

## **SUPPORTING STATEMENT**

### **2013 National Survey of Indigent Defense Systems**

#### **Introduction**

The Bureau of Justice Statistics (BJS) requests clearance to conduct a national census of indigent defense systems. The 2013 National Survey of Indigent Defense Systems (NSIDS) will gather nationwide data about the manner by which legal defense services are provided to indigent people accused of a crime for which they may be jailed or imprisoned. The NSIDS is the fourth in a series of statistical collections on indigent defense that BJS has conducted about every 10 years, beginning in the early 1980s. BJS's first two examinations (in 1982 and 1986) were limited to a sample of defense systems and focused on operational issues. In 1999, BJS expanded its coverage of indigent defense systems by collecting data on all state-level systems and systems in the 100 largest counties. In 2007, the BJS effort was further expanded to include all state systems and the roughly 1,000 county-based public defender offices; in addition, in this effort, BJS also expanded the content of its survey instrument to capture data related to the capacity of indigent defense offices to adhere to the American Bar Association's principles for practicing indigent defense.

In the 2013 NSIDS, BJS will further expand its coverage of indigent defense systems, as for the first time it will collect data on all state and county-based defense systems in the United States, including county-based systems that operate independently of public defenders' offices, as well as services in the District of Columbia. The study will examine the different types of indigent defense systems utilized in state and county systems including public defenders, assigned counsel, and contract attorneys. The content of the survey instrument will emphasize information pertaining to the administration, governance, funding, staffing, caseloads, and compensation structures of the nation's indigent defense systems. The reference period for this project will be calendar year 2013.

A census is the preferred collection methodology as it will allow BJS to roster all defense systems, especially those not operated by a public defender office, and it will allow BJS to describe and compare service delivery across the different types of indigent defense systems.

#### **A. Justification**

##### **1. Necessity of Information Collection**

In 1963, the United States Supreme Court ruled in *Gideon v. Wainwright* that the Sixth Amendment's right to assistance of counsel for criminal defendants is made obligatory in state courts by the Due Process Clause of the Fourteenth Amendment. This has come to mean that any person charged with a criminal offense that carries a potential sentence of jail or imprisonment and who cannot afford to hire their own attorney is entitled to be represented by a lawyer provided at public expense. Though the mandate of the Sixth and Fourteenth Amendments and *Gideon* is clear, the manner by which it is carried out in all of the many thousands of courts throughout our country has never before been the subject of an exhaustive federal survey.

Indigent defense delivery systems lag behind the other components of the criminal justice system when it comes to data collection, analysis, and the ability to form policy based on objective information. With scarce resources and ever-growing caseloads, most right to counsel systems dedicate almost every funding dollar to direct client services rather than to infrastructure, leaving most unable to build case-tracking management systems that could produce data to inform criminal justice decision-making. In many small and rural jurisdictions, almost no data are collected at all.

In addition to lacking capacity to measure core program characteristics, there is growing evidence that many indigent defense systems are being overwhelmed by budget cutbacks as result of the economic downturn. Some of these reductions in public defender budgets and staff were highlighted in a report released by The Justice Policy Institute (JPI) on defense counsel overload.<sup>1</sup> In this report, JPI cited to budget cutbacks of \$500,000 in Kentucky's public defender office, layoffs involving 15% of Minnesota's public defender staff, and California's decision to implement low-bid contracts for public defense as examples of budget pressures generating losses in indigent defense staffing, budgets, and resources.

In summary, the lack of any series capable of examining the totality of nation's indigent defense systems and the growing evidence that these systems are under increasing budgetary and other pressures, has produced a situation in which key questions about whether indigent defense systems are meeting demands remain unanswered. Current policy discussions about the ability of indigent defense systems to meet core needs revolve around several basic questions such as:

- What forms of indigent defense including public defenders, assigned counsel, and contract attorneys are employed to represent the criminally accused? In what context are assigned counsel and contract attorneys employed in centralized state-based public defender systems? Among states where indigent defense is administered locally, how frequently do jurisdictions rely on public defenders or non-public defender alternatives to administer indigent defense?
- What are the average budgets of indigent defense systems? What proportion of indigent defense budgets are funded at the state versus county level and how much do client fees and other client assessments contribute to these budgets? How do the budgets compare between state and county-based systems or between public defender, assigned counsel, and contract attorney offices? What impact has the economic downturn had on public defender budgets?
- What are the caseloads and staffing levels of public defender, assigned counsel, and contact attorney offices? Do staffing levels meet current workload needs? Which type of indigent defense delivery system, if any, is more likely to have staff available to handle current caseloads? For public defender offices, are staffing levels keeping up with caseloads and other resource pressures or have they been reduced because of state and county budget cutbacks?

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<sup>1</sup> The Justice Policy Institute. (2011). *System Overload: The Costs of Under-Resourcing Public Defense*. The Justice Policy Institute. Washington, DC.

- How frequently are non-attorney support personnel including investigators, social workers, paralegals, indigent screeners, and administrative staff employed by indigent defense systems? Is non-attorney support more common among public defender offices compared to assigned counsel or contract attorney systems? Are states with centralized indigent defense systems employing these support staff more frequently than states where indigent defense is administered at the local level?
- What are the compensation levels of indigent attorneys? How much does compensation vary by indigent defense delivery method? Are attorneys working for non-public defender systems being compensated at equivalent levels compared to their public defender counterparts?
- How many indigent defense systems have adopted enforceable standards to handle conflict of interest or case overload situations? How many indigent defense systems are exceeding their maximum limit of felony or misdemeanor case per attorney?
- What proportion of indigent defense systems have implemented the American Bar Association's principles for practicing indigent defense including mandatory training, attorney performance review, or requirements that attorneys represent their clients at all stages of criminal case processing? Does the adoption and enforcement of these standards vary by type of indigent defense delivery system?
- How do indigent defense and prosecutor offices compare in terms of their budgets, staffing, caseloads, adherence to core standards, and training opportunities? Do prosecutors have greater resources compared to indigent defense attorneys?

