



COREY O'CONNOR

Allegheny County Controller

**Performance Audit Report on
Allegheny County's Office of the Public Defender
Indigent Defense Services
For the Period
January 1, 2022 through December 31, 2023**

February 12, 2025

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February 11, 2025

Ms. Lena Bryan-Henderson
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Pittsburgh, PA 15219

Performance Audit Report on
Allegheny County's Office of the Public Defender Indigent Defense Services
For the Period January 1, 2022 through December 31, 2023

Dear Chief Public Defender Henderson:

We conducted a performance audit to review the operations and effectiveness of the indigent defense services offered through the Office of the Public Defender (OPD) in conjunction with the Court of Common Pleas. Our procedures were applied to the period from January 1, 2022 through December 31, 2023. However, we also included certain records which related to current 2024 OPD processes. Our performance audit was performed in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

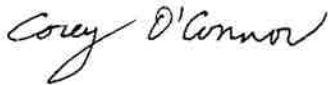
The results of our procedures revealed that the OPD needs to improve attorney caseload management and analysis as well as internal controls and procedures surrounding the adult client intake process. In addition, based on the American Bar Association *Ten Principles of a Public Defense Delivery System*, we noted that the process to assign court-appointed attorneys is not independent.

We offer recommendations so that the OPD can better assist their clients. The results of our audit are detailed in the attached report.

Chief Public Defender Henderson
February 11, 2025
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We would like to thank the management and staff of the Office of the Public Defender and the Court of Common Pleas for their courtesy and cooperation during our audit.

Kind regards,



Corey O'Connor
Controller



Lori A. Churilla
Assistant Deputy Controller, Auditing

cc: Honorable Patrick Catena, President, County Council
Honorable John F. Palmiere, Vice-President, County Council
Honorable Sara Innamorato, County Executive, Allegheny County
Mr. John Fournier, County Manager, Allegheny County
Mr. Grant Gittlen, Chief of Staff, Allegheny County
Mr. Ken Varhola, Chief of Staff, County Council
Ms. Sarah Roka, Budget Manager, County Council
Mr. Chris Connors, District Court Administrator, Fifth Judicial District of Pennsylvania
Administrative Office

I. Introduction

Public defenders safeguard individuals' rights and offer protections provided for in the United States Constitution. In Allegheny County the Office of the Public Defender (OPD) provides legal counsel to any person who cannot afford a lawyer in any proceeding where representation is constitutionally required. Applications are accepted online, in person, over the phone, and on-site in the jail for incarcerated individuals. Under current OPD policy, an adult defendant must meet income requirements to qualify for a Public Defender. However, per OPD policy, adults who are in custody automatically qualify for representation and will be interviewed in the Jail. Currently, the OPD considers the Federal Poverty Guidelines, household income, and the nature of the charges when determining whether an adult defendant qualifies for representation. Beginning in 2024, the OPD uses 175% of the Federal Poverty guidelines for income requirements as shown in the chart below.

2024 (175%) Federal Poverty Guidelines (Persons per Household – Household Income)	
1 - \$26,355	8 - \$92,260
2 - \$35,770	9 - \$101,675
3 - \$45,185	10 - \$111,090
4 - \$54,600	11 - \$119,430
5 - \$64,015	12 - \$129,920
6 - \$73,430	13 - \$139,335
7 - \$82,845	14 - \$148,750

A conflict of interest may exist where the OPD cannot represent an individual. For example, a conflict would occur if a client of the OPD is identified as a victim of another potential client, or if there are multiple individuals charged with conspiracy on a case. The OPD can only represent one of these individuals. The other person will be transferred to a conflict attorney. If there is a conflict within the OPD, the case is transferred to the Allegheny County Office of Conflict Counsel. If there a conflict within Conflict Counsel, the case is transferred to a private practice attorney that accepts indigent/court-appointed cases (court-appointed attorney). If the private practice attorney receives the case during the preliminary hearing (see explanation below), the Administrative Judge appoints the specific attorney. However, if a criminal court judge has been assigned to the case, that judge will appoint the specific attorney.

There are various stages for a criminal case in Pennsylvania, a brief description of the main stages is shown below. Attorneys at the OPD are assigned to various divisions, including pre-trial (which includes the preliminary hearing), trial (which includes the attorneys that are assigned to work on major felony cases), and appeals. The OPD also has attorneys that assist with probation and parole violation hearings and involuntary commitments under the Mental Health Procedures Act. In addition, certain public defenders are assigned to juvenile cases, which were not included in the scope of this audit.

I. Introduction

- **Preliminary Arraignment** – The preliminary arraignment is a proceeding before a Magisterial District Judge where the individual is provided a copy of the complaint and bail is set. If the individual receives a summons, rather than having been arrested, bail may be set before the preliminary hearing. A public defender may be present at the preliminary arraignment.
- **Preliminary Hearing-** The preliminary hearing is held by a Magisterial District Judge between three and 10 days after arrest (if the case proceeds by summons the time period is longer). The Commonwealth must present a prima facie case and will argue to the District Judge that they presented the basic elements of the alleged crime(s). An Assistant District Attorney presents the case on behalf of the Commonwealth and the defendant's attorney or a public defender may be present. If the District Judge finds the prima facie case is not presented, the defendant should be discharged. If they find the prima facie case is presented, the case is held for court and proceeds to the formal arraignment, which is held approximately six to eight weeks later.
- **Formal Arraignment-** The defendant is presented with the specific and numbered counts of the offenses charged against them, the Court of Common Pleas Judge is assigned, and a date for the pretrial conference is set (approximately two to four weeks).
- **Pretrial Conference-** The defendant, their attorney or a public defender, and the Assistant District Attorney appear before the assigned Judge, and a trial date will be set. The defendant will either elect to plead guilty or proceed to a jury trial or non-jury trial (tried by the Judge alone).
- **Trial-** The case can be tried as a jury or non-jury trial. The Assistant District Attorney must establish the defendant's guilt beyond a reasonable doubt. The defendant's attorney, or a public defender, represents the defendant. The Judge or jury return a verdict (in a jury trial, the verdict must be unanimous) on the case. If the defendant is found not guilty, they are dismissed. If they are found guilty, they will be sentenced.
- **Guilty Plea-** A defendant may waive their right to a trial and enter a plea of guilty where they admit their guilt to the charges or a plea of nolo contendere where they do not contest the facts of the case. The Judge must accept the plea and the case will proceed to sentencing.
- **Sentencing-** The defendant may be sentenced the same day as the plea date or trial verdict or may be sentenced at a later date (up to 90 days after the plea or guilty trial verdict).
- **Appeals/Post-Conviction Relief-** Appeals must be filed within 30 days of the sentencing date or court's ruling on post-sentencing proceedings.

