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Report To The

GENERAL ASSEMBLY

of

NORTH CAROLINA

PUBLIC DEFENDER SYSTEM

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FINAL REPORT

COMMITTEE FOR THE STUDY OF

THE ADVISABILITY OF A PUBLIC DEFENDER SYSTEM IN

NORTH CAROLINA

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JANUARY 1965

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LEGISLATIVE COUNCIL STUDY NO. 1
(By Senate Resolution ratified 18 June 1963)

COMMITTEE FOR STUDY OF
A PUBLIC DEFENDER SYSTEM IN NORTH CAROLINA

Chairman :	Representative Hollis M. Owens, Jr. 1341 North Washington Street Rutherfordton, North Carolina
Ex-Officio :	T. Clarence Stone, President of the Senate H. Clifton Blue, Speaker of the House of Representatives Hugh S. Johnson, Jr., Chairman of the Council
Members from: the Council :	Representative L. Sneed High Senator Thomas J. White Senator Staton P. Williams Senator Cicero P. Yow Senator Jyles J. Coggins
Others :	Senator Garland S. Garriss Representative John Kerr, Jr. Representative Robert Leatherwood, III Representative Lester P. Martin, Jr. Senator Robert B. Morgan of Harnett Representative Dwight W. Quinn

Legislative Council Study No. 1

Introduced By: Senator Garris
Adopted : 18 June 1963

A SENATE RESOLUTION DIRECTING THE LEGISLATIVE COUNCIL TO STUDY, INVESTIGATE AND REPORT UPON A PUBLIC DEFENDER SYSTEM IN NORTH CAROLINA.

Be it resolved by the Senate:

Section 1. The Legislative Council created pursuant to Chapter 721 of the Session Laws of 1963, the same being House Bill 663 as amended, is directed and requested, under Section 8, subdivision (a) thereof, by the Senate, to make or cause to be made a study, investigation and report to the General Assembly of 1965, with respect to the advisability of establishing a public defender system in North Carolina.

Sec. 2. This Senate Resolution shall be in full force and effect upon its adoption by the Senate.

COMMITTEE ACTIVITIES

The Public Defender Committee of the Legislative Council held its first meeting on February 14, 1964 to make plans for a study of the advisability of establishing a Public Defender System in North Carolina pursuant to a Resolution passed by the North Carolina State Senate in 1963. At this meeting it was decided that a public hearing should be held and that all of the members of the legal profession in North Carolina, all of the Judges of the Superior Court, and all of the Justices of the Supreme Court should be notified that the study was being conducted, that a public hearing would be held and requested to give the Committee the benefit of their opinions.

The public hearing was held on September 17, 1964. Well in advance of said date the state news media was asked to publicize the time and date of the hearing. The presidents of the North Carolina State Bar and the North Carolina Bar Association were both notified of the time and place of the hearing and requested to acquaint the members of their respective associations to either attend or to make their views known to the Committee. At a meeting held immediately after the hearing, the Committee requested the Chairman to prepare a final report.

Another meeting of the Committee was held on November 13, 1964 at which the Committee decided on certain detailed recommendations with respect to a Public Defender System for North Carolina.

GENERAL STATEMENT OF THE COMMITTEE

In March 1963 the Supreme Court of the United States decided the landmark case of Gideon vs. Wainwright. This case originated in a state court and involved a non-capital felony charge in which the indigent defendant on arraignment had requested appointed counsel; his request had been denied on the ground that the law permitted this only when a defendant is charged with a capital offense. The defendant, then, conducted his own defense and was convicted and sentenced to a five-year term. Subsequently, he brought a habeas corpus proceeding in a state court and this eventually came before the Supreme Court of the United States raising the question of his constitutional right to have counsel furnished to him as an indigent defendant.

The Supreme Court upheld the defendant's contention and the decision is generally understood as holding that the Sixth Amendment of the United States Constitution which provides that "in all criminal proceedings the accused shall have the assistance of counsel for his defense" is a fundamental component of due process and is required in state court processes through the Fourteenth Amendment to the United States Constitution.

