of funds in their accounts in the form of a debit card. They will be able to use the debit card in a machine in the lobby of the Jail to receive cash.

2. Reentry Program [Year 1-3]

Annual Target Group: 150 men in the sentenced population who are in the Jail; 50 women in the sentenced population who are in Alternative Housing

Year 1 Objectives: By June 2011:

- Complete the establishment of a Reentry Center in the Jail, which will include a reentry team, employment services, peer mentoring, family support, and a new D&A program
- 200 men and women are enrolled and participating in the program

Year 2 Objectives: By June 2012:

- Reduce recidivism by 10 percent over base year (2009)
- Meet goals set by Second Chance Act application:
  - Increased employment
  - Decreased substance use
  - Increased family support

Year 3 Objectives: By June 2013:

- Reduce recidivism by additional 10 percent over base year
- Meet goals set by Second Chance Act application

Resources Required:

- Staff
- Equipment, local travel
- Rental assistance
- Peer mentors
- Drug and alcohol program
- Additional in-jail programs
- Construction
- Faith-based/spiritual supports
- Volunteer time of family/other sponsors

Description: The Jail Collaborative will build a Reentry Program that increases the level of services in the Jail and in the community, improves coordination of services for inmates/residents of alternative housing and their families, and supports ex-offenders and their family members for 12 months after release--the period of time during which reentry most often fails. The target population for this Reentry Program during its first three years is 600 women and men in the sentenced population.

The Reentry Team is composed of the inmate, staff, and sponsor, who may be a family member, mentor, or other natural support. The staff, many of whom will be co-located in a Reentry Center on Level 1 of the Jail, may include:

- Service coordinators
  - 3 Reentry Specialists and 1 Family Support Specialist
  - Social workers/treatment staff (ACHS)
  - CYF caseworkers
  - Jail caseworkers
- Probation:
  - 1 Reentry Probation Officer
- Mentors:
  - Peer mentors and spiritual supports
- Employment:
  - Employment/job readiness specialists

As part of this project, the Jail Collaborative will:

- Design and build a new Reentry Center on Level 1 of the Jail
- Design and implement at least one new Reentry Pod to be the housing unit for many of the men in the program; and Coordinate the program with this and other housing units in the Jail
- Develop a new D&A program to be located within the Reentry Center
- Integrate mentoring within the Reentry Center
- Coordinate educational, cognitive-behavioral therapy, family support, and family visits with other services provided on Level 1
- Coordinate the program with Alternative Housing, particularly those programs that serve women

3. Family support [Years 1-3]

Work Group Chair: Warden

Target Group: Reentry program participants (for intensive services);
All inmates (for visits)

Year 1 Objectives: By June 2011:

- Hire, train and integrate family support specialists, family therapist with Reentry Program; and with Jail operations
- Implement family support in Jail and in community
- Develop protocols for recruiting, engaging, and training sponsors
- Design revised contact visit room: physical structure and rules
- Measure and report on results to Program Committee

Year 2 Objectives: by June 2012

- Implement family support in Jail and in community
- Measure and report on results to Program Committee

Year 3 Objectives: by June 2013

- Implement family support in Jail and in community
- Measure and report on results to Program Committee

Resources Required:

- Staff: 2 additional family specialists, a program coordinator, part-time family therapist, peer support specialist
- Family-building activities

Description: This strategy has two parts:
A) Integrate family support within the Jail and community
B) Improve the conditions of visits to the Jail

A) Family support: For the subset of residents and inmates who are parents, the Reentry staff will meet with them in the Jail and alternative housing to ask if they wish to have the assistance of one of the three Family Support Specialists in supporting their children and family during this time and in helping prepare for transition. Of those who choose to participate (approximately 100 inmates per year/200 children), the Family Support Specialists will meet with the resident or inmate, the custodial parent, and with each child to determine the child's needs and desire for involvement with his or her incarcerated parent. The Family Support Specialists will then provide the following, depending upon the child's wishes and the approval of the custodial parent:

- Help for children in learning about and preparing for visits at the Jail and alternative housing (prepare child, inmate, and other adults who will visit)
- Transportation for the children and family members to the visits, if needed
- Support for the children and family on visits--helping to guide and orient them, to answer questions, and talk with them after the visits about their reactions
- Connection to community-based family services, to the degree of intensity necessary/determined by the parents. (Parents may choose in-home services, family group decision-making, or less intensive services.)
- Coordination of services for each child
- For children in foster care and kinship care, the Family Specialists will contact CYF and use a new protocol for family contact

In addition, the Family Support Specialists will use an experiential curriculum in healthy relationships and parenting to teach classes and lead psychoeducation groups in the Reentry Center. This will include components on how to have a good visit, and what to say to a child that is positive and in his/her best interests. A part-time Family Therapist based in the Jail will identify an evidence-based curriculum and train the Family Specialists in this curriculum. (The new Family Support Specialists will coordinate with and not duplicate the work of those service coordinators in alternative housing, nor the family therapists on staff.)

Because parents' relationships with their children may not have been optimal before their arrests and often deteriorate further during the months of their sentences, the Family Support Specialists and other service coordinators on the Reentry Team will help families strengthen the bonds with their children during incarceration (when this is healthy for the children); and will link parents, caregivers, and children with a rich network of family support and community services where they can continue to develop positive parent-child relationships.

While parents are incarcerated, the Reentry Team will promote parent-child interaction by:

- Transporting families who have difficulty getting to the Jail;
- Preparing caregivers before visits to understand security arrangements, the amount of time involved, and the Jail's requirements;
- Preparing inmates, children, and family members for visits, including what to expect and how to speak about the incarceration; and
- Coordinating family visits with the Jail, including time, location, and services that will take place during the visit.

The Family Support Specialists also will provide parent coaching to inmates on the impact of visits on children (before, during, and after visits to the Reentry/Family Center, window visits, and contact visits) and, with the guidance of a child and family therapist, will help the families identify and reconcile different expectations

of what will happen when mom or dad returns home, how the family will be reconstituted, and the adjustment challenges each family member may experience.

In the community, the Reentry Team staff will promote parent-child relationships by linking formerly incarcerated parents, their children, and families with: service providers in their communities including behavioral health, early intervention and other health services. They also will link families with the low-stress environments of one of the 32 neighborhood family support centers that provide a wide range of services such as meals, parent coaching, parent-child activities, transportation to health appointments, tracking of key child health indicators, and screening of and referrals to early intervention services. And they will help families access community activities that build relationships, such as parent-child karate and exercise classes, YW/MCA family programs, and family activities through churches and other faith-based organizations; food banks and other safety-nets.

To ensure that children and families are accessing and benefiting from community-based services, the service coordinators and Family Support Specialists will be available to continue to serve families through the 12 months after a parent's release from jail.

B) Improve visit rooms and rules. The Jail Collaborative will inaugurate a system of regular visits for the participants in its programs and these will take place in the new Reentry/Family Center as well as a redesigned Contact Visit Room. The Collaborative will use the volunteer services of a principal architect with the firm Perkins-Eastman to redesign these spaces, engaging families in the redesign process, so that the space has play areas for families, is arranged to provide room for parent-child interaction, and has sound dampening.

More important than changing physical space is changing the rules that govern visits. Currently, only a subset of inmates is allowed to have contact visits (e.g. those individuals who have been approved for work in the Jail), there are no structured activities, and parent-child play is not permitted. The Jail Collaborative will expand the number of inmates who have these visits by making them available to all inmates who participate in reentry, including those who participate in this program. The program also will develop and provide training for Jail staff who supervise visits so that they can understand the value of the visits and encourage cooperative and respectful interactions between all adults and children.

4. Expand employment and education in the Jail [years 1-2]

Target Group: All inmates

Year 1 Objectives: By June 2011:

- Expand number of participants in Jail rehabilitation programs (education and employment) by 20 percent over 2009
- Identify existing county and other resources that will support improved employment for ex-offenders and establish partnerships that will increase the number of employers/training sites that will hire and train ex-offenders
- Tap existing employer networks and, if not sufficient, develop network of employers that supports employment of ex-offenders, without detracting from existing efforts
- Set standards for educational and employment services
- Leverage the resources of volunteers and other funding streams to build sustainable programs

Year 2 Objectives: By June 2012

- Expand number of participants in Jail rehabilitation programs by 40 percent over 2009
- Review performance of prior year's Employment and Education programs with Program Committee
- Continue to engage employers, training organizations, community-based organizations and volunteers in developing opportunities for learning and work both in the Jail and in the community.
- Leverage resources of volunteers and other funding streams to build sustainable program
- Identify a community-based organization to assume the functions of this Work Group.

By June 2013, these programs will be the function of community-based organizations and part of the ongoing operations of the County and overseen by the Program Committee.

Resources Required:

- Continue current investment in base services, less the funding
- Expanded services for sentenced population
- Expanded services for non-sentenced population

Description: The Jail Collaborative will expand the capacity of those in-Jail services that are linked most directly to reductions in recidivism: Adult Basic Education/GED, and employment skills development/job readiness. It will add new educational program to

widen the range: special education/basic literacy, and vocational education and it will expand opportunities for work in the Jail and tie the opportunity to work to an inmate's meeting a set of criteria (misconduct free, and consistent participation in treatment, reentry program, or an educational program). The Collaborative also will expand opportunities for inmates to volunteer in the Jail (e.g. tutoring other inmates).

The Services for which the Jail/Jail Collaborative will contract and/or open to trained volunteers are:

- Adult basic education and GED
- Literacy and special education
- Vocational education
- Employment and job readiness
- Cognitive behavioral/criminal thinking

5. Transition program [Year 1]

Target Group: All inmates

Year 1 Objectives: By December 2010:

- Meet with the Cabinet to outline the objectives of the leadership team
- Prepare a concept paper for the Cabinet that summarizes options/models for transition, including costs and evidence of effectiveness
- Prepare workplan for the implementation of transition program

Resources Required:

- Travel to examine and report to Cabinet of Jail Collaborative on effective models

Description: Design a transition program that acclimates inmates to life in the community. The design should be based upon best practices—programs studied elsewhere and shown to have reduced recidivism.

The program will prepare individuals for release by providing clear structure of graduated rewards/incentives, paid work in the community, opportunity to attend faith services and recovery meetings in the community, and visits with family in the home. People in the program will transition from their Jail-based provider to a community-based provider for behavioral health services and other services.
The design submitted for review by the Cabinet of the Jail Collaborative will include: measurable objectives, evidence base, numbers to be served in each of next two years, expenses and revenue sources, timeline, and plan for integrating program with existing programs.

6. Reentry and other Treatment Pods [Year 2 and Year 3]

Target Group: All inmates

Year 2 Objective: By June 2012:

- Implement at least one treatment pod with no more than 60 individuals in this housing unit

Year 3 Objective: By June 2013

- Implement at least one additional treatment pod with no more than 60 individuals in this housing unit

Resources required:

- none

Description: With the assistance of the Jail Collaborative, the Jail will design housing units that support successful reentry, and then convert at least one of its current housing units per year to this new design. The housing units will be sized to national standards (population limited), have rules for conduct that support reentry, have specially-trained correctional officers staffing the pod, and provide additional services on the housing unit. People who choose to live on the pod will agree to the rules of conduct and participation in the Reentry Program or other rehabilitation activities in the Jail or be transferred to another housing unit.