I. Introduction

In 2022 and 2023, the total cost of indigent defense services totaled approximately \$12.8 million and \$14.5 million respectively, with an increase of 13% between the two years.

Actual Expenditures	2023	2022	Increase
Office of the Public Defender	\$ 11,940,644	\$ 10,570,703	\$ 1,369,941
Conflict Counsel	916,430	840,810	75,620
Other Court-Appointed Attorneys	1,665,123	1,426,624	238,499
Total Expenditures	<u>\$ 14,522,197</u>	<u>\$ 12,838,137</u>	<u>\$ 1,684,060</u>

Source: County of Allegheny Annual Comprehensive Financial Report and Allegheny County JDE Accounting Records

We noted that the starting salary for an attorney at the Public Defender' Office, as well as those in the District Attorney's Office, increased from approximately \$45,000 in 2022 to \$65,000 in 2023. Court-appointed private practice attorneys are not County employees and are typically paid an hourly rate with a set maximum that varies based on the stage and type of case. In 2022, the hourly rate was \$75 (which was increased to \$100 for homicides), and court time was paid based on a half or a full day in court. The fee structure was changed in June 2023, and the hourly rate was increased and varied between \$80 to \$110 based on the case type. The fee structure, including the hourly rate and case maximum for certain case types, was updated again in September 2024, but the hourly rate is still between \$80 and \$110.

The Allegheny County Budget Office provided us with information on the number of budgeted positions that were filled and vacant in October of each year from 2022 through 2024. The number of specific positions can be adjusted throughout the year based on need, so the position counts are fluid. Based on the available data, the OPD filled approximately 85% of its positions from 2022 through 2024. The position counts for each position are detailed in the Table I on page 6.

Table I

**Office of the Public Defender - Filled and Vacant Positions
As of October 2022, 2023, and 2024**

Attorney Position	October 2022		October 2023		October 2024	
	Filled	Vacant	Filled	Vacant	Filled	Vacant
Chief Deputy Director	1	0	1	0	1	0
Deputy Director Juvenile Division	1	0	1	0	1	0
Deputy Director Major Felony Unit	1	0	1	0	1	0
Deputy Director Post Trial Division	1	0	1	0	1	0
Deputy Director Pretrial Division	1	0	1	0	1	0
Deputy Director Trial Division	1	0	1	0	1	0
Director	1	0	0	1	1	0
Director of Training and Policy	1	0	1	0	1	0
Education Attorney	1	0	0	1	1	0
Manager of Policy	1	0	1	0	1	0
Manager Pretrial	2	0	2	0	1	0
Manager Trial	3	0	3	0	2	1
Managing Attorney	3	0	4	0	7	0
Senior Deputy Director of Trial Advocacy	0	0	1	0	0	1
Trial Defender	6	0	6	0	12	3
Trial Defender 2	9	0	7	0	9	0
Trial Defender 3	15	0	13	1	13	1
Trial Defender 4	32	16	48	1	35	5
Attorney Position Totals	80	16	92	4	89	11
	83%	17%	96%	4%	89%	11%
Non-Attorney Position						
Adult Practice Advocate	0	0	1	0	1	0
Chief Investigator	1	0	0	0	0	0
Education Advocate	2	0	2	0	2	0
Financial Analyst	1	0	1	0	1	0
Intake Administrator	0	0	1	0	1	0
Intake Manager	2	0	1	0	1	0
Intake Paralegal	2	0	2	0	2	1
Intern	2	3	1	4	0	3
Investigator	7	0	5	2	7	0
Law Clerk II	0	0	0	0	3	7
Legal Intake Clerk	3	2	5	1	5	0
Legal Intake Clerk Assistant	0	0	0	0	1	0
Legal Secretary	3	0	2	1	3	1
Legal Secretary 1	7	1	7	0	8	0
Manager of Diversity, Equity, Inclusion	0	0	1	0	1	0
Manager of Investigations	1	0	1	0	1	0
Manager of Legal Support	0	0	1	0	1	0
Multimedia Legal Analyst	1	0	0	1	1	0
Office Manager	1	0	1	0	1	0
Part Time Law Clerk (<i>Clerk to Attorney</i>)	16	2	14	4	4	4
Payroll Technology Coordinator	1	0	0	0	0	0
Peer Support Advocate	0	0	0	0	1	1
Senior Investigator	2	0	2	0	2	0
Social Worker	6	0	3	2	3	2
Supportive Representation Unit Social Worker	0	0	1	0	1	0
Non-Attorney Position Totals	58	8	52	15	51	19
	88%	12%	78%	22%	73%	27%
TOTAL	138	24	144	19	140	30
	85%	15%	88%	12%	82%	18%

Source: Allegheny County Budget Office

II. Objectives, Scope, and Methodology

Objectives

Our objectives were to:

- Determine the processes utilized by the OPD and the Court of Common Pleas (including the Office of Conflict Counsel) in providing indigent defense services in Allegheny County.
- Determine whether the OPD utilizes applicable best practices (American Bar Association *Ten Principles of a Public Defense Delivery System*) to provide effective legal representation to indigent defendants in criminal cases. This will include the following specific objectives:
 - Determine if the County’s public defense function is independent in its selection of the public defender or court-appointed attorney assigned to specific cases.
 - Determine how the County monitors and evaluates individual attorney caseloads, including what standards are utilized, to ensure caseloads are not excessive.
 - Determine how the County ensures that an attorney (public defender or court-appointed attorney) possesses adequate experience and training for the type of case assigned.
 - Determine if the County offers continuing education that is available to all attorneys working in public defense.
- Test a sample of attorney cases to determine if the caseload complies with applicable standards.
- Compare salaries and benefits of the Public Defender’s Office attorneys to the salary and benefits of comparable positions in the District Attorney’s Office.
- Compare the compensation and fee caps for private public defense attorneys in Allegheny County to those in similar Pennsylvania jurisdictions.
- Determine if there is a surplus in the Courts that could be used to increase compensation and fee caps for private public defense attorneys.
- Determine how the Office of the Public Defender ensures defendants meet the requirements to qualify for representation.