Though there has been much criticism of the court's conclusion in the case of Gideon vs. Wainwright, the fact is inescapable that it has had a marked effect on criminal procedure in state courts and has given rise to many questions that are yet to be answered such as:

1. Does the requirement of counsel for indigents apply to all criminal charges including misdemeanor cases?

2. Does it apply upon trial or at arrest?

3. What about counsel for an indigent on appeal, in post-conviction hearings and in a probation revocation?

Though these questions have yet to be answered and though the North Carolina courts have been treating the decision in Gideon vs. Wainwright as applying only to felony charges, there are many people who are of the opinion that an indigent's right to counsel will soon be extended to misdemeanors.

In order to cope with the problems created for state courts by Gideon vs. Wainwright the North Carolina General Assembly of 1963 enacted legislation (G.S. 15-4.1) providing counsel for indigent defendants charged with felonies. This legislation also provides that the presiding Judge may in his discretion appoint counsel for an indigent defendant charged with a misdemeanor if in the opinion of the Judge such appointment is warranted unless the defendant executes a written waiver of counsel.

In connection with the aforementioned legislation, there was appropriated the sum of $500,000 for the fiscal year ending

June 30, 1964 and $500,000 for the fiscal year ending June 30, 1965, for the purpose of paying the fees, costs, and expenses provided for.

In making this study the aim of the Committee has been to find the proper answers to the following questions:

1. Does the assigned counsel system as now operating provide competent and adequate defense for indigent defendants for the present and in the future?

2. If not, what other method may be used to furnish counsel for indigent defendants?

3. Which method is the most economical manner to provide counsel for indigent defendants in North Carolina?

DOES THE ASSIGNED COUNSEL SYSTEM AS NOW OPERATING PROVIDE COMPETENT AND ADEQUATE DEFENSE FOR INDIGENT DEFENDANTS FOR THE PRESENT AND IN THE FUTURE?

Though the present Assigned Counsel System has many leading advocates among the members of the Bar, the Committee has received what it considers to be intelligent and responsible criticism of this system. This criticism may be sumed up under the following headings:

1. In many instances the appointed attorney does not have sufficient time nor investigative resources to prepare adequately for trial.

2. In many cases young and inexperienced lawyers are appointed to represent indigent defendants and in other cases lawyers who are busy with civil practice and have no experience in trying criminal cases are appointed.

3. Under the Assigned Counsel System it is particularly difficult to get attorneys appointed to represent indigent defendants before the presiding Judge arrives to open court. This makes necessary the determination of indigency, the assignment of counsel and in many instances the continuing of cases after a particular term of court is opened. The corresponding loss of the court's time adds up to considerable expense.

4. Under the Assigned Counsel System the indigent defendant often must remain in jail for longer periods of time thereby increasing the expense of the counties or municipalities for maintaining and operating jails.

With respect to the Assigned Counsel System, we feel that the following quotations from a letter received by the Committee

from the Solicitor of the Twelfth Solicitorial District, one of the most populous Solicitorial Districts in the State, is pertinent.

> "It has been a continuous stumbling block and the source of the expenditure of many unnecessary hours of the court's time in this District. That is to say, the solicitor, judge and court officials have no way of knowing whether or not a given individual will ask or demand the appointment of counsel by virtue of his indigency until his case is called for trial at the beginning of the term. In a situation of this sort when counsel is appointed, more often than not, the appointed counsel must ask the court to continue the matter until a following term of court in order that he might properly prepare his defense and properly represent the defendant. The usual practice in this District, and as I am informed the usual practice in many other districts, has been to select younger attorneys whose schedules are not overly crowded to represent indigent defendants, with the consequent result being that we are yet receiving some petitions from defendants now and already in the North Carolina Prison System saying that they were not properly and adequately represented at the time of their trial. Moreover, many attorneys that have practiced in this District for as much as ten years have not had sufficient criminal trial experience so as to be qualified to "adequately represent" some of our more enlightened defendants by experience in prison.
>
> "Finally, with the current practice of rotation of judges, and each judge accordingly, being governed by his own individual dictates, the indigent defendant counsel system now employed is subject to a good deal of stretching and altering and, further, while some judges agree that counsel should be provided for indigent defendants in the inferior courts, others are of the opinion that this is not necessary, and thereby refuse to appoint counsel for these defendants. Of course, the United States Supreme Court has strongly indicated recently that a defendant is entitled to counsel at all stages of his trial after he is served with a warrant and formally charged with an offense from conferences with police officers, preliminary hearings, and trial.