7. Assessments [Year 2]

Target Group: All inmates

Year 2 Objective: By June 2012:

- All inmates in the Jail beyond 30 days will receive an assessment of risk of recidivism, counseling about options for treatment and rehabilitation services, and referral to appropriate programs in the Jail
- With inmates' approval, these assessments will be automated and shared by Jail Collaborative staff so that they coordinate services, measure results, and plan for reentry

Resources Required:

- Staff to conduct assessment
- Automation of assessments

Description: The Jail Collaborative will expand the use of needs/strengths/risk assessments to all inmates, use thee assessments to plan inmates' access to programs; and automate these records.

Planning for discharge will begin intake by identifying individuals at the highest risk of recidivism during their intake screening. As those inmates are identified, they will be flagged for assessment following their period of classification and orientation to the Jail, including their detoxification or medical/mental health stabilization if necessary.

The initial assessment will be done by specially trained ACHS staff who can counsel inmates about the options available to them while they are in the Jail and who can direct and encourage them to enroll in voluntary programs being offered through the collaborative that meet their specific set of needs. Information from intake and from this initial assessment will be shared throughout the re-entry process with other re-entry team members who will be following the inmates as they move closer to their release date.

8. Housing [Years 2—3; with Year 1 work begun by Reentry Work Group]

Target Group: Sentenced and unsentenced inmates

Year 1 Objectives: By June 2011:

- Provide rental assistance to secure and stabilize housing for100 sentenced individuals in the Reentry Program
- Develop and pilot transitional housing program

Year 2 Objectives: By June 2012:

- Expand transitional housing program to serve 50 individuals at any point in time

Year 3 Objectives: By June 2013:

- Expand transitional housing program to serve 50 individuals at any point in time

Resources Required:

- Flex funds in years 1-3
- Funds for pilot program in year 1
- Funds to expand pilot in years 2, 3

Description: The Jail Collaborative will expand housing options to include more transitional housing for ex-offenders so that they are able to stabilize their living situations and find and retain jobs that allow them to obtain and remain in safe, affordable housing.

- For ex-offenders in the Reentry Program: In the first year, the Reentry Team staff will have a pool of funding provided through the federal Second Chance Act grant that allows them to provide limited rental assistance (first and last months' rent) for the eligible participants in that program. The Reentry Team will develop and maintain a list of landlords in scattered sites who are willing to rent to program participants and who understand the high degree of case management and support that are part of the Reentry Program. The landlords will know that they can call the staff if there is ever an incident or question.
- Housing for other ex-offenders: As the Reentry Program is serving individuals in the sentenced population, DHS will develop a transitional housing program for ex-offenders who meet the definition of homelessness (from one day out of the Jail up to six months). This program, which will be designed with an eligible provider organization that provides employment assistance, support and housing to these ex-offenders, will be piloted in year 1 and made part of the County's Continuum of Care application in years 2 and 3. This program will serve 50 individuals at any point in time, for an average of 100 Individuals served per year.
- Participation in the "Prepared Renter" program: Individuals in the Jail and alternative housing will have the opportunity to participate in a class to learn skills that help them learn to understand a lease, communicate with landlords, budget, and choose affordable housing. Upon completion of the program, they will receive a certificate that shows they are likely to be good tenants. (This certificate has value with landlords and housing authorities, through the quality program already underway.)
- Modification of leases: The Housing Authority of the City of Pittsburgh (HACP) has agreed to work with this target population by allowing them to re-unite with their family members living in public housing and section 8 apartments (provided they do not have offenses that would qualify as lifetime bans for assistance such as manufacture of methamphetamine or sex offenses against children). HACP would permit these individuals to be placed on their family member's lease as long as the ex-offenders are receiving supportive services. HACP and DHS may also work together to help the offenders who do not have family members in public housing to apply for HACP-provided housing, again provided that they do not have crimes that result in lifetime bans and that they have supportive services in place when they move in.

Appendix 2: Issues identified by community

Jail-Courts
Discharge from Jail • No standard discharge process or home plan for many inmates • Time of release is not always known, so ex-offenders leaving the Jail at unpredictable hours of the day and night • People leave the Jail without proper clothing, medication, knowing who their probation officer is, and without transportation or bus fare
Jail
Booking: • People are cut off, cannot get in touch with loved ones. Cannot use a pay phone to call for bail Intake/classification: • People (innocent and guilty) can be there for days, areas are filthy Life in the Jail: • It is not "correctional"—most people don't participate in programs or treatment • People who aren't motivated to do anything are alongside those who are • No expectations for behavior, punishment is for the whole group, no rewards. People need incentives • Overcrowded and expensive (commissary, phones) • Facilities don't work (showers, phones) • Food portions are not standard, too little food, so have to buy at commissary • Too much time confined to cell • Phones are expensive, require collect calls so you lose contact with people Treatment and programs • Most people aren't using their time for rehabilitation; they need useful things to do • People in the Jail don't know about programs • Literacy levels are low • Not enough training and work preparation • D&A treatment should be mandatory • Women with abuse issues don't have access to trauma-informed care • No library anymore • Providers want to have more opportunity to see their clients in the Jail; and

notification when a client is in Jail. It is their responsibility
- Providers want policies in writing
- Need to connect treatment and medications given in the Jail with treatment in the community

Visits and communications
- Conditions of visit areas are awful for children, dirty, nowhere to go to bathroom without terminating the visit
- Some staff treat family members as if they are criminals. Not everyone knows the rules but staff assume they do
- Some window visit areas situate visitors many feet apart, with layers of windows in between, with broken phones
- Families and providers don't know who to call to find out if someone is in the Jail or the status of their processing

Overall
- Staff need to be held accountable for their actions, how they treat visitors, inmates, and the agency staff who come into the Jail
- Too few correctional officers on some pods (some are 100 inmates:1 officer)
- Too many double-shifts, so correctional officers are worn out
- Staff need to be trained in confidentiality, programs that are available in the Jail, the corrections part of the mission

Jail

Alternative Housing
- Alternative housing is becoming just another set of jails because they no longer have opportunity to follow a system of rewards/sanctions. Because of a change in rules by Jail and courts, no longer able to organize home visits, N.A. meetings off site, faith activities.
- Information doesn't flow from Jail to alternative housing on release date, risk assessment information, service planning
- No/limited family visits at one of the sites
- Employers cannot reach staff, putting employment at risk

Courts
• Need to clarify sentencing orders for the Jail • Need alternatives to Jail for people who are not paying child support • People who complete their sentence are still held in Jail because of child support. • Whether you get into Drug Court depends on the Judge • Public defenders are too busy. If you don't have a private attorney, you will be in Jail a while and likely will go to state prison, eventually • Time on probation and parole is long, it can be 10 years
Pre-trial services
• Cases that come to Jail from Magisterial District Justices may not follow guidelines: can have high bail and low risk
Probation
• People do not always get the information about probation appointments that was sent to them in the mail because of old addresses • People can wait weeks before getting the name of their probation officer • Probation does not routinely visit alternative housing • Probation officers do not seem to have skills in how to involve the family
Human Services and community, including faith-based organizations
<u>Housing:</u> • Need Transitional housing throughout the City and County • Need more Shelters that are sanitary and free of drugs • Need a "Reentry House" • Public housing should have "clean and sober" sections <u>Families</u> • Families are going without the basics when someone goes to jail, they need direct aid • Children/others in family need to be reconciled/reunited with ex-offenders, when they return home • Families need to know how to prepare their children for visits to Jail, to understand what their children may be going through, and how to support them <u>Drug and Alcohol/Recovery</u> • People may leave the Jail clean and sober, but they need to go directly to a

program or recovery group and/or have a mentor/support if they are to stay clean

- There needs to be more supported housing: living arrangements that support recovery

Support

- Ex-offenders need support from their faith communities: days and after hours
- Need more programs to stay clean, in recovery
- Peer mentors are needed—people who have been through the experience of Jail. There needs to be a recovery community of ex-offenders
- Youth, especially, need mentors

Appendix 3: About the Allegheny County Jail

Jail Structure

The main Jail on Second Avenue has 8 Levels that contain the housing units, programming, reception area and offices:

Level 8M	Inmate Visiting
Level 8	Max Security and Disciplinary Male Housing Units 8D and 8E
Level 7M	Inmate Visiting
Level 7	Max Security Housing Units 7D and 7E
Level 6M	Inmate Visiting, Staff and Caseworkers Offices
Level 6	Max Security Male Housing Units 6D, 6E and 6F Protective Custody
Level 5M	Medical Office and Records, Inmate Visiting, Pod 5MD Female Mental Health and Pod 5MC Male Drug Program Unit
Level 5	Medical Department, Pod 5B Infirmary Pod, 5C and Pod 5D Male Mental Health, Pod 5E Drug Program, Pod 5F Male Step down Mental Health
Level 4M	Inmate Visiting, Staff and Caseworks Offices
Level 4	Male Classification Housing Units 4A, 4B, 4C Female Housing Units 4D, 4E Female HOPE Pod, 4F Female Max Security Unit
Level 3M	Staff and Caseworkers Offices, Inmate Visiting
Level 3	Medium and Max Security Male Inmate Housing Units 3A,3B,3C, 3D, 3E, 3F
Level 2M	Hope Offices, Staff Offices,
Level 2	General Housing Units 2A, 2B, 2C Male HOPE Pod, 2D, 2E, 2F Male
Level 1M	Administration, Main lobby, Shift Commanders Offices, Internal Affairs, training Employees lounge, Locker rooms, Central Control.
Level 1	Sentence and minimum security male inmates 1A, 1B, 1C, Video arraignment, inmate education, Chaplin services, contact visiting, reintegration office
Ground	Intake Department: Receiving and booking of all inmates. Food Service, Supply, Laundry, Maintenance

Profile of Jail Population

Characteristic	Total	
Number in Alternative housing	652	
Total number admitted to ACJ	18,141	
Men	14,616	
Women	3,525	
Share of total in Jail on Misdemeanors (Daily Report)	914	
Men	88%	
Women	12%	
Race	Jail	Allegheny County
White	8,379 (46%)	83%
African American	9,204 (51%)	13%
Other Race	558 (3%)	4%
Number sentenced	2,009	
Number not sentenced	16,132	
Average length of sentence served	8 months	
Median age (Average age range)	20-29	
Share who did not finish high school	42 %	
Share of adults with a special education diagnosis	82 % of the students currently being educated in the Allegheny County Jail have had a special education diagnoses.	
Share unemployed prior to Jail/arrest	53%	
Share homeless or staying with friends prior to arrest	57%	
Percentage who have children		
Men	52%	
Women	58%	
Percentage of individuals in the Jail who lived with their children prior to arrest		
Men	17%	
Women	32%	

Department of Emergency Services

Department of Emergency Services

Problem Statement:

Allegheny County Public Safety is faced with challenges in meeting the public safety requirements for more than 1.3 million residents. Whether emergency planning, training, call processing, response or management the current model has multiple agencies duplicating effort without the amount of coordination that would drive efficiencies and interoperability.