Scope

Our audit procedures covered the period January 1, 2022, through December 31, 2023, for indigent services for adult clients. However, we also included certain records which related to current 2024 OPD processes. Juvenile court cases were not included in our scope. We conducted our audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

II. Objectives, Scope, and Methodology

Methodology

Methodologies used to accomplish our objective included, but were not limited to, the following:

- Interviewed personnel from the OPD and the Court of Common Pleas, including Conflict Counsel, to gain an understanding of the processes involved in providing adult indigent defense services in Allegheny County, including internal controls deemed significant within the context of our objectives. Any significant findings related to internal control are included in the findings and recommendations section of the report.
- Reviewed and evaluated best practices, studies, policies, procedures, reports, and other relevant documents associated with indigent defense services.
- Compared certain public defense practices in Allegheny County against those defined in the American Bar Association *Ten Principles of a Public Defense Delivery System*. Our scope only included those principles identified in the objectives listed above. Our scope did not include every principle identified by the American Bar Association.
- Reviewed national caseload standards and obtained information on how these national standards apply to the Allegheny County OPD.
- Allegheny County Court Administration provided a file from the Common Pleas Criminal Court Case Management System (CPCMS) containing data on criminal cases filed in 2023. We analyzed the data to calculate OPD attorney caseloads and compared the calculated caseloads against the caseload standards.
- Compared salary information for OPD, District Attorney, and Conflict Counsel attorneys.
- Examined fee information for court-appointed private practice attorneys.
- Reviewed financial records for the OPD and the Court of Common Pleas Conflict Counsel and analyzed the Courts financial records to identify any budget surplus.
- Evaluated the eligibility and verification process utilized by the OPD and compared the OPD application to applications from nearby counties.
- Tested a sample of judgementally selected cases filed in 2024 to verify the OPD obtained a signed indigency affidavit from client.
- Performed other procedures as deemed necessary.

We provided a draft copy of this report to the Chief Public Defender for response. The response begins on page 22.

III. Findings and Recommendations

Finding #1

The Office of the Public Defender Needs to Improve Attorney Caseload Management and Analysis

Criteria:

In August 2023, the American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLCID) published the *Ten Principles of a Public Defense Delivery System*. Principle #3 address the control of workloads and states: “The workloads of the Public Defense providers should be regularly monitored and controlled to ensure effective and competent representation. Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations. Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology.” Public Defense providers include public defender offices/agencies and attorneys who provide defense services at the public’s expense

In 2023, the RAND Corporation, in collaboration with the National Center for State Courts, the ABA SCLCID, and Stephen F. Hanlon, Principal, Law Office of Lawyer Hanlon, published the *National Public Defense Workload Study* (NPDWS). The NPDWS defined 11 case types and, through an expert panel, identified the number of hours needed to provide reasonable effective assistance of counsel for each case type (also referred to as case weight). The Study also provided an annual caseload standard based on the case weight, assuming an attorney has 2,080 hours available in a year.

Condition:

The case management system utilized by the OPD does not have the capability to track weighted caseloads by attorney. Additionally, there are times when the system has incorrectly identified the attorney assigned to a case, making it difficult to use the case management system’s information for caseload analysis. Although many attorneys keep information on their own caseloads, the OPD did not maintain any other centralized tracking system. As a result, case weights based on case type were not analyzed by the OPD during our audit period. Therefore, we performed our own caseload analysis.

The OPD provided us with data compiled from its case management system and information self-reported by the attorneys, but the records did not include the type of case. Consequently, we could not use this data for the caseload analysis. Alternatively, Allegheny County Court Administration provided us with a file from the Common Pleas Case Management System (CPCMS) containing data on cases filed in 2023 (excluding expunged and

III. Findings and Recommendations

clean-slated cases), separated by department (public defender, conflict counsel, and other attorneys). The CPCMS is the statewide system containing court docket information for criminal case records.

The NPDWS caseload standards referenced above were calculated using 2,080 hours available for case work during the year, which means the attorney would work on case related work eight hours a day, five days per week, for all 52 weeks in the year. Therefore, the local jurisdiction must develop annual attorney availability. The OPD converted the 2,080-hour work year to its work year, adjusting for vacation days, benefit days, holidays, non-case hours, and a paid lunch, and estimated that an attorney has 1,356 hours available for case work in a year.

Additionally, the NPDWS case weights (hours per case type) are based on vertical representation where the same attorney represents the client from start to finish. In most cases, the OPD utilizes horizontal representation where a different attorney represents the client at the preliminary hearing and the trial, reducing the number of hours required for the trial attorney by an estimated 12.5%. However, certain major felony cases and attorneys use vertical representation. In these cases, the NPDWS hours would apply.

The table below shows the standard case weights (hours per case) and associated annual caseloads by case type. The NPDWS standard is based on vertical representation and 2,080 available hours. The OPD standard adjusts the NPDWS standard hours based on the office’s horizontal representation system (OPD standard hours) and the 1,356 available hours.

