



State Defender Survey Results: Impact of Budget Constraints

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“I represent indigent clients. Those who society deems as undesirable. Few want to publicly speak up for the rights of an accused sex offender, drug addict, or the mentally ill. . . . Often times, I am the only advocate and voice of reason.”

– Assistant Public Defender with 11-20 years experience as public defender

Introduction

North Carolina’s public and statewide defenders are key players in the judicial system who have long provided excellent representation for indigent clients, finding ways to work around resource limitations to achieve good results. However, defenders have increasingly had to deal with funding issues, heavy workloads, and inadequate assistance to offset the burden. In the spring of 2015, the Office of Indigent Defense Services (IDS) surveyed state defenders to assess how these challenges have affected them. The results showed that defenders feel that they could serve their clients better with reduced workloads and increased support. Defenders are stressed by financial hardships, making them unable to resolve debt and causing them to take on additional debt, delay life decisions, work other jobs, and rely on family for monetary aid. Many have been actively looking for other career possibilities with better pay. Ultimately, although through their commitment and dedication defenders are able to get good outcomes for their clients, they could do more if they could get some relief.

Survey Overview

In 1963, the United States Supreme Court held in *Gideon v. Wainwright*, 372 U.S. 335 (1963) that people criminally prosecuted in state courts who cannot afford to hire attorneys have a fundamental right to counsel and must have attorneys appointed to represent them. Since that time, while the rule of *Gideon* to appoint attorneys has largely been followed, its broader aim of ensuring that poor defendants receive meaningful assistance of counsel has not been fully achieved. Indigent defense in much of the country has been in a state of crisis due to chronic underfunding and the consequent strain on resources. Inadequate funding for court systems in which defense attorneys operate has exacerbated the problem.

North Carolina’s indigent defense system has been a rare success compared to other jurisdictions, and the state’s public and statewide defender offices have long been vital components of ensuring that indigent defendants receive quality representation. Due to their institutional presence, integration into the court system, and unity of mission, defender offices provide benefits that can be difficult for other representation systems to fully realize. Defender offices are uniquely positioned to work in collective, coordinated, collaborative, and creative ways to

protect the rights guaranteed by the United States and North Carolina Constitutions and to safeguard against government overreach—the rare government entities charged with constraining the government.

As institutional actors, defender offices can identify and address systemic issues and often serve as incubators for innovative ways to improve court processes and to pave the way for their clients to become productive citizens. Examples of initiatives spearheaded by defender offices include specialized treatment courts and providing counsel at first appearances. Defender offices also develop beneficial in-house programs such as job banks for clients and internship programs. One office has implemented an ongoing intern project of compiling and maintaining a directory of treatment resources. Another office has partnered with a local university for a social worker internship program. Defenders also participate in interoffice networks for dissemination of forensic and immigration information in order to become in-house resources for their colleagues on such matters. (Detailed examples of the good results that defenders have achieved are highlighted further in this report.)

Defender offices supervise, train, mentor, and develop young attorneys, and in fact many of the state's leaders in indigent defense began their careers in defender offices. Defender offices provide efficiency as a result of the attorneys' volume of work, availability to courts, and ability to gain expertise and to specialize. The offices often afford cost savings to their jurisdictions, including by helping to control jail populations by getting their clients released from detention quickly.

Recent years of state budget shortfalls and reductions in funding have resulted in strictures on indigent defense spending, and the state's defender offices have had to absorb some of the impact. Some commentators have observed that short-term frugality can lead to other costly, long-term consequences:

The defender systems that people must turn to are too often completely overwhelmed; many dedicated defenders simply have too many cases, too little time and too few resources to provide quality or even adequate legal representation. Failing to provide the constitutionally guaranteed right to effective counsel, regardless of one's ability to pay, is not simply a denial of justice, it is costly to individuals, families, communities and taxpayers. Individuals who do not receive quality defense may be more likely to end up behind bars or with a criminal conviction that will follow them for the rest of their lives. Families are torn apart when a loved one is sent to prison or can no longer work due to the collateral consequences of a conviction. Communities suffer both in terms of public safety and through unnecessarily losing friends, neighbors and co-workers who are locked up. And taxpayers bear the monetary costs when under-resourcing legal defense results in more—and more expensive—incarceration.¹

The most widely felt effect of the state's budget crisis has been the limited degree to which state-employed defenders have received salary increases over the past several years. Legislative adjustments since 2008, when the Great Recession was fully beginning to affect the state budget, have been enacted as follows²:

¹ Justice Policy Institute, *System Overload: The Costs of Under-Resourcing Public Defense 2* (2011), available at http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/winter2013/09_JPI_system_overload.athcheckdam.pdf.

² Source: Office of State Human Resources, *State of North Carolina 2015 Compensation & Benefits Report 17* (2015), available at http://www.oshr.nc.gov/Guide/CompWebSite/2015%20CompBenefits%20Report%20_finalpdf.pdf.

Year	Cost-of-Living Increase	Career Growth Increase	Bonus/Other
2008	The greater of \$1,100 or 2.75%	0	0
2009	0	0	0
2010	0	0	0
2011	0	0	0
2012	1.2%	0	5 days "special leave"
2013	0	0	5 days "special leave"
2014	\$1,000 flat increase	0	5 days bonus leave

Meanwhile, from 2008 to 2014, nationwide inflation rose nearly 10%³. Moreover, grants of special or bonus leave were of little use to assistant defenders, who do not earn leave and whose pending cases would have to be dealt with even if their chief defenders allowed additional time off.

During many of these same years, the state has enforced salary freezes except for promotions or changes in duties. Due to the nature of defender offices' work and structure, such advancements were often difficult for defenders to achieve. Even in recent years when the freeze has been lifted, IDS's budget constraints have restricted defender offices' ability to offer substantial salary increases to make up for the lost years. Moreover, money for retirement and longevity for state defenders is underfunded in IDS's budget, and lapsed salary and other unspent funds from public defender offices have been needed to address shortfalls in IDS's private assigned counsel (PAC) fund. Thus, chief defenders cannot utilize for salaries the entirety of the allotment amounts designated for each of their offices.

This long period of relatively stagnant income, coupled with high educational debt, has taken its toll, particularly on those who were not employed prior to 2008 when cost-of-living increases were more consistent or, following lapses, more substantive.⁴ As noted by the Massachusetts Bar Association Blue Ribbon Commission on Criminal Justice Attorney Compensation in a recently published report,

[P]ublic service is a noble undertaking that entails long hours, hard work, and personal sacrifice. All prosecutors and criminal defense lawyers willingly signed on to that proposition when they selected their profession. Obviously, they have not pursued their careers to get rich. They do expect, and reasonably so, that their chosen career would compensate them sufficiently, such that they could pay off college and law school loans, afford to live away from their parents' homes, get married, buy a house, and raise a family.⁵

³ See US Dept. of Labor Bureau of Labor Statistics CPI Inflation Calculator, available at http://www.bls.gov/data/inflation_calculator.htm (value calculated by entering \$1,000 as base amount).

⁴ See *id.* at 17 (showing the history of legislative increases from 1992-2014).

⁵ Comm'n on Crim. Just. Att'y Compensation, Mass. Bar Assn., *Doing Right by Those Who Labor for Justice: Fair and Equitable Compensation for Attorneys Serving the Commonwealth in its Criminal Courts* 8 (2014), available at <http://www.massbar.org/media/1494238/doing%20right%20by%20those%20who%20labor%20for%20justice.pdf>.

“I work late and weekends as an APD, work a second job, handle high level felonies, and I have to worry about how I am going to feed my new baby every month. So yes . . . it is hard to focus on your clients when you are worrying about having enough money to feed your child.”