In many regards county agencies are funding and supporting duplicate efforts without coordination. In many cases it is evident that entities are competing with, rather than complementing, one another. The agencies involved in elements of public safety include: CCAC, Emergency Services, Port Authority, Airport Authority and Housing Authority.

Problem Cause:

The various public safety services offered by multiple agencies have expanded duplication without redundancy in capabilities. Much of this is driven by individual agency requirements and/or funding sources. For example the Port Authority, Emergency Services, and Airport Authority all have various facilities, technology and operations dedicated to aspects of dispatch, Emergency Operations and response.

Solution:

1. Assess the public safety responsibilities carried out by each agency related to County government.
2. Determine where effort is duplicated
3. Determine assets that can be shared across agencies
    a. Facility
    b. Radio
    c. Telephony
    d. Operations
4. Determine where funding sources can be leveraged to complement other funding sources and public safety service requirements and opportunities relative to:
    a. Define efficiencies
    b. Cost savings
    c. Cost avoidance
5. Recommend path forward

Transportation

VISION TEAMS

Imagining Allegheny County's Tomorrow

Clifford B. Levine, Chair

County of Allegheny

A Dedication

DEDICATED TO MARK SCHNEIDER

(December 22, 1956 – July 29, 2012)

As the Transportation Vision Team was finalizing this report, one of our members, Mark Schneider, died in a tragic bicycle accident. Mark was a true visionary, who earned a national reputation as a developer of sustainable communities, such as Summerset at Frick Park and Washington's Landing. Mark was instrumental in the construction of PNC Park, Heinz Field and the Convention Center, all built during his tenure as Chair of the Stadium & Exposition Authority. Mark led our regional transit and land use discussions in the spirit in which he always approached challenging projects. He believed that significant positive change was possible, that the struggle was noble and even fun, and that creative and dynamic plans that placed a premium on community would make our region exceptional. Mark was a close friend to many of us and an inspiration to our entire committee. He will be sorely missed. This report is dedicated to Mark.

Clifford B. Levine

Executive Summary

The Transportation Vision Team formulated the following set of recommendations to address the broad scope and breadth of transportation within the context of Regional Issues, Land Use Planning, Transit, and Airport. The Transit and Airport Committees were further divided into recommendations for their respective subcommittees to address (1) Fiscal Status; (2) Systems Improvement; and (3) Marketing and Outreach:

- **Encourage Transit Planning and Regional Coordination**
  - Create a position to be a strong transportation advocate who can push policy objectives and advocate for smart growth enhancing both land use development and transit usage.
  - Pursue Bus Rapid Transit (BRT) that connects existing economic hubs. The stations for BRT should be tied to current and market-based future development and employment opportunities in places where economic activity is already strong.
  - Conduct a comprehensive and strategic evaluation of the current regional transit situation.
  - Work with the Port Authority to improve the transit options to and from the airport and the downtown Pittsburgh and Oakland corridor.
  - Pursue smart transportation initiatives and the funding that is available to support them. Priority should be given to projects that encourage development and multi-model transit opportunities.
  - Establish a local investment fund to undertake mixed-use, smaller scale projects along transit lines and bus corridors within one-half of a mile or so of transit stops, in order to encourage further economic activity around pre-existing hubs.
  - Create a new, county-level program, called the "Allegheny County Community Transportation Program," from existing resources to leverage planning and construction opportunities, development oriented towards transit, bike and pedestrian improvements and commercial corridor reinvestment.
  - Explore the creation of an infrastructure bank or trust fund with financial support from local governments, corporations, and foundations in southwestern Pennsylvania.
  - Work with its surrounding counties to create a regional transit authority.
- **Implement Land Development Protocols Associated with the Airport**
  - Together with the Airport Authority, adopt development principles for the airport area that emphasize aviation-related and aviation-dependent uses, develop according to a master plan, not ad hoc, develop a multi-jurisdictional strategy, concentrate development, encourage mixed-use development, encourage infill development, preserve natural areas, develop sustainably, provide connectivity within the airport environs, and improve connectivity to downtown Pittsburgh and Oakland.
  - Determine whether a Phase II Aerotropolis Plan should be pursued which would include a detailed market study, an urban design master plan, and a governance plan.
  - Energize Tri-County Airport Partnership (TCAP) by signing a Memorandum of Understanding (MOU). Encourage local municipalities to get involved in, support, and benefit from aviation-related and aviation-dependent development by signing the MOU.

- Consider establishing tri-state development collaboration between Pennsylvania, Ohio and West Virginia.
- Address and improve transportation with roads, public transportation and trails to and from the airport.
- Focus Allegheny County TIF requests to link transportation investment with aviation-related and aviation-dependent land use.

- **Strategically Use Ports and Passenger Rail**
  - Remain strong advocates for continued and increased Federal funding for our region's lock and dams.
  - Strategically plan for using our navigable waterways to take full advantage of the economic opportunities provided by the Liquid Natural Gas (LNG) Industry and should serve as an advocate for companies wishing to create new LNG facilities along our rivers.
  - Be a leader in pairing our region's leadership in river transportation with our region's leadership in technology.
  - Explore smart growth and Transit Oriented Development (TOD) funding options that could be used to restore a passenger rail line to the Allegheny River Valley.
  - Plan on the integration of BRT routes with commuter rail options.

- **Address Transit Fiscal Status**
  - Focus on developing a dedicated source of transit funding that reduces Port Authority's reliance on the State.
  - Advocate for state sources to provide a portion of the dedicated funding required for transit needs.
  - Address Labor contract issues and legacy costs.
  - Reassess the infrastructure associated with the Port Authority, and remove such facilities (primarily bridges) from the Port Authority's responsibility if such facilities are no longer associated with Port Authority use.

- **Implement Transit System Improvements**
  - Take full advantage of smart card technology.
  - Develop new fare structures that can increase the convenience of public transit and overcome existing barriers that deter potential riders.
  - Make County transit more bike-friendly.
  - Incorporate available technology to allow riders to better access information quickly.
  - Improve system integration by focusing on connections at transit stops and nodes.
  - Initiate more special events planning and implementation services.
  - Support movement to an off-board fare collection system, which will speed the boarding process.
  - Further study the possibility of implementing signal prioritization in bus bottleneck areas to further increase speed of service.

- Integrate Alternate Transportation Systems into the public transit system to allow users to move seamlessly from one to the other, and support programs that attempt to fill gaps in the overall transit system.
- Explore sponsorships in remote or "extended" areas to encourage increased ridership.
- Explore the cost effectiveness and feasibility of converting buses and other Port Authority of Allegheny County (PAAC) vehicles converting to Natural Gas fuel.
- Consider contracting with inter-city carriers such as Mega Bus or Bolt to use bus ways to reduce travel time, particularly during rush hour.

- **Enhance Transit Marketing and Outreach**
  - Tackle both traditional marketing and operational marketing to increase effectiveness.
  - Undertake an aggressive advertising campaign based on the behavioral economics with outcomes of increasing use of public transit.
  - Increase the visibility of fixed guide ways (bus way and T) through signage and regional promotional and produce more user- and reader-friendly marketing materials.
  - Collaborate with local business communities to demonstrate the available amenities of stations.
  - Improve the overall image of transit by improving the cleanliness and comfort of transit vehicles and stops, cleaner and brighter BRT stops. Public art and murals can be encouraged.

- **Re-conceive Airport Business Strategies**
  - Work to capture air cargo opportunities through incentives for cargo forwarders, making available subordinated debt to build speculative buildings, marketing of the Foreign Trade Zone, and revisiting/considering implementation of the 2009 Webber Air Cargo Inc. cargo study recommendations.
  - Expand non-airline revenue; consider creating a position for the specific purpose of increasing flights, attracting more regional and international airlines, aggressively pursuing cargo operations, and working with the airport's CEO to establish key venture partnerships.
  - Create a Business Development Committee or Task Force reporting to the board and County Executive to assist in generating new ideas and solutions, as well as, executing a marketing and implementation strategy.
  - Develop a cargo city which is an area near a runway to cluster cargo buildings, logistics companies, free trade zone areas, and a host of other infrastructure to grow the industry.
  - Remain vigilant in preparing for opportunities to take advantage of airline industry growth.
  - When the airline industry restructures, use proceeds from Marcellus Shale development on County property to further reduce airport costs and prepare Pittsburgh International Airport (PIT) to compete regionally, nationally and internationally.
  - Continue to grow its regional passengers by promoting its relatively cheaper flights compared to Cleveland and other airports.
  - Increase flexibility with stopping at security areas and expanded use of second security zone.

- Advocate at the federal level for maintaining the local Air Force Reserve and Air National Guard military bases.
- Support passage of Senate Bill 1552, which would exempt fixed-wing aircraft and aircraft repair parts and installation from state sales tax.
- Aggressively pursue travelers within the region in a radius of 150 miles; promote the use of current airline services, such as direct flights and low-cost air carriers.
- Continue improving its signage program and its customer service program.
- Make public transit facilities, including the 28X stop, more visible.
- Expand efforts to showcase the region.

Vision Team Charge

The Transportation Vision Team is charged with reviewing, evaluating and making recommendations as to how transportation service delivery can be improved in Allegheny County and how best these efforts can be coordinated and improved county-wide.

Each vision team, within its charge and conversation, is expected to address sustainability, intergovernmental relations (recognizing existing relationships and identifying potential new ones) and diversity/inclusion. Each of these items should be folded into the recommendations and report made by the team. Additionally, for each recommendation that is made, the scope must be within one of three fields for which the county has a role: the county performs, or should perform, an administrative function related to the recommendation; the recommendation pertains to a financial interest or financial support of the county; and, the recommendation lends itself to advocacy by the county. Those recommendations that do not fit within one of those three fields should not be a focus of the vision team.

Summary of Methodology

The Transportation Vision Team first met on March 15, 2012 and continued meeting both as a whole team, as well as in appointed committees, through August 9, 2012. Following the first meeting, the Chairperson, Clifford Levine, with support from the members, divided the team into three committees: Regional Issues and Land Use Planning, Transit and Airport. The Transit and Airport Committees were further divided into subcommittees. Each committee had an appointed facilitator and research assistant.

The Transit subcommittees were: (1) Fiscal Status; (2) Systems Improvement; and (3) Marketing and Outreach. The Airport subcommittees were: (1) Land Development; (2) Operations; and (3) Marketing. Membership for each committee was determined by previous professional experience and personal interest, with each of the three committees having approximately ten members each and a selected facilitator. Mark Schneider served as the Facilitator of the Regional Issues and Land Use Planning Committee, Ellen Mazo served as the Facilitator of the Transit Committee and Mulugatta Birru served as Facilitator of the Airport Committee. To accomplish its objective, the Transportation Vision Team worked to identify and interview key officials of Allegheny County, the Port Authority and the Airport Authority, as well as important stakeholders in the region. The Team, either as a whole or by committee, met on a bi-monthly basis.

On July 13, 2012, the full Transportation Vision Team met and developed recommendations based on the various interviews and research undertaken by the committees. Each committee met and reported their findings and recommendations to the whole team. Each committee continued to refine and develop recommendations. The entire Transportation Vision Team adopted finalized recommendations on August 9, 2012, and submitted the report to the office of County Executive Richard Fitzgerald on the same date.