Case Type	NPDWS		Public Defender	
	Hours Per Case	Annual Caseload	Hours Per Case	Annual Caseload
Felony-High-LWOP	286.0	7	250.3	5
Felony-High-Murder	248.0	8	217.0	6
Felony-High-Sex	167.0	12	146.1	9
Felony-High-Other	99.0	21	86.6	15
Felony-Mid	57.0	36	49.9	27
Felony-Low	35.0	59	30.6	44
DUI-High	33.0	63	28.9	46
DUI-Low	19.0	109	16.6	81
Misdemeanor-High	22.3	93	19.5	69
Misdemeanor-Low	13.8	150	12.1	112
Probation Violations	13.5	154	11.8	114

Source: National Public Defense Workload Study (NPDWS) and the Office of the Public Defender

III. Findings and Recommendations

We further adjusted the OPD available hours for the time spent on cases for managers (attorney with management duties) that do not work full time on cases and for attorneys that began or ended employment during the year (referred to as adjusted available hours). We used the CPCMS case data, the adjusted available hours, and either the OPD or NPDWS standard hours (depending on case type or attorney) to analyze caseloads for OPD trial attorneys for 2023. For each trial attorney, we summarized the number of cases for each case type and calculated the total hours needed for those cases based on the standard hours. Then we calculated a caseload ratio by dividing the total standard hours by the adjusted available hours. Percentages of 100% and below indicate the attorney has enough available hours to meet the standards, meaning the caseload is within the standard. Percentages over 100% indicate the attorney did not have enough available hours to meet the standard, meaning the caseload exceeds the standard.

Our analysis found that 36 out of the 42 trial attorneys (86%) had caseloads that exceeded the standard. For these 36 attorneys, the average caseload ratio was 243.4% for 2023. These 36 attorneys would need to work their 40,355 available hours (in total) plus an additional 57,868 hours (in total) to meet the caseload standard of 98,223 hours. Schedule I on page 21 details the caseload ratio for each trial attorney.

The table below depicts the details for an example of one attorney’s caseload. This attorney would need 4,196.4 hours to meet the standard, however, they only have 1,356 hours available for the year. Therefore, this attorney would need more than three times their available hours to meet the caseload standard, or 2,840.4 additional hours.

Example of One Attorney’s Caseload (Based on 2023 Cases Filed per CPCMS)		
	Attorney Cases per CPCMS	OPD Standard Hours Needed
Felony-High-Other	2	173.2
Felony-Low	36	1,101.6
DUI-High	3	86.7
DUI-Low	101	1,676.6
Misdemeanor-High	11	214.5
Misdemeanor-Low	78	943.8
Total hours needed based on OPD standard		4,196.4
Attorney’ available hours		1,356.0
Caseload Ratio (Standard Hours vs Available Hours)		309%
<i>Source: Common Pleas Case Management System (CPCMS) data and OPD case weights and available hours.</i>		

III. Findings and Recommendations

Although our analysis shows the caseloads of many public defenders exceeds the adjusted workload standard, it does not imply that defendants do not receive effective assistance from counsel. The adjusted available hours are calculated based on an attorney only working the required number of hours and taking advantage of benefit time. According to the OPD, many attorneys work longer hours than they are paid for (including weekends), forfeit vacation days, and work federal holidays.

Even though our analysis identified that OPD attorney caseloads exceeded those provided in the standards, the CPCMS data utilized in our analysis is not designed to replace data from a case management system and is limited to the information in the system at the time the report was generated. While managing attorney caseloads should be a major focus of the office, the OPD must first implement a comprehensive case management system and conduct their own detailed caseload analysis using data from this new system before adjusting personnel assignments.

Cause: As noted in Table I on page 6, there were various unfilled positions throughout the OPD that ranged from approximately 19 to 30 vacancies from 2022 to 2024. Public defender staffing is also subject to funding constraints, limiting the number of attorney and staff positions in the OPD. In addition, the inadequate income verification process could also contribute to excessive caseloads if public defenders are representing clients that would not be eligible for a public defender.

Effect: The lack of an adequate case management system impairs the ability of the OPD to properly analyze attorney caseloads. This can lead to increased inefficiencies throughout the office and can result in a disproportionate distribution of cases. When public defenders carry excessive caseloads, the quality of representation could suffer, impacting case outcomes.

Recommendations: In alignment with the ABA's *Ten Principles of a Public Defense Delivery System*, we strongly recommend that the OPD implement the following recommendations to better manage caseloads:

- Work with the Governor's Office and the State Legislature (through County officials) to seek additional resources ensuring sufficient funding is provided for an adequate public defense system. This will ensure that each attorney is given the time and resources necessary to provide effective representation and allow funding for necessary staffing including investigators, social workers, and support staff.

III. Findings and Recommendations

- Work to fill vacant positions to alleviate excessive workloads for current personnel and assist in servicing clients who require public defense.
- Implement a formal caseload management software system that evaluates the complexity and demands of each case. Use data-driven tools to determine the appropriate number of cases an attorney can reasonably manage at a given time, factoring in case complexity, client needs, and other duties. Periodically review and adjust caseload caps to reflect actual workload requirements.
- Update the internal case assignment and review process to include an hours-based approach to aid in the identification of potential case load issues and ensure that each case is being handled appropriately. In addition, use performance metrics, client outcomes, and attorney feedback to make informed decisions about resource allocation, staffing, and process improvement, ensuring continuous quality enhancement.
- Established outcome reports on caseload statistics, resource allocation, and performance results to foster transparency. Make periodic reports available to the County Executive, County Council and other legislative bodies, to ensure accountability and to build public confidence in the public defense system.

**Management's
Response:**

The response from the Chief Public Defender begins on page 22.