– Assistant Public Defender with 4-10 years experience as public defender

The financial stress on state defenders and the lack of opportunity for advancement have been compounded by large workloads carried by assistant defenders as a result of pressure to close more cases in order to be cost-effective. In office evaluations performed over the past four years, IDS has compiled information on the pending workloads of each public defender office attorney by client, charge, and type of case at the time of each office’s evaluation. These numbers are snapshots of points in time and depend to some degree on the accuracy of other sources such as court databases, but as rough indicators they are telling.

As shown in the table below, for offices for which the information was readily available, from 2011-15 the average number of clients simultaneously represented by attorneys who primarily handled felony cases, including capital cases and offenses ranging from Class B1 to Class I, was 96, with a high of 211. The average number of charges these attorneys handled was 240, with one attorney being assigned 621 separate charges. For those handling primarily misdemeanors, the per-attorney client average was 191 and the charge average was 299. One attorney had the highest numbers in both categories, representing 379 clients with 681 charges. Attorneys who carried mixed felony and misdemeanor workloads averaged 159 clients and 330 charges, and one defender well exceeded the average with 243 clients and 531 charges.

PUBLIC DEFENDER OFFICE ADULT CRIMINAL PENDING WORKLOADS 2011-2015											
Primarily Felonies				Primarily Misdemeanors				Mixed Misdemeanor and Felony			
Client high	Charge high	Client avg	Charge avg	Client high	Charge high	Client avg	Charge avg	Client high	Charge high	Client avg	Charge avg
211	621	96	240	379	681	191	299	243	531	159	330

Recent workload studies from other states, while not entirely on point due to differences in the types of cases and activities assessed, can serve as comparisons to indicate what time is needed for defenders to adequately handle cases. For example, a 2014 study from Missouri found that for effective representation, the average misdemeanor should entail 11.7 hours of work and the average low-level felony 25 hours.⁶ A more recent Texas study recommended 12.9 hours for misdemeanors and 15.7 hours for low-level felonies.⁷ Assuming 1,800 available work hours per year (excluding weekends, vacation days, holidays, and other non-case-specific time such as

⁶ RubinBrown LLP for the ABA’s Standing Committee on Legal Aid and Indigent Defendants, The Missouri Project: A study of the Missouri defender system and attorney workload standards 21 (2014), available at http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_5c_the_missouri_project_report.authcheckdam.pdf.

⁷ Carmichael, D., et al., Guidelines for indigent defense caseloads: A report to the Texas Indigent Defense Commission 20, Figure 8-1 (2015), available at http://tidc.texas.gov/media/31722/150114_WCL-Final_Reduced-file-size.pdf.

training), such standards would result in annual caseloads of no more than 154 misdemeanors or 72 low-level felonies in Missouri and 140 misdemeanors or 115 low-level felonies in Texas.

"When I have time to actually investigate cases, the results are awesome. I had a gentleman charged with second degree trespass, a minor charge but important to him. . . . After investigating the location he was 'trespassed' from, I determined that the signs stating 'no trespassing' could not be seen from where my client was walking and stopped by the police. After the case was dismissed, which was communicated to him by an intern because I was stuck in another courtroom, he came back to find me the next day to thank me. All of our clients, no matter what the charge, are entitled to have their cases investigated and litigated."

– Assistant Public Defender with three or less years experience as public defender

Some of the workloads included in the North Carolina client and case figures were those of chief public defenders and other office supervisors who carried significant numbers of cases as well as attorneys whose adult criminal workloads were combined with responsibilities for other matters such as involuntary commitment, juvenile delinquency, termination of parental rights, and specialized treatment courts. Attorneys without such other commitments often are required to appear in several different courtrooms each day. To deal with all the work expected of them, defenders must make difficult choices about how best to ration their time by triaging cases.

Defenders are further hampered by limited access to resources to streamline the work. All offices have some investigative staff, and some offices have employed social workers, but expansion of both of these types of aid has been constrained in recent years due to cost considerations. Purchases of books, equipment, and other resources depend on whether the funds can and should be diverted from some other need, and requests are denied because the money simply is not available. Nonetheless, as noted above, offices have been innovative in meeting unfulfilled resource needs.

To determine how this combination of pressures may be affecting defenders' work, in April 2015, IDS issued a survey and invited responses from attorneys actively representing clients in state defender offices, including 16 public defender offices and the Appellate Defender, Capital Defender, Special Counsel, and Parent Representation Offices. Specifically, the survey asked questions regarding the impacts of financial concerns, workload issues, and resource limitations on the defenders and their clients. One hundred thirty-six (136) defenders responded to the survey. IDS also conducted telephone interviews with respondents who expressed willingness to be personally contacted.

This report summarizes the responses IDS received, which show that defenders labor under considerable financial stress, causing them to work additional jobs, depend on their families and the State for assistance, carry debt, and fail to make progress on repaying student loans. Many must contend with large workloads, resulting in their having to make difficult choices about which clients' cases to prioritize given limited available time, including

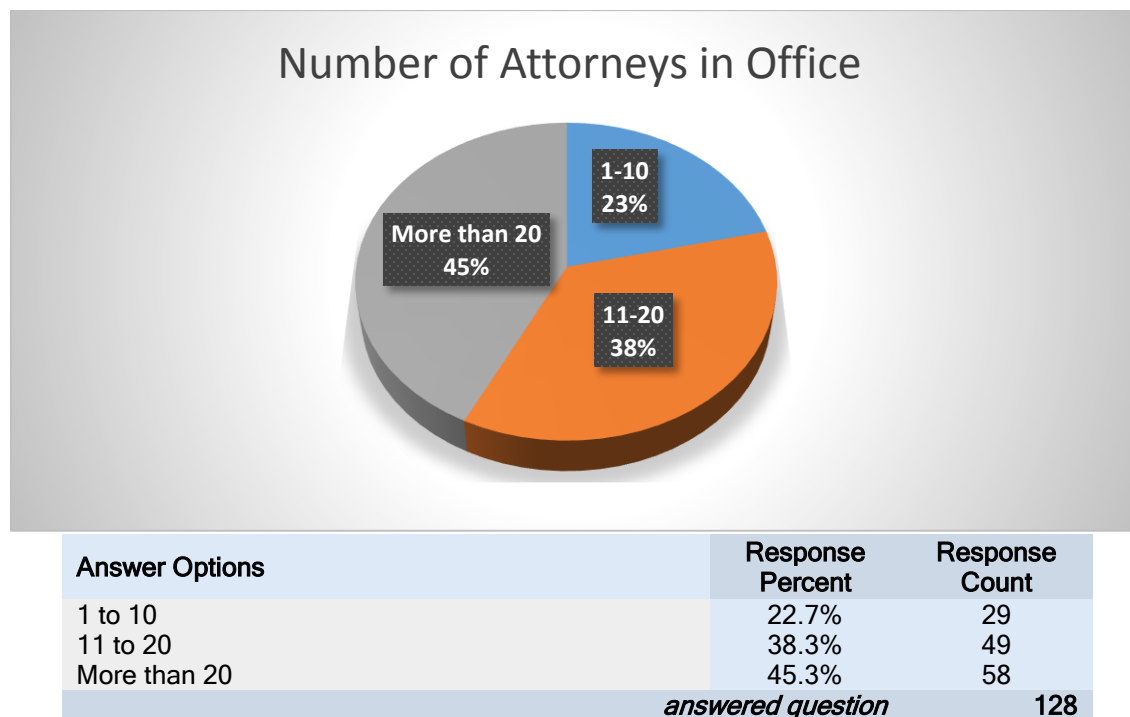
nights and weekends. Moreover, they cannot rely on many office resources to ease their loads. These strains are causing many to consider leaving their offices, with several actively pursuing other options. While they are still able to muster successes and make a difference for their clients, the potential loss of qualified defenders, as well as the prospect of retaining distracted, overworked defenders, puts North Carolina in the precarious posture of joining other jurisdictions that are facing crises caused by underfunded defender systems.⁸

Survey Results: Demographic Information

One hundred thirty-six defenders from across the state answered some or all of the survey questions. Slightly more than 94% identified that they worked in district public defender offices, with the rest (5.8%) working in multiple district or statewide offices.