The Transportation Vision Team received research assistance from three Carnegie Mellon University Heinz College graduate students, Whitney Hinds Coble, Anna Carbino, and Emily Blakemore. These students served as research assistants to each committee. Ms. Hinds-Coble served as a sponsored “Change Agent” through SponsorChange.org and worked with Chelle Buffone, Community Relations Director for SponsorChange, to coordinate the responsibilities among the graduate student assistants. Ken Zapinski, Senior Vice President (Energy and Infrastructure) for the Allegheny Conference on Community Development, served as a resource. Together, the research team worked with Mr. Levine to draft the final report, which the full Vision Team adopted on August 9, 2012.

External Resources

The Regional Issue and Land Use Planning Committee conducted a number of meetings, with Lynn Heckman, the assistant director of Transportation Initiatives for Allegheny County, Kay Pierce of Allegheny Places and Maurice Strul of the Allegheny Economic Development. Members of that committee met with Stave Bland, the Executive Director of the Port Authority.

Individual Transit Committee members had several conversations with Port Authority CEO Steve Bland, as well as with the Authority’s outside labor attorney, Mike Palombo. Individual Committee members also met with various stakeholders and system users for input.

The Airport Committee met with several airport officials who handle land development, operations, and marketing, including Brad Penrod, the Airport Authority's CEO, Randy Forister, the Airport Authority's Director of Development, and Jim Gill, the Airport Authority's COO.

The entire Vision Team met with Messrs. Bland, Penrod, Forister and Gill, as well as Ken Zapinski.

In addition to conducting meetings with relevant stakeholders the graduate research students conducted relevant research often looking at similar projects in comparable counties and cities. The various research reports along with the meetings formed the basis for each committee's recommendations.

Committee on Regional Issues and Land Use Planning

Findings Related to Transit Planning and Regional Coordination

1. Transit Oriented Development (TOD) involves the coordination of designated transit matters with future economic development plans. Coordination of these elements would expand transit use and accelerate development in areas suitable for growth. The county can enhance its transit operations and encourage economic development by focusing on TOD.

2. With the abolishment of the County Planning Department, issues related to transit, outside of the operational consideration of the Port Authority or Airport Authority, have often been ignored or addressed on an ad hoc basis.

3. There are many programs to help with transit and transportation funding, but Allegheny County has not fully pursued these opportunities, largely because there is not a county official dedicated to this task.

4. There are federal and statewide programs aimed specifically at funding TOD and "Smart Transportation". The Pennsylvania Community Transportation Initiative (PCTI) defines "Smart Transportation" as "partnering to build great communities for future generations of Pennsylvania by linking transportation investments and land use planning and decision making." Though currently underfunded, PCTI has recently awarded $24.7 million to fund 41 community-led planning and construction projects. Some examples of the projects funded thus far in Allegheny County include:

    - Oakland Transportation Management Association and Carnegie Mellon University received $150,000 to study methods for improving walkability, safety and multi-modal access along the Forbes Avenue and Fifth Avenue corridors.
    - Allegheny County Public Works Department received $500,000 to develop a safe network of trails for pedestrians and bicyclists in Allegheny County's North Park.
    - Point Park University received $3,950,000 to install corridor upgrades and enhancements to Wood Street corridor and the intersections of Boulevard of the Allies and Third Avenue.
    - All Allegheny County Economic Development received $300,000 to study ways to ensure that walking and biking can become an integral part of getting around Allegheny County.
    - Airport Corridor Transportation Association received $700,000 to reduce congestion and provide better transit, pedestrian, and bicycle access near the Robinson and North Fayette Township commercial area.
    - City of Pittsburgh received $280,000 to develop a multi-modal traffic simulation and land-use model for the city's Strip District.
    - Richland Township received $1,300,000 to improve pedestrian access and traffic flow by constructing sidewalks, a median, and creating left turn lanes near the intersection of Route 8 and Ewalt Road.

5. Bus Rapid Transit (BRT) is an affordable and flexible way to expand and enhance public transportation throughout Allegheny County. BRT provides fast, frequent transit service along major corridors using special buses to provide a smooth, comfortable travel experience.

6. Port Authority of Allegheny County is currently conducting a study for a proposed Bus Rapid Transit project between Downtown, Oakland, and the East End. CMU and Sustainable Pittsburgh's "Get There PGH" coalition have been advocates of BRT. BRT provides fast, reliable, understandable, frequent transit service along major corridors using special buses to provide a smooth, comfortable travel experience and could be an affordable and flexible way to expand and enhance public transportation throughout Allegheny County.

7. There is currently no direct, rapid transit option between the airport and downtown, or between the airport and Oakland. Port Authority's 28X travels between these points, but with stops in Robinson Town Center, which adds to the travel time. Additionally, it utilizes I-376 for much of its trip and is hence susceptible to traffic backups-particularly between Robinson Town Center and the West Busway ramps at Carnegie.

8. The Port Authority of Allegheny County is currently serving a large number of residents in surrounding counties who use their services provided by the Port Authority through the Park and Ride program. These outside residents comprise a significant number of Port Authority riders, making the Port Authority the largest carrier of non-Allegheny County transit riders in the six-county MSA.

9. Allegheny County has far more transit service and ridership than all the surrounding counties, comprising over 90 percent total regional transit ridership. Regional leadership in the outlying counties do not necessarily see the need to expand their transit service. Commuter service provided by outlying counties to and from Allegheny County were designed to complement and not compete with services provided by PAAC. There is a significant demand in Westmoreland County for expanded commuter service. The level of transit service in outlying counties is a function of both demand for service and available federal, state and local funding. Currently, funds are not available to significantly expand services within outlying counties and to and from Allegheny County.

10. Port Authority operates at a much higher cost per hour of transit service than any other regional carrier. This is due to higher union labor costs and its obligation to maintain capital intensive transit facilities, such as light rail and busways.

11. The existing legacy debt of the Port Authority and higher labor costs are an impediment to a regional transit system, because counties with smaller transit agencies are averse to linking their financial status with that of Port Authority.

12. Port Authority's reverse commute market is very small, largely focused on the city of Pittsburgh and very few other areas. The result is a large portion of the system with buses and trains full only half of the time

13. The park and ride model presents operational challenges due to empty buses in non-peak directions. If Park and Ride options are to expand or continue, there must be a consideration as to how empty buses after peak runs can be utilized or, otherwise, such costs will have to be considered as part of the pricing.

14. Regional transit between Allegheny, Beaver, Washington, and Westmoreland counties can be improved. Focusing on TOD in suburban counties offers long-term benefits to developing a viable regional transit system.

Recommendations for Transit Planning and Regional Coordination

1. The County should create a position for and appoint a strong transportation advocate who can push policy objectives and advocate for smart growth enhancing both land use development and transit usage. The individual should have regional planning background, and be able to serve as a liaison between the Airport Authority, Port Authority, the southwestern Pennsylvania counties, Southwestern Pennsylvania Commission (SPC), and others involved in regional development.

2. Pursue BRT that connects existing economic hubs. The stations for BRT should be tied to current and market-based future development and employment opportunities be in places where economic activity is already strong. **Additionally, any BRT undertaken must be of the highest quality possible, mimic rail transit as much as possible, and be integrated into the fabric of the existing communities it serves.**

    - Focus first on creating BRT between Downtown, Oakland and East Liberty.
    - Focus also on creating a north-south BRT axis, running from East Liberty to Squirrel Hill to Greenfield to Hazelwood to Southside Works.
    - Encourage a BRT line to the Airport.
    - Encourage a BRT line to the Mon Valley.
    - Integrate the BRT system with other modes of transportation to make the overall transportation system better and safer.
    - Improve transit connections at stops and nodes
    - Incorporate TOD in planning and development efforts
    - Consider exiting TOD studies from PCRG, Move PGH, and Connect 09

3. Conduct a comprehensive and strategic evaluation of the current regional transit situation. The evaluation should allow the county to measure and evaluate progress in each major area and assess necessary adjustments accordingly.

4. The County should work with the Port Authority to improve the transit options to and from the airport. Access to downtown Pittsburgh and Oakland are particularly critical, but circulation to existing and potential development in the airport area should also be included in transit considerations. There is a need for express service to the airport, using a BRT station. Access to development around the airport, such as Robinson Town Center, requires workforce transit service, which could be coordinated with the Airport BRT.

5. Allegheny County should actively pursue smart transportation initiatives and the funding that is available to support them. The County should give priority to projects that encourage development and multi-model transit opportunities. These resources have included the TIGER and sustainable Communities partnership grants at the Federal level, and the Pennsylvania Community Transportation Initiative (PCTI) at PennDOT at the State level. The County must engage regionally at the SPC to advocate for regional programs for worthy County projects to leverage in applying for state and federal grants. The County should give priority to projects that are in core, established communities, including existing population and job centers; re-use brownfield or abandoned sites; use existing infrastructure; encourage re-development and multi-use development around transit opportunities' maintain and repair existing infrastructure.

6. In addition to pursing funding already available, the region should establish a local investment fund to undertake mixed-use, smaller scale projects along transit lines and bus corridors within one-half of a mile or so of transit stops, in order to encourage further economic activity around pre-existing hubs. This investment fund would be used to provide local match money for state and federal smart growth projects.

7. Allegheny County should create a new, county-level program, called the "Allegheny County Community Transportation Program," from existing resources. In addition, it should actively pursue funding through the newly established SPC smart growth program. Projects would leverage planning and construction opportunities, development oriented towards transit, bike and pedestrian improvements and commercial corridor reinvestment. Establishing an Allegheny County Community Transportation program, using existing resources and PennDOT's PCTI model, and help serve as a catalyst for economic development, community reinvestment and attract regional, state and federal resources. This has already been done in other counties around Pennsylvania. Lancaster County, for example, has just released its first round of its smart community transportation funding to four communities, investing $1.7 million county-wide. The Delaware Valley Regional Planning Commission in Southeaster Pennsylvania invests nearly $5 million annually in Community Development Block Grant eligible communities.

8. The County should explore the creation of an infrastructure bank or trust fund with financial support from local governments, corporations, and foundations in southwestern Pennsylvania. One option would be for the existing Strategic Investment Fund, created for the purpose of providing short-term subordinated debt and controlled by the Allegheny Conference and the Development Fund of Allegheny County, to be supplemented with additional funds that would support transit and airport related development.

9. Allegheny County should work with its surrounding counties to create a regional transit authority. The disparity in operational and legacy costs has been an impediment to date. However, by focusing on areas of common interest, and allowing operation functions to remain at the county level, a regional authority would be a valuable resource in developing positive outcomes for many regional needs that have been under-served. The Regional Authority initially would assume a more limited role in planning, preparing grant applications and serving in a capital construction role until the Port Authority's legacy costs can be addressed. The County should consider an earlier study conducted by SPC and Port Authority, entitled the 2020 Regional Transit Vision in developing this idea.

    - A regional planning, finance and construction entity that works toward regional transit will allow the county to think regionally on how to finance and develop an operational plan for counties to work together and build and construct key components and necessary integrations to begin the process for a regional transit approach.