III. Findings and Recommendations

Finding #2

The Process to Assign Court-Appointed Attorneys is Not in Alignment with American Bar Association Principles

- Criteria:** The ABA SCLAID *Ten Principles of a Public Defense Delivery System*, Principle #1 states that “public defense providers and their lawyers should be independent of political influence and subject to judicial authority and review only in the same manner and to the same extent as retained counsel and the prosecuting agency and its lawyers.” Independence should extend to the selection, funding, and payment of public defense providers and lawyers.
- Condition:** The District Attorney is the prosecuting agency in Allegheny County and is an independently elected official, separate from the Allegheny County Chief Executive and the Court of Common Pleas. Therefore, based on the ABA principles, the selection of public defense providers should be as independent as it is in the District Attorney’s Office.
- Personnel within the OPD and the Office of Conflict Counsel assign cases to attorneys in their respective offices. However, the court-appointed attorneys are selected by the Administrative Judge or the Criminal Court Judge, which fall under the judicial system. If the court-appointed attorney is assigned during the preliminary hearing, the Administrative Judge appoints the specific attorney from a list of vetted attorneys that have agreed to represent court-appointed cases. If a criminal court judge has been assigned to the case, that judge will appoint the attorney. Therefore, based on the ABA principles, the selection of court-appointed attorneys is not independent of the judicial system. Our finding does not imply that the Courts are not in compliance with the Pennsylvania Rules of Criminal Procedure.
- Cause:** According to Court Administration, their processes align with the Pennsylvania Rules of Criminal Procedure.
- Effect:** Based on the ABA principles, the current process is not independent of the judicial system, which could create the appearance that the system for assigning court-appointed attorneys to public defense cases is unfair and not impartial.
- Recommendations:** In alignment with the ABA’s *Ten Principles of a Public Defense Delivery System*, we recommend that the OPD work with appropriate parties to:

III. Findings and Recommendations

- Develop clear, standardized criteria for assigning court-appointed attorneys to public defense cases. These guidelines should ensure that factors like attorney experience, specialty areas, and case complexity are considered, while ensuring that judicial preferences do not skew the selection process. The criteria should also include provisions to prevent judges from recommending or selecting specific attorneys to avoid any conflicts of interest.
- Implement a centralized, automated case tracking system for assigning court-appointed attorneys to public defense cases. The system should be independent of individual judges and based solely on factors like attorney availability, expertise, and caseload, ensuring that assignments are random or based on objective criteria rather than judicial discretion.
- Ensure that the assignment process is transparent and auditable, providing documentation of how each case is assigned. This transparency can reduce any perceived bias in the assignment process.

**Management's
Response:**

The response from the Chief Public Defender begins on page 22.

III. Findings and Recommendations

Finding #3

The Office of the Public Defender Needs to Strengthen Internal Controls and Procedures

Criteria:

The purpose of the Public Defender’s Act of December 2, 1968 (the Act), is “to provide for the office of Public Defender, authorizing assistants and other personnel, and to provide adequate representation for persons who have been charged with an indictable offense or with being a juvenile delinquent, who for lack of sufficient funds are unable to obtain legal counsel.”

Section 6 of the Act further states the Public Defender shall be responsible for furnishing legal counsel in certain cases to any person who, for lack of sufficient funds, is unable to obtain legal counsel. The Public Defender, after being satisfied of the person’s inability to procure sufficient funds to obtain legal counsel to represent the person, shall provide such counsel. Every person who requests legal counsel shall sign an affidavit that they are unable to procure sufficient funds to obtain legal counsel to represent them and shall provide, under oath, such other information as may be required by the Court, the Public Defender, or the PA Rules of Criminal Procedure. In addition, Section 8 states that false affidavits and false statements made by any person for the purpose of securing counsel or services under this Act, are subject to the penalties prescribed by law for perjury and, if convicted, said person shall make restitution as determined by the Court of all monies paid on the basis of the false affidavit or statement.

Condition:

Our procedures found that the OPD can strengthen its internal controls and procedures surrounding the client intake process.

The intake process for a public defender starts with an application, which can be submitted in person, over the phone, online, or through in-person meetings for individuals incarcerated in the Jail. The intake staff maintain a separate log for each application method and document every time someone contacts the office. If the application is completed online, the staff print the application. If it is completed over the phone, in-person, or at the jail, OPD intake personnel interview the applicant and enter the information into a Microsoft Word document. Regardless of application method, staff must complete several other processes including a conflict-of-interest check, a screening to determine if the case qualifies for the Major Felony Unit (MFU), and preparing a physical file. When applicants complete the application themselves either online or in pre-printed paper form (in-person, via fax or email), it could reduce some of the burden on the intake staff and

III. Findings and Recommendations

allow additional time for them to perform other vital tasks. Intake staff could still assist applicants in instances when they are not capable of completing their own application.

The current Client Qualification form (the application) on the OPD's website only requires basic client information and includes 12 qualification questions as well as a statement of indigency. The application does not ask for information such as charges filed, bond amount, prior criminal history, prior representation by the public defender, and names and addresses of witnesses and possible alibis. The financial questions do not require the applicant to list any sources of income or amounts (for themselves or others that support the household), household size, or available resources (cash on hand or in the bank). Requesting this additional information on the application could assist in processing the application, aid the attorney in preparation for the case, and increase administrative efficiencies.

During our audit period, the OPD did not employ an eligibility process to determine if a prospective client lacked sufficient funds to obtain legal counsel. According to the OPD, the office was using the poverty guidelines and collecting signed affidavits to verify eligibility prior to the 2020 COVID-19 pandemic. However, these procedures were abandoned when the pandemic occurred. After the pandemic, the OPD found it challenging to reinstate the income verification and affidavit processes due to a lack of staffing.

In 2024, the OPD implemented income qualification guidelines where prospective clients with income above 175% of the federal poverty level would not qualify for OPD representation. According to the OPD, incarcerated applicants are presumed to be indigent as they are unable to be employed or post bond. The statement of indigency section on the updated online application now includes the federal poverty amounts. The section of the form also includes an affidavit where the applicant must check a box to attest that they are unable to procure sufficient funds to obtain legal counsel to represent them in their pending legal criminal matters. A separate affidavit form is available for individuals that apply in person. Although potential clients attest that they meet the guidelines, the application does not request income amounts or require applicants to provide any income verification documentation.

Since there was not an eligibility process in place during our audit period, we reviewed processes in place during 2024. We tested a sample of 20 open cases filed in 2024 to verify the client signed the affidavit stating they cannot procure sufficient funds for counsel. Our testing found that eight of the 20 (40%) cases were incarcerated, so the affidavit was not required per the OPD. For the remaining 12 cases: the OPD obtained a signed affidavit

III. Findings and Recommendations

for four cases (33%), verbally confirmed the affidavit over the phone for three cases (25%), but could not provide us with a signed affidavit for five cases (42%). Although the lack of documentation to support client income and missing affidavits are weaknesses in the OPD's policies, procedures, and internal controls, it does not imply that clients did anything wrong or do not qualify for services.