Office Size and Geographic Coverage:

Forty-five percent, or 58 attorneys, responded that they work in larger offices comprising more than 20 attorneys, while 38% (49 attorneys) indicated working in mid-size offices of 11-20 attorneys. Almost 23%, or 29 attorneys, responded that they work in small offices employing one to 10 attorneys, which tend to be located in rural districts.

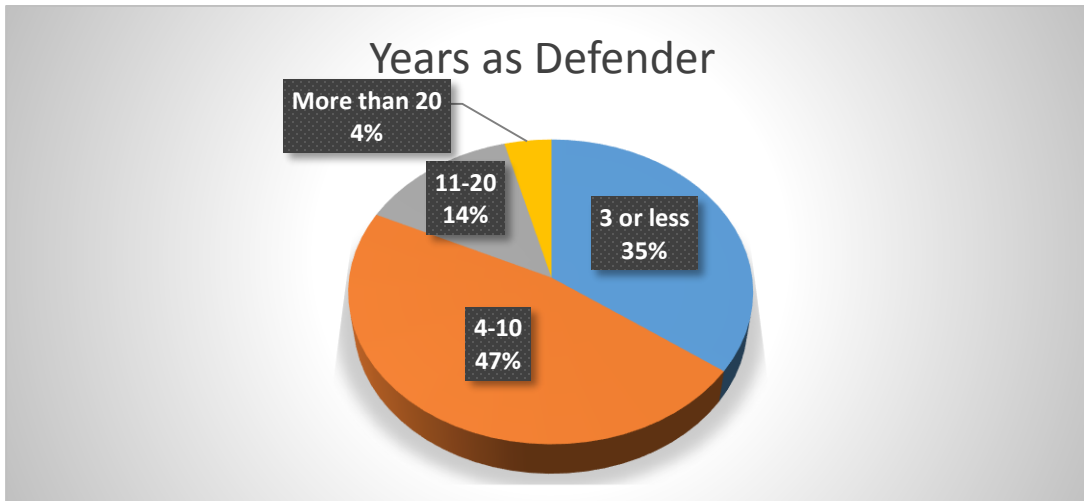


Of the 134 who responded to the question, 70.9% (95 attorneys) indicated that they work in single-county offices while 29.1% (39 attorneys) work in multi-county offices.

⁸ See, e.g., Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel, at 49-101 (The Constitution Project, Apr. 2009) (providing examples of issues in indigent defense systems caused by insufficient funding, the burden of too much work, and other impediments to competent and effective defense services).

Years of Practice:

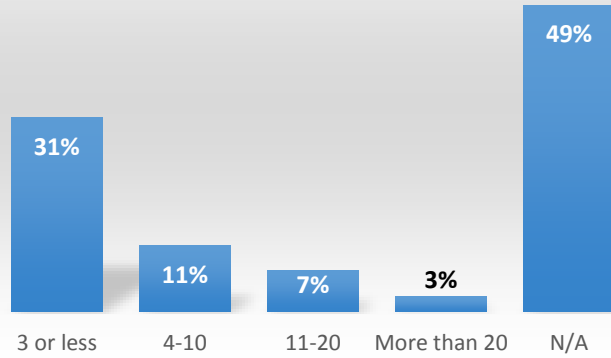
Almost two-thirds of the respondents (65%, or 80 attorneys) had more than three years of experience as state defenders. The largest percentage, nearly half (47.2%, or 58 attorneys), had worked in defender offices for between four and 10 years.



Answer Options	Response Percent	Response Count
3 or less	35.0%	43
4-10	47.2%	58
11-20	13.8%	17
More than 20	4.1%	5
<i>answered question</i>		123

While many of those responding had worked solely as state defenders, more than half (50.8%) reported that they had spent some time in prior private criminal practice. The largest percentage of respondents who had worked in private practice (31.1%, or 38 attorneys) had three years or less private practice experience, while 20% (24 attorneys) had worked as private practitioners for periods ranging from four to more than 20 years.

Years of Prior Private Criminal Practice

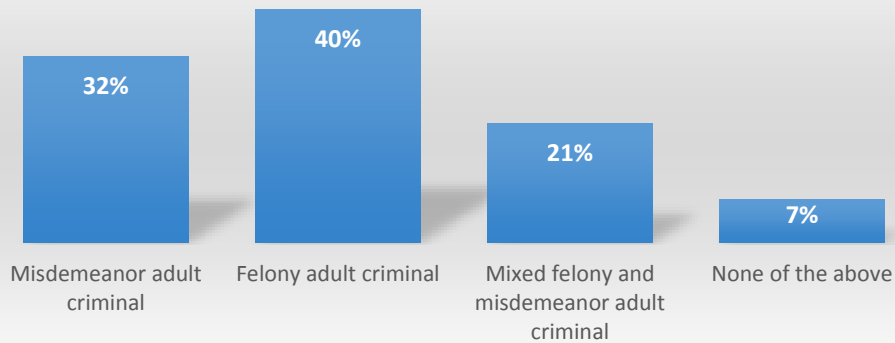


Answer Options	Response Percent	Response Count
3 or less	31.1%	38
4-10	10.7%	13
11-20	6.6%	8
More than 20	2.5%	3
N/A	49.2%	60
answered question		122

Nature of defender practice:

Almost 93% of respondents (113 attorneys) indicated that over the last 12 months they have worked mainly on adult criminal cases, with 40.2%, or 49 attorneys, primarily handling felony cases, 32% (39 attorneys) primarily handling misdemeanors, and 20.5% (25 attorneys) having mixed felony and misdemeanor workloads.

Primary Area of Trial Level Practice



Answer Options	Response Percent	Response Count
Misdemeanor adult criminal	32.0%	39
Felony adult criminal	40.2%	49
Mixed felony and misdemeanor adult criminal	20.5%	25
None of the above	7.4%	9
<i>answered question</i>		122

Respondents identified the following areas in which they have spent more than 10% of their time over the past 12 months:

Answer Options	Response Percent	Response Count
Potentially capital	23.2%	16
Juvenile delinquency	27.5%	19
DSS	20.3%	14
Appeals	20.3%	14
Involuntary commitment/competency	18.8%	13
Treatment or specialized court	17.4%	12
Supervising others	29.0%	20
Other (please specify)	14.5%	10
<i>answered question</i>		69

Of the 10 who selected "Other," responses largely consisted of specialized adult criminal work such as felony probation violations but also included items such as immigration consultation and assisting outside attorneys.