Findings Related to Regional Development Associated with the Airport

1. Allegheny County owns 8,800 acres of land in Moon and Findlay Townships, of which 2,000 acres are within the secure perimeter of the airport. Approximately 3,800 acres of vacant land are available for future aviation-related and aviation-dependent economic development. Additionally, thousands of acres of vacant land are adjacent to the County-owned land controlled by a handful of private owners, including sites in Beaver and Washington Counties as well as in Allegheny County.

2. The Airport Authority released The Pittsburgh International Airport Development Master Plan (PIA Development Master Plan) in July 2011. This plan focused on the 3,800 developable acres of County-owned land. Recommendations included a World Trade Center certification, a foreign-trade zone, and

new development west of the landside terminal that would allow companies to import goods from outside the U.S. for assembly and resale internationally. Concept plans were also developed for other sections of County-owned land.

3. In September 2011 the County published, but did not release, The Pittsburgh International Airport Development Vision Plan (Aerotropolis) that included an international benchmarking and conceptual development program in parallel with an urban design study of development principles and models for both County and privately owned vacant land in the three counties. The Plan stated that development in the airport region should be connected to the four major R's of transportation: runways, roads, rails and rivers. The three county environs of the Pittsburgh International Airport thus have potential to benefit in concentrated and planned airport area growth by establish plans to develop vacant land and access to the four modes of transportation.

4. The proposed cracker plant in Beaver County that will process Marcellus Shale gas, and other potential Marcellus shale related facilities, can lead to new manufacturing and research jobs in the airport environs, especially related to gas by-products such as lightweight plastic parts that will be air-cargo dependent.

5. The Tri-county Airport Partnership (TCAP) is a coalition of leaders from Allegheny, Beaver, and Washington counties, along with the airport authority, whose goal is to work collectively to advance transportation, industrial opportunities, and economic development around the airport. TCAP has provided a good start to regional cooperation on airport matters that affect the three participating counties—successes include getting an Interstate designation for what is now I-376 and significant development around the airport for business properties—but they are not actively meeting as of August 2012.

6. There is currently no airport regional collaboration that includes local townships within the three counties surrounding the airport. Their participation in land development is important due to the fact that local municipalities control land use permits, real estate taxes, and zoning. Approximately 85% of real estate taxes that can be diverted to Tax-Increment Financing (TIF) arrangements are controlled at the local level. This funding is critical in the development of infrastructure for real estate development.

7. Many of the areas attractive for aviation-related and aviation-dependent development are lacking sewer, water, and road infrastructure, and funding is difficult to attain.

8. There are connectivity problems associated with all modes of transportation from population and workforce centers to the airport.

Recommendations for Land Development Associated with the Airport

1. Allegheny County and the Airport Authority should adopt the following development principles for the airport area:

    - Emphasize aviation-related and aviation-dependent uses
    - Develop according to a master plan, not ad hoc
    - Develop a multi-jurisdictional strategy
    - Concentrate development
    - Encourage mixed-use development
    - Encourage infill development

- Preserve natural areas
- Develop sustainably
- Provide connectivity within the airport environs
- Improve connectivity to downtown Pittsburgh and Oakland

2. Allegheny County should be involved in determining whether a Phase II Aerotropolis Plan should be pursued. That study would include a detailed market study, an urban design master plan, and a governance plan.

   - Complete implementation may not be something the airport authority feels is within their scope, and thus the concepts should be considered in terms of economic development both at the county and regional level.
   - Development of the County-owned property at the Airport should be focused on expanding air traffic, and not simply a suburban office park. The County can support development of office park facilities outside the immediate airport property, but, in doing so, should seek businesses new to the region, and not encourage the relocation of businesses from other regional sites.
   - Use Airport/County development resources to support and capitalize on the emerging natural gas industry.

3. Energize TCAP by signing a Memorandum of Understanding (MOU). Encourage local municipalities to get involved in, support, and benefit from aviation-related and aviation-dependent development by signing the MOU.

4. Consider establishing a tri-state development collaboration between Pennsylvania, Ohio and West Virginia.

5. Transportation with roads, public transportation and trails to and from the airport should be addressed and improved. Access to downtown Pittsburgh and Oakland is critical. Also, access to nearby and potential development areas around the airport should be improved to facilitate industrial and manufacturing development.

6. Focus Allegheny County TIF requests to link transportation investment with aviation-related and aviation-dependent land use, and would further encourage the development of regional Smart Transportation investment funding, such as through the PCTI program.

Findings Relating to Ports and Passenger Rail

1. Allegheny County's navigable waterways provide a cost-efficient and dependable means of industrial transportation. The navigable waterways system in western Pennsylvania (the Port of Pittsburgh) supports 200,000 jobs and contributes to local economic activity.

2. In addition to the direct impact upon our regional transportation system and economy, our navigable waterways also affect our collective regional water supply, sewage treatment, recreational opportunities, and other matters affecting our region's sustainability.

3. Intergovernmental coordination is very important for ports and rails. Responsibility for maintaining stable pools of water for river transportation through a system of locks and dams is the responsibility of the federal government, specifically the Army Corps of Engineers. Consequently, the federal government’s actions have a large impact on the ports and transit of our region.

4. The commitment of the federal government to provide adequate funding for maintaining or replacing existing locks and dams has decreased. In addition, there is considerable regional competition for the limited funds available for lock and dams improvement. As a result, the condition of our region's locks and dams continue to deteriorate, as well documented in the media.

5. The mission of the Port of Pittsburgh Commission is to promote the commercial use and development of the inland water-intermodal transportation system. It is the center of regional efforts to enhance the economic benefits of our navigable waterways.

6. As our Liquid Natural Gas (LNG) industry expands, it can be expected that more of these businesses will want to take advantage of the economic opportunities presented by the industry. Allegheny County was a leader in securing the Shell cracker plant now being planned for Beaver County. Allegheny County can serve these potential businesses by serving as an advocate with respect to environmental permitting, identification of potential site locations, and promotion of existing facilities along our river banks.

7. It is critical that Allegheny County remain a strong advocate for continued and increased federal funding for our region's locks and dams.

8. Allegheny County and western Pennsylvania is rapidly becoming a Marcellus Shale and Liquefied Natural Gas center. There may be numerous opportunities to use river transportation for the shipment of liquefied natural gas, its derivatives, and the by-products of production. Allegheny County should serve as an advocate for expanded use of our rivers for transporting such items.

9. The Port of Pittsburgh and Carnegie-Mellon University have developed a Wireless Waterways program that brings state-of-the art Broadband Wireless Waterways Network Infrastructure to our region's three navigable waterways, which should be operational by the end of 2012. The Broadband Network has the potential to provide short-term and long-term benefits and efficiencies to local and regional governmental bodies with responsibilities for bridges, public safety, air quality, water quality, and sewage outflows.

10. The failure of any component of our navigable waterways infrastructure could have serious consequences on our region's water supply. More than 80% of Allegheny County's drinking water is taken from our navigable rivers. Though not a specific transportation issue, Allegheny County is uniquely positioned to ensure that governments that could be impacted by a lock and dam failure have coordinated contingency plans in place.

11. A public transportation option, such as rail, could help alleviate current congestion levels on highways in the Allegheny River Valley.

12. There has been considerable study of revitalizing a rail line from downtown Pittsburgh to Arnold through the Allegheny River Valley. With the increased development of the Strip District, Lawrenceville, and Oakmont, there could be opportunities for TOD through rail in these areas.

Recommendations Relating to Port and Passenger Rail

1. It is critical that Allegheny County and this region remain strong advocates for continued and increased Federal funding for our region’s lock and dams.

2. Allegheny County should strategically plan for using our navigable waterways to take full advantage of the economic opportunities provided by the Liquid Natural Gas (LNG) Industry and should serve as an advocate for companies wishing to create new LNG facilities along our rivers.

3. Allegheny County should be a leader in pairing our region's leadership in river transportation with our region's leadership in technology. Specifically, Allegheny County encourage governments in our region to plan for a more efficient operational system of our lock and dam infrastructure.

4. Explore smart growth and TOD funding options that could be used to restore a passenger rail line to the Allegheny River Valley.

5. Plan on the integration of BRT routes with commuter rail options.

Findings Related to Transit Fiscal Status

1. The Port Authority of Allegheny County relies on state funding to a greater degree than many comparable cities. This source of funding can be erratic and is out of the control of the local authorities making transit decisions. Recent declines in state funding amounts have contributed to the current funding crisis.

2. Cities comparable to Pittsburgh have used local options to support state funding for their transit systems. For example:

   - **Philadelphia:** The Southeastern Pennsylvania Transportation Authority (SEPTA) is a State Authority (like Port Authority) created to serve 5 counties in Southeastern Pennsylvania (Philadelphia, Bucks, Chester, Delaware, and Montgomery). State funding is the dominant source, but each county also contributes a local share.

   - **San Francisco**: The region has multiple transit operators with a variety of jurisdictional bases. San Francisco Muni is the urban transit operator for the City of San Francisco, and is a City Department (it operates buses, cable cars, etc.). However, it also is responsible for transportation planning, parking and overall streets management; allowing the City to better integrate transit into overall transportation policy

   - **Atlanta, Dallas, Denver, Salt Lake City**: These are cities/regions that have (by referendum) created regional transit systems covering multiple jurisdictions with multimodal service, and dedicated local funding sources (generally sales tax). In some cases (i.e.: Atlanta) the authority is formed based on county participation in the broader region (Fulton and DeKalb Counties); in some (like Dallas) participation is at the municipal level.

3. Legacy costs involving retiree medical insurance and pensions are at the root of the financial stress of Port Authority. In 2003 these expenses accounted for six percent of the Port Authority's budget, whereas they now account for 22% of the overall budget. Without local and state adjustments in funding, it could result in either the bankruptcy of the Port Authority, or service reduced to unsustainable levels.

4. The Port Authority continues to be responsible for maintaining 88 bridges in the region, of which only 11 continue to have exclusive Port Authority functions (e.g., trolley line may have been removed years ago). Maintenance responsibility places an undue and unfair stress on the Port Authority.

5. A demise in public transit would have very negative impacts on the region's businesses and lifestyles. Service cuts would be costly in terms of road congestion, higher parking costs, and additional travel time. A recent study by PCRG concluded that a 35 percent cut in transit would cost Allegheny County taxpayers, drivers and riders, combined, over $325 million

Recommendations for Transit Fiscal Status

1. Focus on developing a dedicated source of transit funding that reduces Port Authority's reliance on the state.

    - Port Authority could invite leaders from cities with successful local funding sources to Pittsburgh to discuss their success.

2. Advocate for state sources to provide a portion of the dedicated funding required for transit needs.

    - In 2010, the legislature adopted Act 44 which appropriately included revenue for mass transit needs. That funding scheme was impacted when the federal DOT rejected the application proposing the use of toll funds for various transportation projects across the state, including transit. Under federal law, toll funds collected on interstates can only be used for maintenance of the roadway being tolled.

    - The County should continue to work with the Legislature, Governor and Federal government to pursue creative funding options, recognizing the inter-connected relationship of highways and public transit.