Under the Public Defender's Act, the OPD can only represent individuals after being satisfied of the person's inability to procure sufficient funds to obtain legal counsel. Every person requesting legal counsel shall sign an affidavit that they are unable to procure sufficient funds to obtain legal counsel and shall provide, under oath, other information required by the public defender. Individuals that make false affidavits and false statements are subject to the penalties prescribed by law for perjury and, if convicted, the individual shall make restitution of all amounts paid on the basis of the false affidavit or statement.

The OPD should reexamine its qualification policy to ensure their procedures fulfill the Act's requirement to be satisfied of the applicant's inability to procure sufficient funds to obtain legal counsel. Although the Public Defender's Act does not specially require the applicant to submit supporting income records, it allows for the OPD to require "other information." Requesting this additional information on the front end could reduce wait times and assignments downstream, aid the legal staff/attorney in preparation for the case, and increase administrative efficiencies. We reviewed public defender applications for three nearby counties and websites for four additional Pennsylvania counties. All these counties require the applicant to provide documentation to support their income. We did note that certain counties allow an exception for incarcerated applicants.

Cause: The OPD does not have a comprehensive policy to address intake procedures. According to the OPD, they do not have enough staff to assign an employee to the income verification process. As noted in Table I on page 6, there were various unfilled positions throughout the OPD that ranged from approximately 19 to 30 vacancies from 2022 to 2024.

Effect: Weak internal controls and inadequate procedures can lead to inefficiencies and can place unnecessary strain on an already overburdened system. In addition, weaknesses in the verification process can lead to a risk that applicants do not qualify for a public defender. In cases where there is a conflict of interest, individuals are automatically eligible for a Conflict Counsel attorney, or a court-appointed private practice attorney, if they qualify through the OPD. Therefore, the Courts rely on the OPD's income verification and do not perform their own verification procedures.

III. Findings and Recommendations

Recommendations: In alignment with the Public Defender’s Act and American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID) *Ten Principles of a Public Defense Delivery System* (ABA’s principles), which emphasize the importance of equal access to justice and the right to competent legal representation, we recommend that the OPD:

- Develop a systematic client intake policy, including requirements related to client eligibility.
 - Train staff on the new intake policy and clearly communicate all procedures and requirements to ensure consistent enforcement of the policy.
 - Strengthen procedures to ensure each applicant signs an affidavit that they are unable to procure sufficient funds to obtain legal counsel to represent them.
- Update the application to request additional information that can assist in processing the application and aid the attorney in preparation for the hearing.
- Encourage individuals to submit an electronic application online or complete a paper application form in person, via fax, or through email to reduce the time required for OPD staff to data-enter applicants’ information.
 - Work with Jail personnel to determine if the application can be made available on the tablet provided to each incarcerated so they can complete and submit the application to the OPD.
 - Work with Court personnel to determine if paper applications can be made available by the OPD at local Magisterial District Judge offices so potential clients have access to them at the time of their preliminary hearing.

**Management’s
Response:**

The response from the Chief Public Defender begins on page 22.

IV. Conclusion

To improve the services provided to indigent clients, the OPD needs to improve attorney caseload analysis and management. The OPD workloads should be monitored regularly and controlled to ensure effective representation. Our analysis revealed that 36 (86%) of the 42 trial attorneys had caseloads that exceeded the standards in 2023. For these 36 attorneys, the average caseload percentage was 243.4%, meaning that these attorneys would need to work their 40,355 available hours (in total) plus an additional 57,868 (in total) hours to meet the caseload standard of 98,223 hours. Furthermore, the OPD needs to strengthen internal controls and procedures surrounding the intake process.

In addition, the assignment process of court-appointed attorneys is not independent based on the American Bar Association *Ten Principles of a Public Defense Delivery System*. The OPD should work with appropriate parties to ensure that the process of assigning court-appointed attorneys to public defense cases is independent and free from potential conflicts of interest.

By implementing our recommendations, the public defender's operations will significantly improve, become transparent, utilize resources more efficiently, and adequately monitor and stop the cycle of overwhelming caseloads. In addition, our recommendations can help to ensure the process for assigning court-appointed attorneys is fair, independent, and transparent based on the American Bar Association *Ten Principles of a Public Defense Delivery System*.

2023 Caseload Ratios for Office of the Public Defender Trial Attorneys

Attorney	CPCMS Cases Filed in 2023	Standard Hours Needed	OPD Available Hours	Time Spent on Cases	Adjusted Available Hours	Caseload Ratio
#1	98	3,922	1,356	75%	1,017	386%
#2	76	2,893	1,356	61%	827	350%
#3	106	4,602	1,356	100%	1,356	339%
#4	97	4,199	1,356	100%	1,356	310%
#5	231	4,196	1,356	100%	1,356	309%
#6	100	4,116	1,356	100%	1,356	304%
#7	158	4,098	1,356	100%	1,356	302%
#8	94	3,951	1,356	100%	1,356	291%
#9	98	3,905	1,356	100%	1,356	288%
#10	92	3,758	1,356	100%	1,356	277%
#11	115	3,709	1,356	100%	1,356	274%
#12	91	3,573	1,356	100%	1,356	263%
#13	74	2,606	1,356	75%	1,017	256%
#14	84	3,471	1,356	100%	1,356	256%
#15	80	3,427	1,356	100%	1,356	253%
#16	77	3,386	1,356	100%	1,356	250%
#17	88	3,355	1,356	100%	1,356	247%
#18	135	3,351	1,356	100%	1,356	247%
#19	67	2,491	1,356	75%	1,017	245%
#20	90	3,217	1,356	100%	1,356	237%
#21	101	3,217	1,356	100%	1,356	237%
#22	68	3,028	1,356	100%	1,356	223%
#23	17	742	1,356	25%	339	219%
#24	11	438	1,356	15%	203	215%
#25	16	685	1,356	25%	339	202%
#26	14	668	1,356	25%	339	197%
#27	47	1,999	1,356	75%	1,017	197%
#28	16	2,600	1,356	100%	1,356	192%
#29	76	2,467	1,356	100%	1,356	182%
#30	16	610	1,356	25%	339	180%
#31	51	2,425	1,356	100%	1,356	179%
#32	36	1,967	1,356	100%	1,356	145%
#33	11	1,854	1,356	100%	1,356	137%
#34	11	446	1,356	25%	339	132%
#35	5	1,243	1,356	75%	1,017	122%
#36	36	1,608	1,356	100%	1,356	119%
#37	42	1,314	1,356	98%	1,329	99%
#38	6	1,291	1,356	100%	1,356	95%
#39	7	1,258	1,356	100%	1,356	93%
#40	28	1,025	1,356	100%	1,356	76%
#41	5	915	1,356	100%	1,356	67%
#42	3	399	1,356	55%	746	53%
	2,674	104,425	56,952		47,853	