Survey Results: Financial Concerns

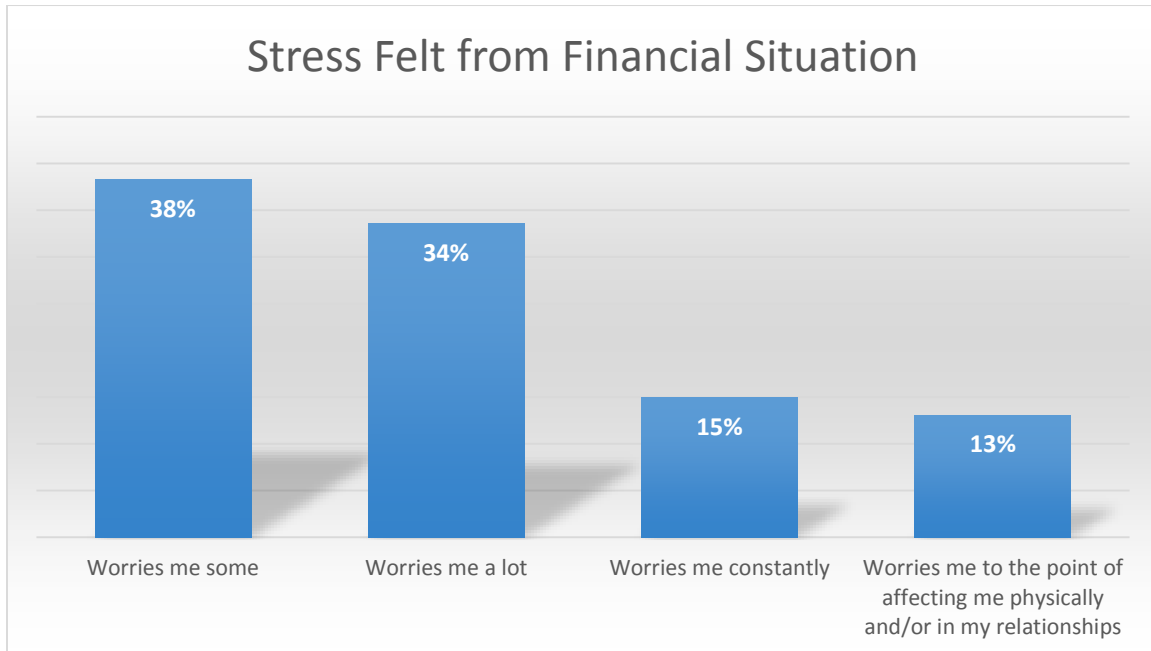
"I have creditors calling all of the time. My electric and water have each been shut off at least once since I've been here. I have absolutely no extra money to purchase anything for my kids and \$0.00 is savings. Seriously, seriously stressed . . . beyond words. In tears now thinking about it."

– Assistant Public Defender with three or less years experience as public defender

Stress and impacts:

In answer to the question of whether their financial situations cause them stress, 87.6%, or 106 attorneys, responded yes. When asked how much stress they feel from their financial situations, 33.6% (36 attorneys) noted

that it worries them a lot, 15% (16 attorneys) responded that it worries them constantly, and 13.1% (14 attorneys) indicated that it worries them to the point that it affects them physically and/or in their interpersonal relationships.



Answer Options	Response Percent	Response Count
Worries me some	38.3%	41
Worries me a lot	33.6%	36
Worries me constantly	15.0%	16
Worries me to the point of affecting me physically and/or in my relationships	13.1%	14
answered question		107

Student loans are a particular stressor, with one respondent noting that they “are a huge financial burden for me.” Another example given by a defender of the effect of financial stress was, “I have a daughter starting college next year and to think of how much I am going to have to borrow keeps me awake at night.” One noted that “the last week of every month seems especially stressful for many of us who are trying to make ends meet with our current salaries.”

Family relationships are affected by worry over stress. One respondent disclosed, “I recently became divorced and a lot of the problems were due to money.” Medical issues that defenders ascribed to their financial stress were depression, anxiety, and high blood pressure. Citing the cost of paying for family members under the state health insurance plan, a respondent stated, “When this cost is taken in the context of paying law school loans, child care, and other fixed costs such as food, transportation, and housing, we are forced to make decisions about whether to purchase health insurance, etc. that are stressful,” while another noted, “At times you feel like you have to go without seeing specialists because of copays. Also to make ends meet because of high student loan debt, I have to work a second job and other odd jobs.” Another related, “I struggle to pay my bills and work a second job on the weekends to make ends meet.”

“I am constantly having to seek help from relatives to cover basic living expenses even after working an additional job. My husband and I very rarely spend time with each other due to both of us working 2 jobs to make ends meet. I constantly worry about how I am going to provide for my new child's future.”

– Assistant Public Defender with 4-10 years experience as public defender

When asked to identify all the ways, including working additional jobs, in which salary issues have affected them in the past two years, respondents answered as follows:

Answer Options	Response Percent	Response Count
Carrying credit card debt	63.2%	72
Delay in starting a family, buying a house, etc.	48.2%	55
Having to take on secondary employment	24.6%	28
Missed or late student loan payments	24.6%	28
Income-based government assistance for you or your family (e.g., loan assistance; outside health care; health care subsidy)	22.8%	26
Missed or late non-student loan debt payments	20.2%	23
Other (please specify)	17.5%	20
N/A	10.5%	12
<i>answered question</i>		114

Additional impacts specified by those who selected “Other” included having to take on more debt to pay for a medical emergency, inability to contribute to a savings account, inability to pay towards the principal amounts of student loans, borrowing from a 401(k) retirement account to buy a car rather than paying for repairs for a 19-year-old vehicle, refraining from replacing older vehicles, and talking to an attorney about filing for bankruptcy due to debt.

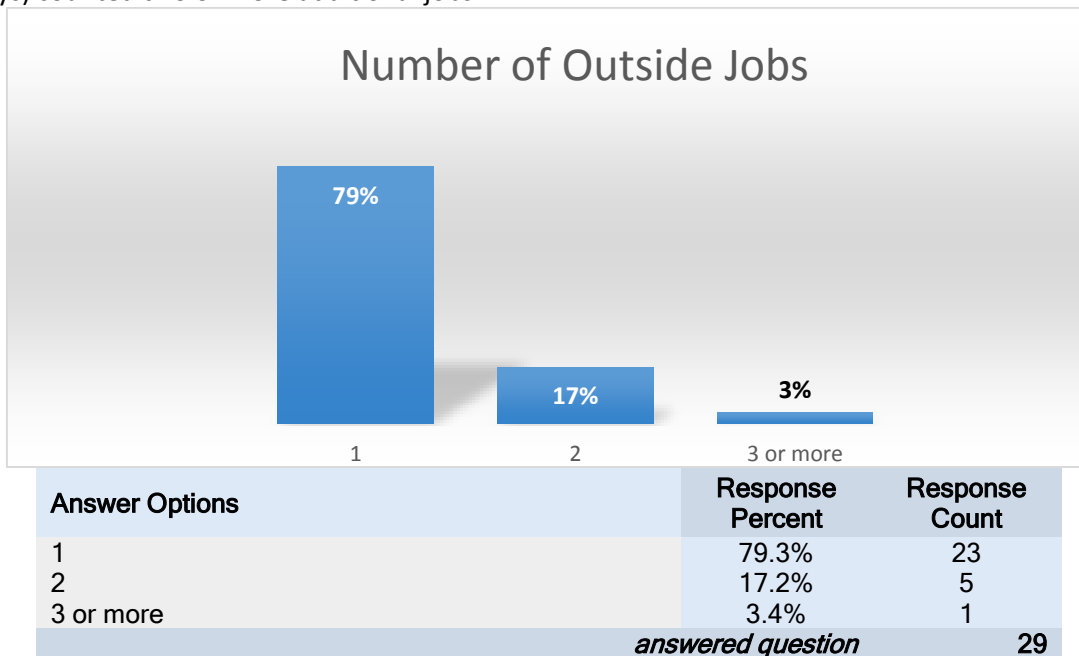
“I have had to work a second job for all ten years of being a public defender and often in my younger years I had to rely on the generosity of my family to make the job that I loved a financial reality.”

– Assistant Public Defender with 4-10 years experience as public defender

A respondent related deciding to live 25 minutes away from the office in another town in order to lower the cost of rent. One defender commented that the defender’s federal student loans are in forbearance because the defender does not make enough to pay them and is thus not eligible for loan forgiveness. This same defender went without heat in the defender’s house for the first three years on the job because the defender could not afford the heating bills.

Outside employment:

Those who picked “Having to take on secondary employment” as an option were asked a series of questions about their other jobs. Almost four-fifths of them—79.3%, or 23 attorneys—reported having one other job, while 20.7% (6 attorneys) counted two or more additional jobs.