3. Labor contract issues and legacy costs must be addressed.

    - Even with enactment of Governor Corbett's Transportation Funding Advisory Commission (TFAC) recommendations, the increase in funding allocated to Port Authority will not be enough to offset legacy costs. These costs must be contained. While progress has been made in previous labor negotiations regarding new employees, and those employees with up to 10 years of service in the area of retiree medical costs, much remains to be done, particularly with the largest group of employees, those with 10 to 25 years of service. Such discussions must be part of a comprehensive resolution involving the State, County and Port Authority and its union.

4. Reassess the infrastructure associated with the Port Authority, and remove such facilities (primarily bridges) from the Port Authority's responsibility if such facilities are no longer associated with Port Authority use.

Findings Related to Transit System Improvements

1. Smartcard technology has been shown to improve efficiency and the rider experience in other transit systems.

2. The Port Authority of Allegheny County is in the process of implementing its smart card technology called the ConnectCard. The ConnectCard will be implemented throughout 2012 with the idea of eventually eliminating both annual and monthly bus passes.

3. Currently there is no fare mechanism for short-term visitors to Pittsburgh. A short-term pass could encourage these visitors to use public transportation.

4. Many cities have successfully introduced creative fare structures, such as flat fares during peak hours and day or youth passes, which increase the convenience and simplicity of using transit.

    - In Portland the Tri-Met transit system created a new Day Pass with unlimited rides for bus and MAX (light rail), established a "Flat Fare" of $2.50 for one-way travel (Revenue gain: $6 million),

and modified their transfer policy to limit single fare tickets to one-way travel (Revenue gain from elimination of round-tripping $3 million)

5. Many transit stops lack full information on routes and stops necessary for riders to plan effectively. Such information currently available online is often difficult to find and view.

6. Efforts to integrate bikes into transit have been successful to date, but there are still areas where this can be improved.

7. As bicycle use has expanded, safety issues involving vehicular traffic have occurred. As use of trails has expanded, there is an increased need to ensure safety for pedestrian and users.

8. The idea of system integration supports the notion that functions of transit should work together in a way that is user friendly and encourages repeated use. Improving the current system integration would improve system usability and encourage extended use of transit.

9. On and off-boarding accounts for a large portion of the time to complete a transit route. Speeding these processes can increase overall speed of service.

10. There are a number of alternative transportation services that operate within the county— such as Heritage Health's WorkLink, RideACTA, ACCESS, and other client based transportation systems— that currently have little coordination with Port Authority transit, but are services that many of its customers rely upon.

11. During some special events, such as St Patrick's Day, buses are overcrowded and can result in delays. Additional service during such special events would alleviate this problem.

12. Charlotte, NC adopted a new hybrid bus fleet called the Sprinter Service, which uses hybrid buses and increased ridership on certain routes by 12%. The growing natural gas industry in the region could make using natural gas on transit more feasible in the future.

13. Inter-city bus transit is expanding with MegaBus and Bolt. Such bus service is delayed during rush hour traffic.

14. The North Shore Connector stops offer service free to the public, with the costs being subsidized by Alco Parking, the Stadium Authority, Rivers Casino and Pittsburgh Steelers. This creative way of financing encourages usage and benefits the sponsor.

Recommendations for Transit System Improvements

1. Take full advantage of smart card technology

   - This card should be a multi-transit system fare card, which can be used for as many modes of transportation as possible to improve integration of the entire transportation system. This includes coordinating with transit authorities other than Port Authority to make the card usable throughout the region.

   - When new transportation initiatives are introduced, such as the proposed bike-sharing program, integrate usability with ConnectCard.

2. Develop new fare structures that can increase the convenience of public transit and, thereby, ridership, such as:

   - Day or weekend passes for visitors to Pittsburgh
   - Flat fares
   - Changes to the transfer policy

3. Keep the new transit user in mind. Improvements to the transit system must address barriers to using the system that currently deter potential riders.

   - Such barriers include lack of signage and information along transit routes, difficult-to-find information online, speed of service, convenience of stops, and pleasantness of vehicles, stops, and operators.
   - Make ConnectCard kiosks available at all fixed guideway stations as well as major on-street transit stops, such as Negley and Centre Avenues in Shadyside and the airport
   - Improve transit's visibility at the airport
   - In an effort to maximize efficiency, improve the rider experience and save the end user time when utilizing transit, the current system must be modernized and simplified through real-time information, off-board fare collection on fixed guideways, and changing on-board fare collection to be the same procedure regardless of the direction of travel or the time of day.

4. Make Allegheny County transit more bike-friendly

   - Allocate and develop safe biking routes, which can be published on the County web site. The County should plan safe, connected routes for bicycle use.
   - Create secure, sheltered bike parking at major transit nodes
   - Consider future development of safe bikeways along BRT routes and the potential redesign of existing bus routes if safe barriers can be established or lanes expanded.

5. Incorporate available technology to allow riders to better access information quickly

   - Develop the ability to broadcast real-time arrival information
   - Integrate smart phone and social media

6. Improve system integration by focusing on connections at transit stops and nodes

   a. Make intermodal centers, such as the Wood Street T station and the downtown Greyhound bus terminal, more robust and user-friendly by encouraging the development of stores and restaurants in the centers, creating comfortable waiting areas, and allowing for easy transfer between the different modes of transportation.

   b. Improve signage and information both on transit and at stops, such as information on where express buses stop, wayfinding to major transit stops such as the busway, clear and easy-to-read maps, etc.

c. Improve connections to other transit services such as ACCESS, shuttles, and circulators, as well as to other modes of transportation like Zipcar and bike-sharing.

d. Consider adoption of the "Complete Streets" policy.

7. Initiate more special events services

- Proactively plan, schedule and advertise service for special events.
- Use social media or other technology to advertise real time availability of additional service to potential riders
- Provide additional Port Authority police for these events and potentially staff buses and rail cars with police in areas that generate public safety issues during events
- Pursue sponsorship ideas with event organizers

8. Support movement to an off-board fare collection system, which will speed the boarding process.

- This can be integrated with a proof of payment system which will allow users to enter and exit transit vehicles from all entrances and speed the process further

9. Further study the possibility of implementing signal prioritization in bus bottleneck areas to further increase speed of service.

10. Integrate Alternate Transportation Systems (Heritage WorkLink, RideACTA, ACCESS, and other client based transportation systems) into the public transit system to allow users to move seamlessly from one to the other, and support programs that attempt to fill gaps in the overall transit system

- Reference the SPC Human Service Coordinated Transportation Plan for information on gaps and existing projects in the region
- Consider the possibility of a centralized trip booking system for ACCESS that would give riders the opportunity to call one number. The booking system should also be available online.

11. Explore sponsorships in remote or "extended" areas (as was done in the North Shore) to encourage increased ridership.

12. Explore the cost effectiveness and feasibility of converting buses and other PAAC vehicles converting to Natural Gas fuel.

13. Consider contracting with inter-city carriers such as MegaBus or Bolt to use busways to reduce travel time, particularly during rush hour.

Findings Related to Transit Marketing and Outreach

1. There are two important elements of transit marketing:

- Traditional marketing, which includes increasing the visibility and public awareness of services through advertising campaigns

- Operational marketing, which includes driver interactions with passengers, speed of service, cleanliness, accessibility, ease of use through promoting new technologies, visible signage, and accessible maps.

2. The Port Authority of Allegheny County does not appear to have a visible marketing campaign that communicates a positive message about using public transportation.

3. Even using the fixed guideways, a casual or new user (or even a regular user who rarely leaves his/her end of the city) cannot figure out how to get, for example, from Negley Station to South Hills Village. No system-sized map of the busways and T exist, much like a DC Metro or New York subway map, to show this at stations or online

4. The alphanumeric labeling of buses on the East and West Busways is also confusing to the casual or new user. Treating these more like rail lines (Instead of P1, P2, and P3 for example we have Purple Line Downtown, Purple Line Oakland, and Purple Line Short) would improve understanding of the busways.

5. Many people have negative associations of using the bus and do not consider it a natural or default transportation option.

6. Behavioral economics has found a successful marketing effect in using peer pressure and appealing to people's desire for social approval. Marketing for the Port Authority can be enhanced with behavior approaches. One study found that the wording of placards asking hotel guests to reuse towels had a dramatic impact of reuse rates. The placard reading, "Join your fellow guests" and noted that 75% of guests reused towels resulted in 25% more towel reuse compared to a placard that says, "Help save the environment."

7. Some tactics that have proved helpful in other marketing campaigns include focusing on economics rather than environmentalism or sustainability, and integrating users' personal experiences.

8. Many residents choose not to take transit because they do not know how to navigate the system, and this information is not easily available at fixed guideway stations and on-street routes.

9. Several medium-sized cities, like Cleveland and Portland, have had significant campaigns that worked toward "improving the experience."

10. Drivers are the face of public transit to riders, and thus have the ability to shape the public's perception of the system.

11. Port Authority's system is largely hidden to the public – again particularly the busways and T. Unlike other cities, no highly visible signage exists to direct people to stations. For example, a Parkway West traveler has no idea that a major transit station exists in Carnegie and doesn't know how to get to it.

12. There is also little information in literature promoting the region about our transit system. Many visitors to the region do not have a car and this is an added travel expense. Facilitating non-car movement by visitors pays dividends on many levels

Recommendations for Transit Marketing and Outreach

1. Effective marketing needs to tackle both traditional marketing and operational marketing

2. Ann aggressive advertising campaign based on the behavioral economics should be undertaken.

3. Conduct an advertising campaign in which people see their neighbors, peers, co-workers taking public transit, in order to influence them to also ride/use public transit.

    - This idea was effective in St. Louis In the mid-2000s, the Metrobus and Metrolink transit system was in danger of being severely cut because of budget shortages and limited revenues. They made transit relevant to everyone of all demographics. The campaign slogan was: "Some of us ride it. All of us need it."

4. Find a way to increase the visibility of fixed guideway (busway and T) through signage and regional promotional. This will both serve as marketing for people who walk on the street – or driving from outer areas - but currently do not take transit, and improve the ease of use of the system.

5. Produce more user- and reader-friendly marketing materials— creation of a full fixed guideway system map, simplification of the East and West Busways to Purple and Blue Lines (leave suburban express nomenclature the same), and perhaps the 28X the Brown line -, easier ticket/ pass purchase methods and more locations.

6. Work with local business communities to demonstrate the available amenities at each station – shops, restaurants, hotels, etc.

7. Improve the cleanliness and comfort of transit vehicles and stops.

8. Clean and brighter BRT stops, including those along busways. Public art and murals can be encouraged.

9. Implement the recommendations of this report's Recommendations for Transit System Improvements section, as these also address the marketability of the system.

The Airport Committee

Findings Related to Airport Operations

1. Increased cargo imports and exports into Pittsburgh International Airport (PIT) are feasible:

    - Air cargo will likely triple globally in the next 20 years
    - Exports from Pennsylvania recently increased by 18%, despite the poor economy
    - The busiest 5 airports handle 40% of cargo, and have higher taxiing times. PIT taxiing time is on average 5 minutes lower
    - The Airport Authority has pursued a strategy to attract cargo transportation. An expansion of this effort would lead to more air cargo business being captured by PIT.