I well realize that there is some objection to the establishment of a Public Defender System in North Carolina; however, I believe the benefits of such system will far out-weigh any objection thereto. From my standpoint, this system should not be in actuality nearly as expensive as the system now employed. I realize that the State only used $238,000 of the original $500,000 apportioned by the 1963 Legislature for the purpose of reimbursement of indigent counsel, but a closer look at the figures will reveal that those lawyers employed to represent indigent defendants were paid miserly sums far below the true value of the services which they rendered, and not even in accord with the minimum fee which they could charge a client of their own choosing. Obviously, the entire burden of providing counsel for an indigent defendant should not fall upon the shoulders of the already over burdened members of the North Carolina Bar Association, but should be divided among each and every taxpaying citizen and resident of this State."

IF NOT, WHAT OTHER METHOD MAY BE USED TO FURNISH COUNSEL FOR INDIGENT DEFENDANTS?

With respect to other methods of providing counsel for indigent defendants, the Committee found that in some areas Defender offices have been set up and financed by public funds and private contributions. In other areas a combination of Assigned Counsel and Public Defender System is being used to provide counsel for the indigent. The Committee concluded, however, that as far as North Carolina is concerned, the best method of providing counsel for the indigent is either the present Assigned Counsel System or a uniform statewide Public Defender System.

The principle of the Public Defender System is very simple. Instead of assigning a series for each diffirent case there is one regular lawyer in every case. The Public Defender is the opposite number of the Public Prosecuter. He is paid a salary by the year instead of a fee for each case. He may have his own investigator and assistants.

The first Public Defender was in Los Angeles County beginning in 1914. Since that time the idea has gradually spread and is gaining in popularity. As of July 1, 1964 the State of Delaware shifted from the Assigned Counsel System to the Public Defender System. A public defender office was

established in Dade County, Florida, in 1955 and by the beginning of 1963 four of the larger counties in Florida had Public Defender offices. Then the Florida General Assembly as a result of the Gideon decision decided to extend the system for the whole state with a public defender for each Judicial Circuit.

The Committee feels that a Public Defender System would offer the following advantages:

1. The Public Defender could work more closely with the Solicitor in calendaring and disposing of all jail cases properly and expeditiously without defendants needlessly having to remain in jail for an extended period of time. The Solicitor would know what each and every plea was going to be before the time of trial and, accordingly, could set a more adequate and flexible calendar for each term of court.

2. The quality of legal assistance for indigents would be improved.

3. The Public Defender would enter all cases at a very early stage and remain in said cases as long as they were before the courts, including post-conviction proceedings. This would solve all questions of when and at what stage counsel is required for an indigent.

4. Attorneys who are both competent and experienced in the handling of criminal cases and busy with their own clients would not have to bear part of the burden of defending the indigent.

The Committee realizes that a Public Defender System does not emerge in a new locality without opposition and that the Public Defender idea is new as far as North Carolina is concerned. Opposition comes from responsible individuals and must be accorded thorough study. One of the most often repeated

objections to the Public Defender System is that the state pays for both the prosecution and defense of the defendant. As pointed out, however, at the public hearing held by the Committee by a competent and experienced member of the Bar, that is exactly what is taking place under the present Assigned Counsel System.