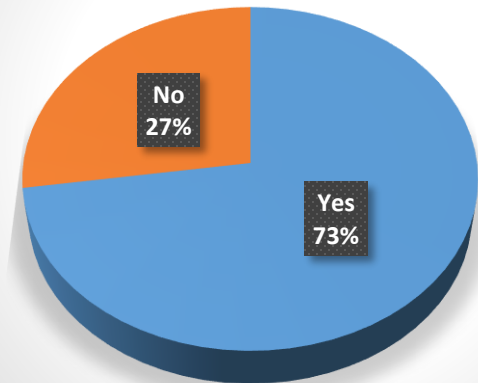


“I have trouble paying down debt and saving money. I have very little savings because financial obligations eat up my monthly pay. Most months, I have under \$100 in my checking account at the end of the month, and that is an uncomfortable feeling.”

– Assistant Public Defender with 4-10 years experience as public defender

The vast majority (72.7%, or 24 attorneys) of those working additional jobs reported doing so solely from a need for more income.

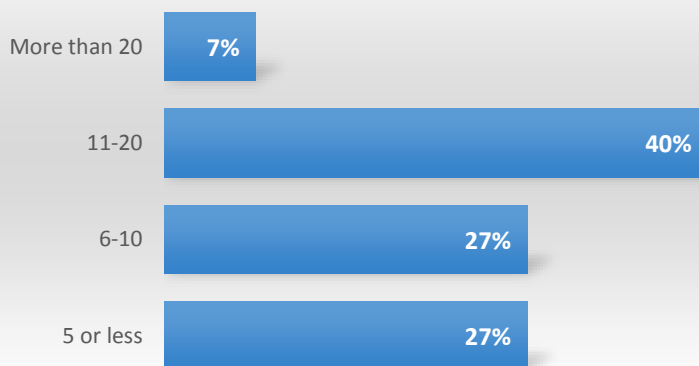
Have Taken on Outside Jobs Solely from Need for More Income



Answer Options	Response Percent	Response Count
Yes	72.7%	24
No	27.3%	9
<i>answered question</i>		
		33

Most respondents with outside employment (40%, or 12 attorneys) indicated spending on average 11-20 hours per week on outside employment. Two, or 6.7%, reported working more than 20 hours per week on other jobs.

Average Hours Per Week Spent on Outside Employment



Answer Options	Response Percent	Response Count
5 or less	26.7%	8
6-10	26.7%	8
11-20	40.0%	12
More than 20	6.7%	2
<i>answered question</i>		
		30

Almost three-quarters (74.2%, or 23 attorneys) said that none of their outside jobs were legal-related, while the other 25.8% (8 attorneys) reported having one or two legal-related secondary jobs.

Student loans:

“My student loan payment for law school is \$1200/month (and that is income-based). It comes out to about 1/3 of my pay each month. I take public transportation to work . . . to try to save money.”

– Assistant Public Defender with three or less years experience as public defender

Eighty-two respondents felt comfortable reporting the approximate amounts of their monthly student loan payments. While ten indicated that they did not currently have any loan debt, the others’ responses averaged \$538 per month with a median amount of \$400. Twenty-nine had monthly student loan payments of \$500 or above, and seven of those were obligated to pay \$1,000 or more. The highest amount listed was \$2,800, and the lowest owed amount was \$149.

“After my student loans and other monthly expenses are deducted from my check, I barely have enough to afford personal necessities—much less any extra expenses. I wait tables on the weekends to make ends meet, which gives me very little personal free time. As a professional, working two jobs is often demoralizing and exhausting, but with my current financial situation, I am faced with little choice. I am aware of several other Assistant Public Defenders who work additional jobs to make ends meet.”

– Assistant Public Defender with three or less years experience as public defender

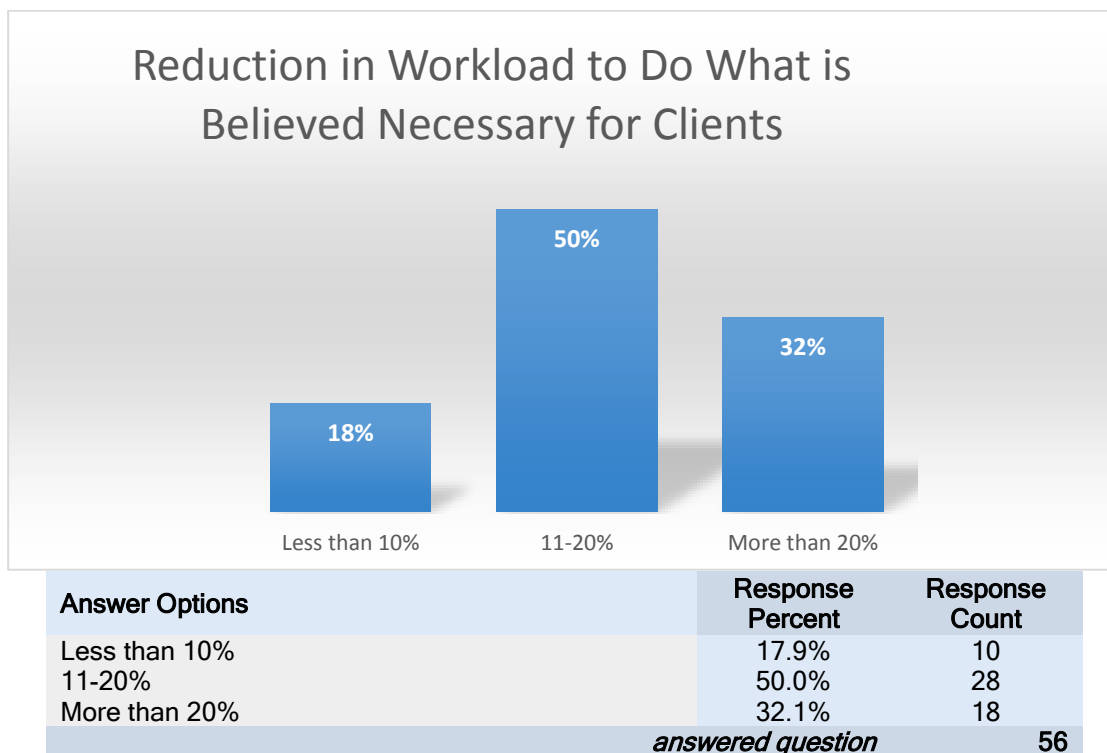
Survey Results: Workloads

“Right now, I have a list of clients I want to go to jail to see, but then the [district attorney] dumps 6 packets of discovery on me, which I have to read before [court]. Some of them have plea offers which will get my client out of jail, so I have to triage, and bump those clients up the jail visit list, so I can get them out of jail by entering a plea when the trial calendar breaks down. But then I come back to my office and find I've got 5 more new cases, and 1/2 of them are in jail.”

– Assistant Public Defender with more than 20 years experience as public defender

Needed workload adjustments:

While just over half (50.4%, or 60 attorneys) indicated feeling that their workloads are reasonable, a subsequent question regarding the percentage of workload reduction that would allow defenders to do what they believe is necessary for their clients generated 56 responses, with exactly half noting that an 11-20% reduction would be appropriate and another 32.1% indicating the need for a greater than 20% workload reduction. One attorney commented that an office caseload cap was lifted and then reinstated because “[t]he workload became so intense that the quality of work was beginning to suffer.”