2. In 2009, Webber Air Cargo, Inc. prepared a comprehensive study of cargo operations and opportunities for the Airport Authority.

3. Other airports have been successful at increasing air cargo. St. Louis Airport, for example, attracted China Air to fly air cargo. For return flights, Missouri earmarked tax credits for exporting agricultural products and meat products to China. The development of expanded cargo volume in mid-sized communities would require some tax incentives at the outset, until there is sufficient return cargo to support two way operations.

4. Several major U.S. companies that rely on air cargo, such as FedEx Ground and UPS, are continuing to expand. These companies will seek new regional hubs to handle their growth.

5. PIT has several advantages it could leverage to attract cargo business:

   - Excess airport capacity reduces wait times and delays for landing aircraft. Combined with the fact that Pittsburgh is within easy driving distance of the New York City and Washington, DC markets, flying cargo into PIT can actually be faster than using backed-up northeast corridor airports.

   - There is no curfew for getting cargo in and out of PIT.

   - Cargo trials at PIT have already proved to be successful, such as American Eagle's trial of flying cargo into PIT then shipping to nearby markets by truck.

   - There are several other companies in the Pittsburgh area which import and export goods, which could use air cargo for higher end items, Westinghouse, pharmaceutical companies, medical equipment manufacturers, and high tech companies.

6. Several disadvantages would have to be addressed for using PIT for cargo:

   - There is less return cargo to fly out of PIT than there would be out of New York or Washington, D.C.

   - Fewer flights in and out of PIT mean that missing a cargo plane results in a longer waiting time until the next flight.

   - The cargo business operates based on tradition and long-standing relationships, making breaking into the industry or changing habits difficult.

7. Because of the significant reduction in flights from PIT, because it no longer serves as a hub airport, PIT is a relatively expensive airport to operate. Of the large airports, only three are more expensive than PIT. The landing and operating costs are at about $12.50, whereas Charlotte is $2.09, O'Hare $7.57 and Philly at $8.60. However, the Philly airport could have significantly higher landing fees if it pursues its proposed 8.4 billion capital program. When the debt for the new airport is fully paid off in 2018, the cost will come down to a $6.00 to $8.00 range, which is a significant reduction. Increasing flights is the major avenue to lower operating costs of airlines.

8. When the airport debt is fully retired, the landing cost will be reduced significantly, and the lower landing cost can be attractive for some low-cost airlines like Spirit to select PIT instead of a rural airport like Latrobe.

9. PIT is operating only at 15% capacity, and it has three parallel runways that are unique and efficient. Such capacity gives the airport a tremendous comparative operational advantage over congested airports in the East and at O'Hare, and in several regional airports.

10. The Airport Authority has undertaken basic studies of business that use cargo, but an expanded effort, with officials tasked, would be appropriate given the potential upside to the region.

11. The security areas are often congested, often at unpredictable times.

Recommendations for Airport Operations

1. The Airport and the County should work to capture air cargo opportunities:

   - Create incentives for cargo forwarders to use PIT, such as reduced rental for cargo space, incentives for job creation directly related to air cargo, and financial incentives if forwarders want to build space capacity.

   - Subordinated debt must be available to build speculative buildings. The region has proven that capacities that are created are effectively used. Funding through the County, the State, and the Allegheny Conference affiliate (SIF) should be used for such purposes.

   - Market the Foreign Trade Zone - this designation is available through RIDC, but not very well used. This designation can attract semi-finished products to be finished locally by avoiding the payment of certain import duties and local taxes.

   - The County should revisit the 2009 cargo study prepared by Webber Air Cargo, Inc., and examine how to implement or follow-up with the recommendations.

   These incentives could be from the State as well as from local governments and business groups. A state wide incentive can help all Pennsylvania airports, but PIT will be the major beneficiary as it has landing capacity as well as huge landmass for aviation-driven economic development

2. Although the Airport Authority has begun laudable efforts to expand non-airline_ revenue, the Airport Authority could expand this role. The Authority should consider creating a position for the specific purpose of increasing flights, attracting more regional and international airlines, aggressively pursuing cargo operations, and working with the airport's CEO to establish key venture partnerships. The individual assigned to this role should have a logistics or marketing background. This position should work closely with the Redevelopment Authority of Allegheny County.

3. Create a Business Development Committee or Task Force reporting to the board and County Executive to assist in generating new ideas and solutions, as well as executing a marketing and implementation strategy. Members should be identified from the business community, logistics sector, educational and medical centers that use airports both for passenger and cargo.

4. As part of a long-term strategy, the County should seek to develop a cargo city – an area near a runway to cluster cargo buildings, logistics companies, free trade zone areas, and a host of other infrastructure to grow the industry.

5. The airline industry is exhibiting growth, despite the industry's current unpredictable restructuring, and growing airlines will soon seek regional new hubs. PIT should be vigilant at all times in preparing itself for such opportunities.

6. When the airline industry restructures, the County/PIT can use proceeds from Marcellus Shale development on County property to further reduce airport costs and prepare PIT to compete regionally, nationally and internationally. In the short term, PIT should be vigilant in promoting the airport to all airlines, including little-known international airlines. PIT should grow efficient flights that connect regional passengers with hub airports for final destinations.

7. PIT must continue to grow its regional passengers by promoting its relatively cheaper flights compared to Cleveland and other airports.

8. Increase flexibility with stopping at security areas and expanded use of second security zone.

Findings Related to Aviation Advocacy

1. The Air Force Reserve and Air National Guard military bases provide a significant amount of economic activity for the airport region.

2. The current Pennsylvania tax on fixed-wing aircraft and aircraft repair parts and installation encourages the business or aircraft sales and repairs to move out of Pennsylvania to other states where these are exempt from tax. This also results in Pennsylvania losing many graduates of the state's aviation maintenance and operations training centers, including the Pittsburgh Institute of Aeronautics. Pennsylvania Senate bill 1552 would remove this tax, making the aircraft industry more competitive in the state.

Recommendations for Aviation Advocacy

1. Advocate for maintaining the local Air Force Reserve and Air National Guard military bases.

2. Support passage of Senate Bill 1552, which would exempt fixed-wing aircraft and aircraft repair parts and installation from state sales tax.

Findings Relating to Airport Marketing and Outreach

1. As it has transitioned from a hub to an airport offering primarily direct flights, the reduced costs of flights has attracted flyers from beyond Western Pennsylvania.

2. PIT has an established and successful marketing campaign to take advantage of it pricing advantage. One measure of the success and reach of the campaign is the fact that each year there are one million travelers from the Cleveland area who choose to fly out of PIT rather than the Cleveland airport.

3. The availability of direct flights out of PIT is vital to the attractiveness of Pittsburgh for national and international companies. Maintaining these flights is therefore tied to the economic development of the region.

4. Currently, only about 20% of travelers to Europe and the West Coast use the direct flights offered by PIT airlines. Airlines will reduce the number of direct flights available if enough people do not use them.

    - The main reasons travelers choose indirect flights is lower fares and the ability to accrue frequent flier miles on their preferred airline.

    - In the face of higher fares, people will not choose direct flights without some other benefit for doing so.

5. Road Signage and directions to the airport need to be more clear and readable. For example, there are no signs directing motorists to the airport at the I-376 entrance in Oakland, and at the airport the stop for the Port Authority bus to Pittsburgh is not obvious

6. With the new trail connection to the Airport, the Airport will serve as a starting and ending point for the Great Allegheny Passage Trail for riders coming from out of town.

7. Airport presents an opportunity to present to world travelers that Pittsburgh is not only a sports town but a cultural, arts and business hub. Currently the city's promotion in the airport is limited.

    - The airside core, with its figures of George Washington and Franco Harris, could be expanded to showcase the region. The current exhibit is funded by the Heinz History Center under an agreement with the Airport Authority.

Recommendations for Airport Marketing and Outreach

1. PIT should continue to aggressively pursue travelers within the region in a radius of 150 miles.
2. Marketing initiatives should be continued and expanded to focus on latent demand currently using other modes of transportation or alternatives to travel (MegaBus, driving, video-conferences, etc).
3. Marketing should go beyond advertising and public relations to consider the customer experience and how to improve the ease, efficiency and enjoyment of the experience of using PIT, not limited to but including systems design, customer interfacing and signage.
    - Included should be increasing the number and geographic radius of way finding signs directing potential travelers to PIT.
    - The Airport should continue improving its signage program and its customer service program.
4. The Airport should make public transit facilities, including the 28X stop, more visible.
5. Promote the use of current airline services, such as direct flights and low-cost air carriers
    - Increased use of direct flights will ensure that direct flights remain at PIT and are available for those who need them. Using low-cost carriers keeps cost per passenger low and ensures that these low-cost options remain at PIT.
    - The Airport Authority's Fly Pittsburgh Pledge aims to accomplish this, but it is the belief of the Vision Team that the Pledge will only slightly raise awareness, and will not overcome significant price disparity.
        i. There should be an increased effort to create tangible benefits to using direct flights and/or low-cost carriers, such as by instituting some kind of loyalty program that rewards travelers when they choose select flights.
        ii. Alternatively, the focus of the pledge should be on prominent businesses and/ or the Chamber of Commerce, who already have the strongest interest in keeping direct flights available.
6. The Airport Authority should expand its efforts to showcase the region. The number of historic figures in the airside core could be increased.
    - Potential figures could include:
        i. Andrew Carnegie
        ii. Rachel Carson
        iii. Roberto Clemente
        iv. Annie Dillard
        v. Howard Heinz
        vi. Gene Kelly
        vii. Mario Lemieux

viii. Andrew Mellon
ix. Judith Resnick
x. Arnold Palmer
xi. Fred Rogers
xii. Jonas Salk
xiii. Thomas Starzl
xiv. Andy Warhol
xv. August Wilson

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Workforce Development

VISION TEAMS

Imagining Allegheny County's Tomorrow

Victor Diaz & Bill Strickland, Co-Chairs

County of Allegheny

Executive Summary

Clearly, Allegheny County has distinguished itself in the national economy with an unemployment rate 1.8% below the national average which can be attributed to its robust and diverse finance, healthcare, advanced manufacturing, education and energy sectors. Augmenting this status is a much-heralded community college system and public and private universities that are nationally and internationally recognized for research and technological advances.