OFFICE OF THE
PUBLIC DEFENDER
ALLEGHENY COUNTY

Dear Allegheny County Controller O'Connor and Team,

I want to express my gratitude for the time and effort the Controller's Office dedicated to this audit. The report correctly identifies our office's critical need for additional attorneys and a modernized case management system—both of which are essential to improving our ability to serve indigent clients effectively.

I also want to express my gratitude to the County Executive, Sara Innamorato, and her team for their support in providing additional resources to address running the Office of the Public Defender more effectively. It is clear that the Office of the Public Defender, the County Controller, and the County Executive have the same goal of improving the quality of representation our clients.

Since taking over the position of Chief Public Defender in 2024, I have already taken steps to improve processes and internal controls in the department. Due to the reporting period of the audit, the impact of our new policies and procedures are not truly reflected in the recommendations. With that in mind, I respectfully respond with the following for consideration:

Response to Finding 1

I could not agree more that the Office of the Public Defender needs to improve attorney caseload management and analysis.

Specifically, implementing new case management software would greatly improve our ability to manage caseloads and provide opportunities for analysis. The current case management software provided to us is dated, inadequate, and often creates more work rather than less. Despite years of consistent training on the software and continued utilization, the overwhelming consensus is that our current case management software is an unhelpful but necessary burden. Due to the software's inability to accurately provide the office with data, attorneys are required to keep separate records to track their caseloads. Attorneys now carry the burden of utilizing inadequate software, maintaining their files, and managing their own case data so that it may be consolidated to reflect the work of the office. This is work intensive and unacceptable.

Lena Bryan-Henderson, Chief Public Defender

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The office of the Public Defender is in great and undeniable need of a case management system that can track caseloads and provide reliable data.

There is an implication in the recommendations portion of Finding 1 that the Office of the Public Defender utilizes an informal case management system and methods to assign and track cases. This is not accurate. Across the office, our deputies and managers screen all cases before assignment. They consider the severity of the charges, complexity of the case, any unique needs of the client, the courtroom schedule, the specialties and experience level of the attorneys, current attorney caseloads, and any other relevant consideration prior to assigning cases. Then the process is memorialized with the current tools at the office's disposal, including our inadequate case management software, attorney data records, in the paper files, etc. We acknowledge that the implementation of better tools would aid greatly in this process, however, we also want to emphasize that our current method of caseload management is formalized and evidence-based within the confines of the resources provided to us.

Lastly, this audit suggests that the Office of the Public Defender carries a large amount of attorney vacancies, but the audit did not account for our seasonal recruitment model.

The Office of the Public Defender utilizes a seasonal recruitment model, our Clerk to Attorney Program, to maintain a robust office of talent. The Clerk to Attorney Program functions by hiring a class of clerks to begin training to be Public Defender Attorneys after they take the July Bar Exam. When results are released in October, our law clerks have had months of training to prepare them for their attorney assignments right away. This nationally recognized model includes a recruiting phase wherein last year law students apply to the extremely competitive program during their final year of law school. The Office of the Public Defender conducts approximately a hundred interviews for this program that include applicants for local, ivy league, and national universities. We determine how many clerk positions to offer based on our anticipated vacancy rate for October. Over the past five years, The Office of the Public Defender hired 48 clerks through this program and 46 of them passed the Bar Exam on the first try to become Defender Attorneys. Our Clerk to Attorney program has a 95.8% bar passage rate, which is nearly 20% higher than the Pennsylvania State Bar Exam passage rate. This ensures our vacancies stay low.

Therefore, whenever our clerk class passes the bar, generally, they move into all available attorney vacancies at the Office of the Public Defender. Not only does this bring our vacancy rate down, but it does so with attorneys that have already been preliminarily trained during their clerkship. This is a program we are proud of, and the below tables illustrate how this seasonal recruiting model keeps our vacancy rate low.

Chief Deputy Director	1	0	1	0
Deputy Director Juvenile Division	1	0	1	0
Deputy Director Major Felony Unit	1	0	1	0
Deputy Director Post Trial Division	1	0	1	0
Deputy Director Pretrial Division	1	0	1	0
Deputy Director Trial Division	1	0	1	0
Director	1	0	0	1
Director of Training and Policy	1	0	1	0
Education Attorney	1	0	0	1
Manager of Policy	1	0	1	0
Manager Pretrial	2	0	2	0
Manager Trial	3	0	3	0
Managing Attorney	3	0	4	0
Senior Deputy Director of Trial Advocacy	0	0	1	0
Trial Defender	6	0	6	0
Trial Defender 2	9	0	7	0
Trial Defender 3	15	0	13	0
Trial Defender 4	32	0	48	0
Attorney Positions	80	0	92	2
Percentage Filled/Vacant	100%	0%	98%	2%