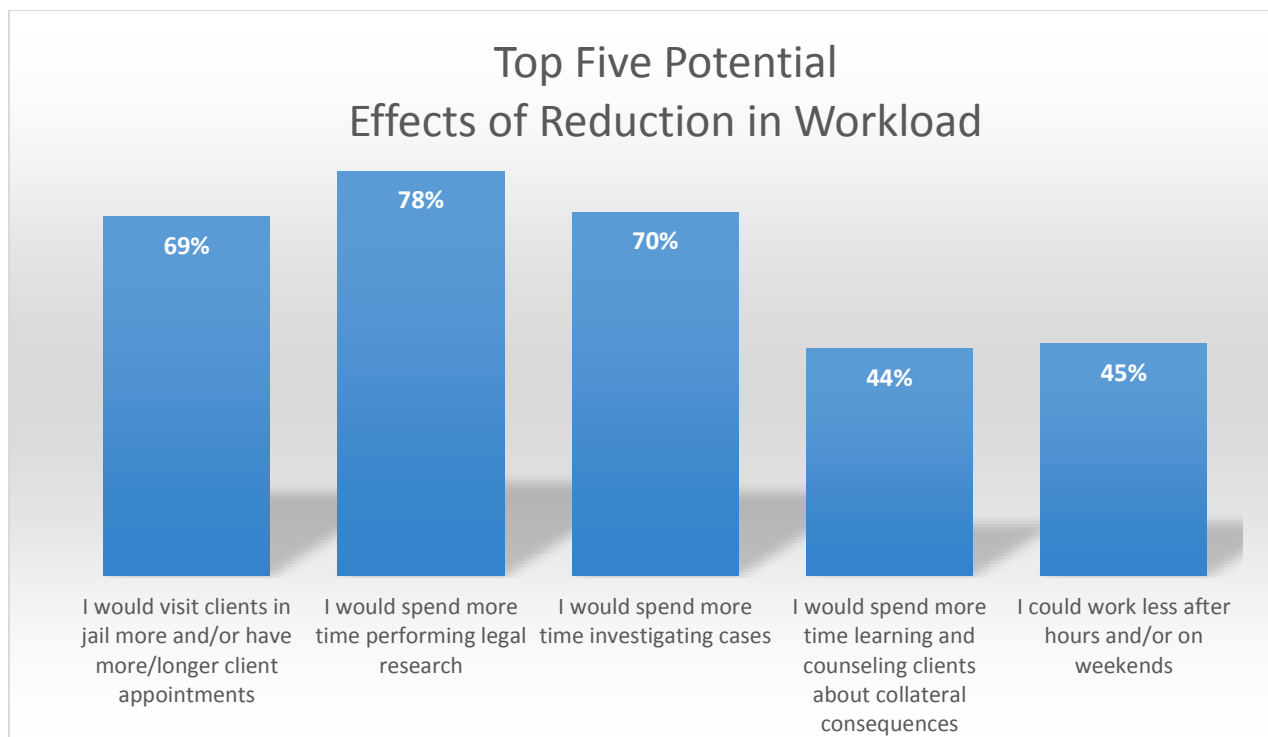


In spite of the believed benefits of workload reduction, 64.4%, or 38 attorneys, answered that they had not requested relief in the past year, with many offering reasons such as the work would still have to be done, colleagues are also overburdened and would have to bear the load, there is pressure to be cost-effective, and attorneys would not want such requests to reflect negatively on them.

“I wish I had more time to spend on each case individually. I believe public defenders should have lower caseloads. I think it would help establish trust between the client and the attorney if the client felt they were getting the time spent on their case that they thought necessary. But because stereotypically we have high caseloads, clients can distrust the idea that we are working on their cases.”

– Assistant Public Defender with 4-10 years experience as public defender

Respondents were asked to select up to five options that describe how workload reduction could better enable them to represent their clients. The top five selections were as follows:



The entirety of the responses to the options provided were:

Answer Options	Response Percent	Response Count
I would spend more time performing legal research	78.1%	89
I would spend more time investigating cases	70.2%	80
I would visit clients in jail more and/or have more/longer client appointments	69.3%	79
I could work less after hours and/or on weekends	44.7%	51
I would spend more time learning and counseling clients about collateral consequences	43.9%	50
I would be able to locate more treatment resources for clients	41.2%	47
I would ask for fewer continuances	40.4%	46
I would file more motions	35.1%	40
I would spend less time in court	23.7%	27
I could identify and resolve other pending matters for clients	23.7%	27
I could take on additional responsibility in my office	21.9%	25
I would take more cases to trial	15.8%	18
I would feel freer to withdraw from cases in which I represent co-defendants or other clients with potential conflicts	5.3%	6
<i>answered question</i>		114

“Many of the problems our clients deal with are the collateral consequences of charges and convictions. Clients and their families can be removed from their homes simply by being charged with a crime. Clients lose jobs and cannot find new ones. Benefits are lost in some cases. It would be nice to have someone assist them with these challenges.”

– Assistant Public Defender with 4-10 years experience as public defender

One attorney proposed as an additional benefit, “I would be able to more fully explore services for my clients that would speed up the reunification process in [abuse, neglect, and dependency] court.”

Survey Results: Resources

“It is difficult to provide the best defense possible when you do not have the resources—be it money, experts, or time—to give the same attention and detail to a case as you would if you were in private practice with a paying client. It is even more difficult to explain to an indigent client why he or she should be satisfied with your representation when you cannot provide the exact same service for him or her.”

– Assistant Public Defender with 4-10 years experience as public defender

Respondents were asked to identify the top three resource deficiencies in their offices. Their top three choices were:



“We lack basic technology like readily available recording equipment, case organization software, Adobe professional, etc. Lack of funding leads to a lack of support staff resources, so lawyers are regularly spending time doing paralegal work like copying cases, managing calendars, etc.”

– Assistant Public Defender with three or less years experience as public defender

Responses to all options listed were as follows:

Answer Options	Response Percent	Response Count
Inadequate access to social workers or other qualified professionals to assist with clients in need of services	51.5%	53
Inadequate access to legal staff	46.6%	48
Inadequate access to other experts	39.8%	41
Inadequate access to investigators	37.9%	39
Inadequate access to equipment	36.9%	38
Inability to attend training	22.3%	23
Unreimbursed work-related travel	18.4%	19
Unreimbursed attendance at training	12.6%	13
<i>answered question</i>		103

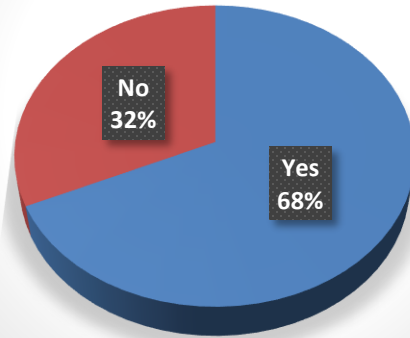
“The single largest resource deficiency is in our lack of access to professionals to assist with clients in need of social or mental health services. I have had many clients who have been in custody but who really needed some treatment setting. As a public defender, I do not have the time nor the training to figure out the best treatment setting for many of my mentally ill or substance dependent clients. However, it is often the case that if I could propose some alternative to jail, a plea or alternative disposition could be negotiated that would better serve the interests of justice. I believe that every office should have a social worker employed at least part time, or shared among more than one office as a resource on these types of cases.”