> "Now what would the public defender do. They talk here about having the stigma of having the state prosecute you and the state defend you. That's exactly what we are doing now, aren't we? Everytime I am appointed to defend somebody the state of North Carolina pays me for it, so I am being paid inadequately and I wish to God that the day would come when they take away the payment from the lawyer and just say, "Go to work. You are assigned to John Doe. Go represent him like they did in the days of old." I don't need the $40.00. I don't want it. I think that I am demeaned when I take it. I owe something to the Bar. I am willing to give it. I go into the Federal Court like I used to here and I don't get a nickel. I'm appointed Monday and you know when I get ready to try my case it's Friday, and I'm sitting there all day long and all week long. That's all right. That's part of my duty, but if you had a public defender and a proper program, you'd undertake to discuss this affair with this man, and in many cases it would reduce the docket, the heavy schedule that we have in every court."

Another often voiced objection to the Public Defender System is that the public prosecutor might become too friendly resulting in an inadequate defense of the indigent. Again it was pointed out by the same attorney previously quoted that under the present Assigned Counsel System attorneys discuss cases with the Solicitor and that being on friendly terms with the

Solicitor is not bad. It was pointed out also by a distinguished member of the Committee that the objection that the Public Defender and Public Prosecutor would become too friendly is simply one of the usual insults that all lawyers contend with and that this objection says in the first place one or both of them would have no integrity and if that should be established they should be put out of office.

WHICH METHOD IS THE MOST ECONOMICAL MANNER TO PROVIDE COUNSEL FOR INDIGENT DEFENDANTS IN NORTH CAROLINA?

With respect to the method that would provide an economical and efficient manner of providing counsel for the indigent in North Carolina, the Committee found it difficult to arrive at any comparative cost figures between the two simply because of the fact that there are at present no Public Defender offices in North Carolina. Under the present Assigned Counsel System during the year beginning July 1, 1963, and ending on June 30, 1964, 3,003 indigent defendants appeared in the separate Superior Courts. The cost was $238,956. It should be pointed out, however, that these cases included only felony charges, that in many cases the fees paid were grossly inadequate and that the cost figures do not include any post-conviction hearings. Also, the Committee takes note of the fact that the Administrative Assistant to the Chief Justice of the North Carolina Supreme Court in remarks made at the October 1964 meeting of the North Carolina State Bar reported that during the first fifteen weeks of the current year appointments made under the Assigned Counsel System were up 78% over the same period last year and that payments to assigned counsel increased 105%.

The Committee feels that this trend under the Assigned Counsel System is likely to continue. The Committee feels that while a Public Defender System may cost more initially than the present Assigned Counsel System, that as the State grows in population and that as the principle set forth in Gideon vs. Wainwright is extended to cover cases other than felony cases, the Public Defender System will be more economical to operate. As far as efficiency is concerned the Committee is convinced that counsel for the indigent can be more efficiently provided by a uniform statewide Public Defender System. Since there are no Public Defender offices in North Carolina and since this is a new concept, the Committee feels that a decision of this type should be left to the wisdom and best judgment of the North Carolina General Assembly. Should such a bill be introduced in the upcoming Session of the General Assembly the Committee recommends that it provide for the following:

1. That a Public Defender be provided in each of the State's Judicial Districts with provision for as many assistants as the work-load in a particular District warrants with appropriate investigative and clerical help. The Committee realizes that a Public Defender System might work better in some areas of the State than others, but in keeping with the uniform System of Courts now being developed for the State the Committee feels that any Public Defender System should be uniform.

2. That the initial determination of indigency should be made by the Public Defender based on information gathered by his investigative staff with the defendant being required to sign a statement attesting to the

inability to employ counsel. The legislation should also provide that the Court in which the case is tried initially could reverse the Public Defender decision on later received evidence.

3. That the Public Defender should enter the case before the plea is entered and as soon after arrest as practicable.

4. That in view of the fact that the Public Defender would be charged with the duty of representing indigents in the District Courts soon to be established, in all of the Superior Courts in his particular Judicial District, and in all appeals and post-conviction hearings, the Committee feels that a Public Defender should be paid a salary in the neighborhood of $15,000 per year.

5. That Public Defenders should be restricted to their official duties.

6. That a Public Defender should appear for all indigents in criminal cases where the possible punishment exceeds more than thirty days in prison.

7. That if legislation to establish a Public Defender System is not introduced in the 1965 General Assembly, study of the matter should be continued by the Legislative Council.