Adult Practice Advocate	0	0	1	0
Chief Investigator	1	0	0	0
Education Advocate	2	0	2	0
Financial Analyst	1	0	1	0
Intake Administrator	0	0	1	0
Intake Manager	2	0	1	0
Intake Paralegal	2	0	2	0
Intern				
Investigator	7	0	5	2
Law Clerk II				
Legal Intake Clerk	3	2	5	1
Legal Intake Clerk Assistant	0	0	0	0
Legal Secretary	3	0	2	1
Legal Secretary 1	7	1	7	0
Manager of Diversity, Equity, Inclusion	0	0	1	0
Manager of Investigations	1	0	1	0
Manager of Legal Support	0	0	1	0
Multimedia Legal Analyst	1	0	0	1
Office Manager	1	0	1	0
Part Time Law Clerk (Clerk to Attorney)	1	0	1	0
Payroll Technology Coordinator	1	0	0	0

Peer Support Advocate	0	0	0	0
Senior Investigator	2	0	2	0
Social Worker	6	0	3	2
Supportive Representation Unit Social Worker	0	0	1	0
Non-Attorney Positions	41	3	38	7
Percentage Filled/Vacant	93%	7%	84%	16%
Total Positions	121	3	130	9
Percentage Filled/Vacant	98%	2%	94%	6%
	385	22		
	95%	5%		

Response to Finding 2

The Office of the Public Defender is dedicated to continuing to meet their obligation to only taking cases that do not pose a conflict to our office and our clients. After determining that we cannot take a case due to a conflict and providing the necessary conflict referral information, we have no more involvement in the process. Therefore, finding 2 is not relevant to the internal operations of the Office of the Public Defender. We support a process to appoint court-appointed attorneys in alignment with American Bar Association Principals.

Response to Finding 3

Since becoming Chief Public Defender in 2024, I have implemented policies to improve our intake processes that are not reflected in this audit due to the reporting period. Even so, there are several clarifications that must be made with regard to the Office of the Public Defender’s income verification process.

I must respectfully disagree with the audit’s claims regarding our income eligibility process. The assertion that requiring additional income verification, such as pay stubs or tax returns, would reduce caseloads, wait times, or aid attorneys in case preparation is not supported by any evidence. There is no demonstrated correlation between these factors and our current eligibility process.

Page 16 of the audit clearly states, “Every person who requests legal counsel shall sign an affidavit that they are unable to procure sufficient funds to obtain legal counsel to represent them and shall provide, under oath, such information as may be required by the Court, Public Defender, or the PA Rules of Criminal Procedure.” We do exactly this. During our intake process, applicants sign an affidavit attesting, under penalty of perjury, that they cannot procure sufficient funds to obtain legal counsel. Further,

clients provide their employment information, information regarding housing and additional information regarding whether they receive certain government assistance funds. The law controlling our obligation to check our client's income eligibility is statutorily defined through the Public Defender Act. We exceed our obligation to check client income under that law. Further, we do not have the necessary amount of employees or access to software and information to easily verify income.

The primary function of our office is to ensure that individuals who cannot afford legal representation receive quality defense. Implementing more stringent documentation requirements could create unnecessary barriers for individuals already facing significant hardships, without any proven benefits to case outcomes or administrative efficiency.

I appreciate the opportunity to respond. Thank you again for your work on this report and your commitment to improving service that the OPD's provide for indigent people in Allegheny County.

Most Sincerely,

A handwritten signature in blue ink that reads "Lena Bryan-Henderson, Esq." with a stylized flourish at the end.

Lena Bryan-Henderson, Esq.

Chief Public Defender

Allegheny County Office of the Public Defender

VII. Controller’s Office Comments Regarding the Public Defender’s Response

As part of this audit, we asked the Chief Public Defender to respond to the recommendations in the report. The Chief Public Defender did respond (referred to hereafter as the Response), however, we want to clarify some points included in the response.

The Response states that the recommendations for Finding #1 imply that the OPD utilizes an informal case management system and methods to assign and track cases. Our recommendation regarding a formal system refers to the case management software, which the OPD acknowledges that new case management software would greatly improve their ability to manage caseloads. An additional recommendation suggests the OPD update their current assignment and review process to include an hours-based approach and does not imply that the OPD does not have a formal process to assign cases to attorneys.

The Response states that the report does not take into account the seasonal recruitment model. In addition, the number of positions provided in the response does not agree to the numbers in Table I of our report. Our figures are based on information provided by the Allegheny County Budget Office and represent the budgeted, filled and vacant positions at the time the budgets were submitted to Council in October of each year. The OPD does not provide the source of its information or which years this information pertains to.

According to the Response, the OPD implemented policies to improve the intake processes that are not reflected in this audit due to the reporting period. Our report does include the change made in 2024 to include the income qualification guidelines of 175% of the federal poverty level. The Response does not detail what additional policies were implemented, if any.

Under the Public Defender’s Act, the public defender shall provide counsel after being satisfied of the person’s inability to procure sufficient funds to obtain legal counsel. Every person requesting legal counsel shall sign an affidavit that they are unable to procure sufficient funds to obtain legal counsel to represent them and shall provide, under oath, other information required by the public defender. Individuals that make false affidavits and false statements are subject to the penalties prescribed by law for perjury and, if convicted, the individual shall make restitution of all amounts paid on the basis of the false affidavit or statement. The Response includes reference to the requirements of the Act and states that during the intake process, applicants sign an affidavit attesting, under penalty of perjury, that they cannot procure sufficient funds to obtain legal counsel. This is not accurate. We reviewed the online, in-person, and over-the-phone applications, and the affidavit statement reads, “I attest that I am the defendant and that I am unable to procure sufficient funds to obtain legal counsel to represent me in my pending criminal legal matters.” There is no mention of “under penalty of perjury.” In addition, the response indicates that every person who requests legal counsel shall sign the affidavit. However, if the applicant is incarcerated, the OPD does not require them to sign the affidavit. Furthermore, the OPD could not provide us with a signed affidavit for five of 12 cases (42%) where the applicant was not incarcerated.

VII. Controller's Office Comments Regarding the Public Defender's Response

The Response further states that clients provide their employment information, information regarding housing, and additional information regarding whether they receive certain government assistance funds. We found that the application asks yes or no questions regarding income and does not require applicants to provide income amounts/available resources, and does not require any supporting documentation to substantiate income eligibility. Our recommendation suggests that the OPD align its practices with ABA standards to streamline internal intake procedures, eliminate unnecessary barriers, and more efficiently serve clients.