– Assistant Public Defender with three or less years experience as public defender

Survey Results: Continued Careers in Defender Offices

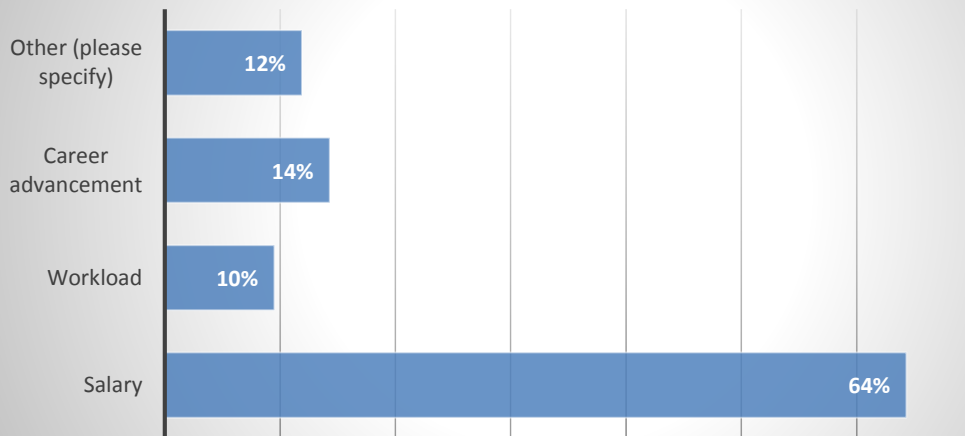
Although the majority of those asked responded that they were not likely to leave their offices in the next two years, with several comments describing love for the work, more than a third (37.6%, or 42 attorneys) indicated that they were likely to leave. When invited to answer if they felt comfortable doing so, more than two-thirds of respondents (68.2%, or 30 attorneys) disclosed that they have been actively looking for other employment opportunities over the past two years, and the reason for leaving given by the majority (64.3%, or 27 attorneys), was salary issues.

Actively Looking for Other Employment Over Past Two Years



Answer Options	Response Percent	Response Count
Yes	68.2%	30
No	31.8%	14
<i>answered question</i>		44

Primary Reason for Leaving



Answer Options	Response Percent	Response Count
Salary	64.3%	27
Workload	9.5%	4
Career advancement	14.3%	6
Other (please specify)	11.9%	5
<i>answered question</i>		42

Several of those selecting “Other” mentioned stress as a reason.

“I DO NOT want to leave but if I can't make ends meet for my family or provide for my daughter without overworking myself I am afraid I would have to consider leaving to make more money and be able to take care of my family. I cannot continue to ask my family for help. If made to choose between the job I love and providing financially for my husband and child I would have to choose leaving so as to make more money to provide for them.”

– Assistant Public Defender with 4-10 years experience as public defender

Survey Results: Importance of Quality Representation and Impacts of Underfunding

“It is extremely important to me to have enough time to get to know what underlying issues affect my client's decision making skills. Throughout my representation, I have learned that instability in housing and finances is often a factor in my clients' decisions. Recently, I learned that one of my clients has not had a stable residence or transportation for months. This has caused my client to not have the ability to fulfill requirements of a deferred prosecution agreement. After learning this information and gaining my client's permission to share it, I was able to convince the State not to revoke the deferral. Instead, the State is going to agree to modify the terms and give my client more time to comply with it.”

– Assistant Public Defender with 4-10 years experience as public defender

In response to open-ended questions asked in the survey and during follow-up telephone conversations in the weeks following the close of the survey with those who offered their identifying information for further contact, several defenders provided examples of situations both reflecting the importance of their being able to provide quality representation to their clients and illustrating how lack of funding has impacted their or their colleagues'

ability to do their best for their clients.⁹ Their stories illustrate that defenders are able to do good jobs for their clients despite their workloads and other constraints but also that large workloads are having an impact.

1. Defenders get good outcomes for their clients . . .

Examples abound of defenders' successes. For example, when a case involving an intellectually disabled client was over, one defender "couldn't let it drop." The defender spoke to the client's family and the client's social worker and explained the situation, and the social worker helped get the client on Social Security Disability Insurance (SSDI). The client had been a "regular" in the court system, and the client has not been back to court since. The defender notes, "People think people who are intellectually disabled are feeble, but they have addictions and are people, too."

Other illustrations of advantageous outcomes for clients related by defenders included:

"A large number of the clients I represent are adolescents who have been admitted to locked mental health facilities. The average stay is 7 to 10 days, if the client will be returning home; finding placement for these kids invariably lengthens their stay, sometimes for months. One recurring theme is that the kids are either stressed out because they are missing school, or the kids aren't complaining about missing school but their academic careers are being seriously impacted by extended stays in locked facilities that do not provide any educational substitute for their time out of school. There are similar stressors for adult clients; some are college students but many more have the threat of losing jobs and the costs associated with hospitalization."

– Assistant Public Defender with 11-20
years experience as public defender

- "I recently had a client charged with common law robbery. This man was a veteran who served during the Iraq War. He began having mental health difficulties and developed an addiction to prescription pain killers. The property in question in the robbery were OxyContin pills from CVS pharmacy. Through investigation of the case I was able to uncover the client never actually used any force or made a threat to use force in order to gain possession of the property, just that the pharmacy technician felt 'threatened' based on the fact my client was wearing a ski mask when he asked for the pills. By confronting the ADA prosecuting the case with this information I was able to get the felony dropped down to a misdemeanor and able to get the client involved in mental health and substance abuse treatment through the efforts of a social worker with the Veteran's Administration. Prior to being charged this honorably discharged veteran had no criminal record and had never spent any time incarcerated. He now only has a misdemeanor on his record, instead of a felony which was the initial plea offer, only spent time in jail between his first appearance and first district court date (approximately three weeks), and is now receiving services through the VA which should dramatically decrease the chance of recidivism."

- A defender whose office's social worker assisted a client in finding housing sees the client as "incredibly brave for making the decision to do something hard."

⁹ These telephone interviews were not recorded, and thus responses are paraphrased except where direct quotes are reasonably certain.

The social worker and the office have allowed the client to reach for those goals. The defender “like[s] winning trials” but says that “good defense is not all about that. Everyone has given up on [the client], and the office has told him to believe something different, and that’s what good defense is.”

- “I had a client [who] was in desperate need of housing and substance abuse assistance. I was able to utilize the social work intern to help me help him. When he came up to me on a day he was not in court, he came simply to ask me for help because he thought I was kind and might be able to, but I was not in a position to have time to talk to him that day but [asked] him to come back later that week. He was able to do so and I had the social work intern work with him until we were able to get him some assistance. He was so grateful and I was so grateful that one of the attorneys in our office took the initiative to have a social work intern assigned to our office. He is sober and I ended up getting the majority of his charges dismissed and one charge had judgment continued. If we did not have the social worker intern then I would not have been able to assist him.”
- Another defender noted that being able to spend more time with clients can lead to discovery of mental health issues, which can be the reason clients fail to appear. This defender found out that a client had been involuntarily committed and got the local mental health people involved. Now the client wants to get mental health services, which will help get the client’s other charges resolved.
- A defender’s client shoplifted two DVDs from a retail store. The client “seemed like a middle-class guy who had great jobs.” The client said he had been molested for a long period of time in his youth, which led to a substance abuse problem and Post-Traumatic Stress Disorder (PTSD). The client had only ever told one other person about the abuse. The defender could have gotten the case referred to deferred prosecution or dismissed but recognized that the client needed to address his mental health issues. The client is in mental health court and is getting treatment. According to the defender, the client “seems happy that he finally got that off his chest.”
- One defender “had a run of 17 cases” where the person was found guilty in district court of domestic violence and not guilty by a jury. In one case, the client had just gotten out of prison and had custody of his son because the complaining witness, the mother of the son, was in rehab. The client went on a Sunday with the complaining witness and the son to a park although it was not the complaining witness’s custody day. The complaining witness claimed to the rehab officials when they got back that the client had strangled her in the car. The marks on her neck were consistent with her inflicting them herself. “That was a 10-minute not guilty [verdict] by the jury,” stated the defender.
- Another defender had represented a client with what the defender termed “a horrible record from his youth [spent] on drugs.” The client was on probation and federal parole. The client had parked his car and was going into a grocery store around midnight. Another man was walking out of the store. The client and the man looked at each other, the man made a racial slur, and they exchanged words. The client went in and bought an item. The client was arrested for robbery with a dangerous weapon because the man claimed that the client used a knife and took his wallet and other items. The office’s investigator got the store video, which the State said had been erased, and the video showed the face-to-face encounter and no robbery. The client was found not guilty. The client’s federal parole was reinstated, and his probation was terminated. After the case, the client was able to get his father into an assisted living facility and got on with his life. The client was detained in jail eight months during the case, but without the defender’s advocacy, he could have served nine years on the violations plus whatever he would have been sentenced to on the new robbery charge.