Despite this strong foundation, the Workforce Development Vision Team concluded that increasing coordination and collaboration especially with human services, expanding our diverse training programs, redesigning our methodologies to match supply and demands of our workforce, and increasing our focus on middle-skill workers would enhance our economic profile. In fact, the team concluded that an enthusiastic embrace of the following recommendations would allow the County to achieve the distinction of being a model for workforce development:

- **Align Quality Resources for Job Seekers Countywide**
  - Promote intergovernmental cooperation as a theme to facilitate this endeavor.
  - Define a long-term focus and strategies for job seekers to secure employment.
  - Assemble a quality network of community-based organizations that provide services.
  - Develop a mechanism to connect job seekers to available jobs.
- **Create Employer-Driven Partnerships that Meet Labor Market Needs to Create a Sustainable Employment Dynamic**
  - Engage employers in curriculum development and training.
  - Utilize federal funding received by The Three Rivers Workforce Investment Board to assist employers in new industries and unions to collaborate to train workers in high-tech manufacturing.
  - Replicate the Megatronics program developed by the Community College of Allegheny County (CCAC) in other industries which demonstrated that effective collaboration can lead to programs that meet employers' changing talent needs.
- **Promote education and training tailored to the range of high-priority occupations (HPO) that lead to family supporting jobs.**
  - Identify well-paid, middle skill high priority occupations (HPOs) that can be attained with an Associate's degree or less than four years of training.
  - Communicate that college is not a required path for every individual to secure competitive employment.
  - Develop strategies to educate residents that the local economy needs a diverse workforce requiring different kinds of credentials: two-year degrees, industry-recognized certificates, on-the-job training opportunities, and advanced degrees.
  - Promote training that will decrease the under-supply of middle level skilled jobs with the regional over-supply of workers with advanced degrees.

- **Develop and expand the pipeline through career pathways.**
    - Provide early exposure to career pathways and work experience to ensure higher employment rates in the future.
    - Systematically invest in high school internship programs that connect to community college and/or jobs.
    - Allocate resources to mid-career and aging workers to best utilize their skills in the workforce and advance in their chosen field.
    - Recognize that with employer-driven programming already in place, the Community College of Allegheny County is poised to become the hub of innovative training for the region.
    - Ensure that trainer provider models are employer-driven, evidence-based, defined by outcomes, and accountable to the needs of different constituents.
- **Maximize Career and Technical Center (CTC) programs**
    - Promote the Career and Technical Centers as an excellent place for young people to begin their professional journey.
    - Guarantee that the community understands that five CTCs in Allegheny County have articulation agreements with CCAC for students to acquire industry-recognized credentials and learn how the workplace functions, making them more likely to enter the workforce.
- **Coordinate workforce systems and human support services to serve job seekers and preserve diversity in our community**
    - Determine how to most efficiently use intersecting systems (counseling, public transit, training, etc) so that our residents achieve prosperity and independence.
    - Define the intersection between workforce development and human support services.
    - Develop criteria to stratify and serve job seekers throughout the entire community.

Vision Team Charge

The Workforce Development Vision Team is charged with looking at how training and workforce development is currently done in the county, what means are used to funnel information to those agencies and organizations about upcoming and existing needs that companies have, and opportunities that can be utilized to improve communication and coordination between the economic development and workforce development components of the county. (This Vision Team will meet with the Economic Development Vision Team at least twice and is directed to work cooperatively as appropriate.)

Each vision team, within its charge and conversation, is expected to address sustainability, intergovernmental relations (recognizing existing relationships and identifying potential new ones) and diversity/inclusion. Each of these items should be folded into the recommendations and report made by the team. Additionally, for each recommendation that is made, the scope must be within one of three fields for which the county has a role: the county performs, or should perform, an administrative function related to the recommendation; the recommendation pertains to a financial interest or financial support of the county; and, the recommendation lends itself to advocacy by the county. Those recommendations that do not fit within one of those three fields should not be a focus of the vision team.

Findings & Recommendations

The findings and recommendations below detail the issues that are most critical to achieving an innovative vision of Allegheny County's workforce.

Findings

- **The workforce development system is fragmented.**

  Over the years, multiple programs have been added to the County's workforce development system, often without regard for similar programs that were already in operation or an effort to connect them in some way. A fragmented system affects the delivery of services for job seekers and employers because it is in danger of duplicating similar efforts, not being able to share best practices, and not being able to track performance reliably. McKinsey and Company reports in *Western Pennsylvania's Workforce Development System: Challenges and Opportunities* that the $300 million total in workforce funding that flows into the region is divided among over 400 different service providers, with the largest administrators controlling only 5-6% of total funds. There is currently no single organization (or group of organizations) that has a full view of all funding, programs, and outcomes.

- **Local training programs reveal the opportunity for growth and employer engagement.**

  With over 160 programs of study at CCAC and hundreds more available from other training providers and community-based organizations, Allegheny County is home to one of the largest and most diverse training systems in the country. These systems, while long-standing, are ripe for expansion and focus. Not all program curricula reflect the current needs of employers, while employers and workforce developers lack a good understanding of quality of the programs offered.

- **The supply-demand mismatch continues.**

  Employers in key industry sectors describe critical shortages of talent while 45,000 workers in Allegheny County cannot find jobs. Analyzing the mismatch more closely, it becomes evident that multiple factors are responsible, such as outmoded skill sets, inadequate exposure to career pathways, challenging employer requirements, an unemployed labor force with different qualifications than what employers need, underutilization of an aging workforce, and lack of access to transportation, to name a few.

- **Data on middle-skill workers show a keen challenge to County economic development.**

  Allegheny County has an over-supply of more highly-educated workers but an under-supply of middle skill talent. McKinsey and Company's analysis of workforce in the Pittsburgh region reveals that while 50% of current vacancies typically require an associate's degree or higher, only 22% of Western Pennsylvania's unemployed population has attained this level of education. At the other end of the spectrum, the region has an over-supply of 5,000 workers with advanced degrees when it comes to basic labor and service and occupations where experience and certification are required. This imbalance raises the question of whether

or not there are actually enough higher-skill jobs in the region for workers and if the region needs to do more to attract new employers that can better utilize the local talent. It also highlights the shortage of middle-skill workers and the lack of attraction to middle-skill jobs. Taken together, these facts point to the need for economic development strategies to create new jobs of all levels as well as middle-skill positions with opportunities for advancement.

- **Youth and other workers benefit from exposure to a defined career pathway and real-world work experience.**

  Research posits that youth are not sufficiently exposed to viable career options. This lack of exposure results in young people pursuing no career options or ill-suited ones. Several thousands of the youth population aged 14 to 24 in Allegheny County are neither employed nor in school. All young people at this stage of their lives should be intensively connected with educational or work opportunities to develop knowledge and skills that will ensure their self-sufficiency and prosperity. The opportunity to connect youth to meaningful employment has never been more pressing. Not all career pathways require advanced education. In fact, two-thirds of local jobs do not require a four year college degree yet still call for solid technical skills and academic competence. These High Priority Occupations (HPOs) are jobs which lead to robust career pathways and a family sustaining wage.

  Real world work experience for youth is also increasingly harder to come by. Summer employment opportunities for high school students have decreased 55% since the year 2000. Inability to enter the job market results in a lack of diversity among youths' preferred fields of study.

- **Unemployment challenges are exacerbated with certain geographic locales.**

  An additional challenge posed to the regional labor market is known as the spatial mismatch; a disconnect between the location of jobs and the location of talent. Without regular and affordable access to transportation, jobs that are located in remote areas will remain unfilled. In 2011, 29% of businesses in Allegheny County were considered geographically disconnected by being located over 0.25 of a mile from the nearest bus route. This disconnect translates to about 125,000 inaccessible jobs, or 22% of total jobs in Allegheny County. With additional cuts in public service, this problem will be further exacerbated.

- **Unemployment challenges are exacerbated by barriers to employment among different populations.**

  It is in the best interest of workforce development systems to advocate for those who require special support. Groups with barriers to employment represent a significant percentage of the Allegheny County population and clients served through workforce development initiatives. There are over 102,000 veterans in the County. Single parents, ex-offenders, and individuals with disabilities identify as 17%, 9%, and 2% of CareerLink customers, respectively. Thirty-eight percent of Allegheny County households fall below the self-sufficiency wage. There is reason to pay attention to these special demographics. Employers must be coaxed in some cases to bring people with different backgrounds into the pipeline. Unemployment or under-employment among ex-offenders is significantly higher than the general population; criminal background is a major barrier for most well-paying jobs. Screening tools can be useful for employers, but they are often used to screen out otherwise qualified candidates.

- **The workforce system alone cannot provide the full range of human support services.**

  Workforce investment makes the effort to address special populations and those with barriers to employment such as veterans, individuals with disabilities, and ex-offenders. However, these efforts alone cannot address all the factors. Some individuals, such as refugees, may require social and psychological

supportive services beyond workforce funding for intensive services or training. These issues must be addressed before an individual may be considered workready.

Recommendations

- **Align quality resources for job seekers countywide.**

  In order to alleviate system fragmentation and the supply-demand mismatch, Allegheny County must define its long-term focus and strategies for job seekers. Stakeholders could assemble a quality network of community-based organizations that provide services. From there, a mechanism to connect job seekers to open jobs would be helpful. Intergovernmental cooperation is a key element of this endeavor.

- **Create employer-driven partnerships that meet labor market needs.**

  Successful workforce development models are those that engage employers in curriculum development and training. The Three Rivers Workforce Investment Board recently received $3 million in federal funding to help employers in new industries and unions collaborate to train workers in high-tech manufacturing. With its Mechatronics program, CCAC is an example of how effective collaboration can lead to programs that meet employers' changing talent needs. Employer-driven programs such as these will help to establish a more sustainable employment dynamic in the Pittsburgh region.

- **Promote education and training tailored to the range of high-priority occupations that lead to family supporting jobs.**

  High priority occupations (HPOs) are often well-paid middle-skill jobs that can be attained with an Associate's degree or less than four years of training. Yet, Allegheny County is facing challenges in filling these jobs. It is important to communicate that college is not a required path for every individual and that other options are available. The County needs a diverse workforce in which residents have different kinds of credentials: two-year degrees, industry-recognized certificates, on-the-job training opportunities, and advanced degrees. Local awareness of this reality among job seekers would help balance out the projected regional over-supply of workers with advanced degrees and ease the supply-demand gap facing the County.

- **Develop and expand the pipeline through career pathways.**

  Discovering one's desired career path does not have to happen at age 18 or later. Instead, research shows that early exposure to career pathways and work experience leads to higher employment rates later on. The County should find ways to systematically invest in high school internship programs that connect to community college opportunities or jobs. Meanwhile, resources must be made available to mid-career and aging workers to show them how to best utilize their skills in the workforce and advance to the next step.

  With employer-driven programming already in place, the Community College of Allegheny County is poised to become the hub of innovative training for the region. It is a stepping stone for labor union apprentices, Career and Technical Center students, advanced degree students before they transfer, and residents of Allegheny County seeking to advance their careers. Programs must be carefully developed, however. Training provider models should be employer-driven, evidence-based, defined by outcomes, and accountable to the needs of different constituents.

- **Career and Technical Center (CTC) programs can be more fully utilized.**

  While community colleges are a logical mid-point for many job seekers in transition, Allegheny County's Career and Technical Centers are an excellent place for young people to begin their professional journey. In the five CTCs in Allegheny County, which have articulations of agreement with CCAC, students can acquire industry-recognized credentials and learn how the workplace functions, making them more likely to enter the workforce.

- **Coordinate workforce systems and human support services.**

  In order to serve job seekers and preserve diversity in our community, workforce development in Allegheny County and human support services should define the intersection between their systems. In light of growing budget constraints, it is important to determine how to most efficiently use these systems – counseling, public transit, training – to help the most people achieve prosperity and independence. At that point, criteria could be developed to stratify and serve job seekers accordingly.

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