Defenders also assist in ways other than direct representation, as there is someone the court can consult with if a defendant does not have an attorney. A defender related, “We are truly the ‘public’ defender office. There are things we don’t get case credit for that [not only] benefit individual defendants but also prevent logjams, and we spot issues so we can resolve cases faster. We also try to be a resource to other attorneys in the area.”

2. . . . but they could do more.

Although they are able to achieve successes for clients, several defenders wished that they could help their clients more. Time to attend to clients and their cases was the most commonly cited deficiency of inadequate funding as well as the commodity that defenders most desire. While one defender noted that the local sheriff says that the office gets people out of jail quickly, which “means a lot” to the sheriff, another commented that if workloads were lower, assistant defenders could do more to help clients get out of jail on bond.

One respondent advised, “There are days in District Court when the misdemeanor defenders have 25 or more clients on the docket and the judge and the ADA are [ready] to move cases and we just can't get to them all in terms of preparation and negotiation. There are just too many days where I feel that I haven't had the time to prepare a misdemeanor case for the optimum result.”

Likewise, another defender observed:

With such a heavy caseload and being expected to appear in up to 7 courtrooms per session, I am often unable to spend more than a few minutes with clients. Because most of our clients do not come to see us other than at court, I am often running with incomplete information. As a result, I am not always able to best advise or counsel my clients, and have made mistakes. In addition, our attorneys sometimes struggle to make it to all the courtrooms each session, and we end up filling in for each other. I was hired to work in an office where one lawyer represents one client, not where a parcel of lawyers trade off representation of one client and the client sees a different attorney every time. But with caseloads what they are, filling in is a common practice.

A defender described the work as often “just doing triage.” The defender related that clients “don’t get a lot of face time” and generally spend 20 minutes talking with their attorney. According to this defender, compared to private attorneys, the defender has less time. If the defender has 20 cases a day, the defender has to meet with the clients, and if they can meet ahead of time they can develop a game plan. The defender noted, “If I had one-quarter less caseload, I could follow up, go to clients’ houses, [and] help them with paperwork for jobs and DMV.” The defender added that a social worker could ease the burden by “talking to people; helping with life predicaments.”

“[W]ith the type of district court caseload I have, I am often in court trying cases well into the afternoon. There is absolutely no office time unless I come in over the weekend. . . . My clients (who love me in court and get great results at trial) feel like I'm never available when they call or stop by to see me.”

– Assistant Public Defender with 11-20 years experience as public defender

One defender commented:

I recently represented a Spanish speaking juvenile who was forced into a hearing without actually speaking to me about his case first!!! . . . More than once I have been forced to meet a client and try the case on the same day. I don't always have time [to] call each client, or research legal issues in each client's case, before the case is scheduled for court. We can always do more to prepare for court, but we each do as much as we can and do the best we can. I have noticed the impacts in several ways: clients don't know what to expect in court (because we didn't have time to call them or our limited appointment times are taken up), we can't paint the best picture at sentencing because we don't have enough information, we aren't fully prepared for trial (limitations on ability to conduct research because we have so many phone calls to return, etc.), we don't get medical/mental health records that we ideally would have, we haven't fully investigated cases, etc.

“Every week we rush to see a large number of people before their hearings on Thursday morning. Although we go over their rights, general mental health law, [and] collateral consequences of commitment and speak with them regarding the court process, there is seldom time to pursue witnesses or prepare pre-trial motions. Also, if we continue these cases to prepare in depth, the client is held pending hearing and they are charged for their stay.”

– Assistant Public Defender with 11-20 years experience as public defender

A defender noted that on days or in court sessions where the defender has lighter caseloads, the defender is always shocked at how much more attention the defender can give to each client. The defender related that in such circumstances, the defender can get a deeper understanding of the client, and their relationship is better. Sometimes when the defender has days where the defender can “talk slowly” with clients, the defender feels guilty about the times that the defender has rushed. According to the defender, “It feels like I could be doing a little bit better with each client if I had more time.”

Funding issues can create perverse, cumulative adverse effects. As one defender noted,

The lack of funding for our office results in attorneys who carry a heavy caseload and rarely have time to spend in the office. We often have to take work home, come to the office or visit the jail on the weekends, or spend time in the office after regular working hours just to review our cases or prepare them for an Administrative session of court. Some of my colleagues have had to take on second jobs just to make ends meet and they do not have the time to spend reviewing cases on the weekends or after regular working hours.

Conclusion

Survey responses conveyed three common themes about how current funding conditions are affecting defenders.

1. Financial stress is wearing on defenders, particularly younger attorneys.

"I have difficulty focusing at work due to the financial strain I am under as a result of my low salary. . . ."

– Assistant Public Defender with 4-10 years experience as public defender

"I have sincere concerns for the many attorneys in the office who are unable to meet their monthly obligations and no likelihood of any substantial pay increase, regardless of the quality of services they perform for the State of North Carolina."

– Chief Public Defender

2. Work overload is undermining defenders' ability to produce good results for clients.

"I would feel less stress if I had more time to devote to reviewing discovery, meeting with clients at the jail and at my office, and performing legal research. I would be a much more effective attorney if I had time to prepare more and stress less."

– Assistant Public Defender with 4-10 years experience as public defender

"Just when I feel that my head is above water, it gets pushed back under again. I spend most days gasping for a quick breath."

– Assistant Public Defender with 4-10 years experience as public defender

3. While defenders are committed and love their jobs, if conditions continue unchanged offices will lose good attorneys and clients will suffer.

“The attorneys I have the privilege to work with in this office are some of the best attorneys who practice in our district—every bit as good, if not better than, private attorneys here. Of course, they do not receive anywhere near the compensation for this work that they deserve. They work as public defenders because they are dedicated to representing indigent clients. A more dedicated group of lawyers I have never met. Obviously, we as public defenders will never make as much as we could in private practice, and there are many benefits that go along with working for IDS and the State, but the level of pay is pretty low, and I know of at least one incredibly talented attorney who was forced to leave this office due to the low pay, and others who are considering leaving.”

– Assistant Public Defender with three or less years experience as public defender

“Clients get frustrated and cases delayed [because] when attorneys leave the office, their many cases must be reassigned.”

– Chief Public Defender

The State of North Carolina has been fortunate to attract to its defender offices so many attorneys committed to advocating for indigent clients and trying to better those clients’ lives when possible. As can be seen from the responses to the survey, despite the pressures placed on them by financial hardship, work overload, and resource needs, defenders are able to achieve victories and to provide meaningful assistance to their clients through their dedication, persistence, and resourcefulness.

These defenders were well aware when they chose this professional path that it would not offer prospects for great wealth and that it would be hard work and low on amenities. Regardless, they should not themselves be consigned to the ranks of the working poor, and they should be afforded sufficient time and resources to be able to provide quality representation to all their clients. Any less not only denies the promise of *Gideon* but assures greater long-term costs to the state from increased and unwarranted incarceration and from clients’ and their families’ dependence on the state for assistance due to the effects of criminal convictions. In order to protect its investment, to avoid unnecessary and expensive consequences, to ensure the vitality of the state’s indigent defense system, and to fulfill its constitutional obligation to provide effective assistance of counsel to indigents, the General Assembly must approve increased and adequate funding for this important work.