Although it may be beyond the scope of BJS to address all of these issues, prior BJS reports on indigent defense have provided some statistics to begin addressing some of these questions. Since shortly after it was formed and continuing through today, BJS has maintained a program in which it periodically gathered and reported statistics on indigent defense systems. In 1982, BJS conducted the National Criminal Defense Systems Survey, the first such examination criminal defense systems of its kind. The BJS survey gathered information on the types and characteristics of criminal defense systems in a national sample of jurisdictions; it gathered information on the capacities of defense services to deliver early representation, support and investigative services; and it provided a database that would be useful to criminal justice researchers and for future censuses of public defender organizations. A similar survey of indigent defense systems was again conducted by BJS in 1986.

In 1999, BJS renewed its research in the area of indigent defense services (see OMB Control # 1121-0095). This effort attempted to survey all forms of indigent systems including public defenders, assigned counsel, and contract attorneys in (1) states that entirely funded and administered their indigent defense services at the state-level and (2) the nation's 100 most populous counties.<sup>2</sup> BJS produced two reports from this survey and although these reports led to a renewed focus on the delivery of indigent defense services, the data were still incomplete in

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<sup>2</sup> Please see the burden hour discussion and Section B for a more detailed overview of state differences in the administration of indigent defense and how these differences will affect data collection protocols.

terms of surveying the provision of indigent defense for the entire country and especially in less populous regions.<sup>3</sup> In 2007, BJS conducted the *Census of Public Defender Offices (CPDO)* (OMB Control # 1121-0095) which was a census of public defender offices in all states and the District of Columbia. BJS summarized the responses of the 957 public defender offices in two separate reports: *State Public Defender Programs, 2007* and *County Based and Local Public Defender Offices, 2007*. These reports provided, for the first time, extensive nationwide information about the provision of trial-level indigent defense services by public defender office systems throughout the country.<sup>4</sup> Some of the key findings from these surveys and reports included:

- Information about public defender offices for states with centralized indigent defense systems –
  - Documentation that many state public defender offices are not maintaining staff sufficient to handle current caseloads. In 2007, 15 of the 22 state-based public defender programs reported exceeding the maximum recommended number of felony and misdemeanor cases per attorney.
  - Evidence that many public defender offices employ a significant number of non-attorney support staff. State public defender programs in 2007 employed nearly 3,000 support staff—such as clerical and administrative staff, paralegals, investigators, social workers, indigent screeners, and interns—to provide case assistance for public defenders. States employed a median of 85 support staff in 2007.
  - Trend information indicating that public defender staffing had not kept up with current caseloads. Between 1999 and 2007, criminal caseloads increased by 20% while the number of public defenders employed in state programs increased by only 4%.
- Information about public defender offices operating in states that administer and fund their indigent defense systems at the county level –
  - Evidence showing that many county-based public defender programs did not have sufficient staff to meet caseload demands. In 2007, county-based public defender offices received a median of approximately 2,500 cases and only 27% of these offices reported a sufficient number of attorneys to handle the number of case received in their office.
  - Documentation that many county-based public defender offices lack non-attorney support staff. In 2007, 40% of all county-based public defender offices had no investigators on staff to provide assistance in case investigation.
  - Baseline information about county-based public defender expenditures. The county-based public defender offices spent nearly \$1.5 billion (65%) of the \$2.3 billion spent in 2007 providing public defender representation nationwide. County-based public

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<sup>3</sup> DeFrances, C. (2001). *State-Funded Indigent Defense Services, 1999*. Bureau of Justice Statistics, Washington, DC. DeFrances, C. & Litras, M. (2000). *Indigent Defense Services in Large Counties, 1999*. Bureau of Justice Statistics, Washington, DC.

<sup>4</sup> Langton, L. & Farole, D. (2010) *State Funded Public Defender Programs, 2007*. Bureau of Justice Statistics, Washington, DC. Farole, D. & Langton, L. (2010). *County-based and Local Public Defender Offices, 2007*. Bureau of Justice Statistics, Washington, DC.

defender offices served a median population of about 117,000 residents with a median operating budget of about \$708,000 in 2007.

Although the 1999 NSIDS and 2007 CPDO were crucial in examining the nation's public defender programs and provided some information about non-public defender systems in the nation's 100 most populous counties, these projects failed to capture key aspects of how representation is provided to many indigent defendants in America. Specifically, both projects were unable to obtain details on the delivery of indigent defense services for all of those states and their counties that primarily provide representation through contracts and assigned counsel systems and in conflict situations where indigent defendants are represented at the trial level by a secondary system outside of the jurisdiction's public defender office. Prior efforts by BJS to examine these various forms of indigent delivery systems were limited either in geographic scope or in the form of indigent defense delivery system examined.

Hence, 50 years after *Gideon* there is a lack of information about how representation is provided to most indigent defendants in America: in all of those states and their counties that primarily provide representation through contracts and assigned counsel systems; in conflict situations where indigent defendants are represented at the trial level by a secondary system outside of the jurisdiction's public defender office; and in appeals and in all critical stages of criminal proceedings that occur prior to and/or without institution of prosecution. A study that both updates the information BJS obtained in 1999 and 2007 and obtains data for all other delivery systems and constitutionally mandated services is desperately needed. The key data that this survey will yield will provide a benchmark against which future changes can be measured. With the accurate, verifiable, and objective data resulting from this survey, policymakers at the county, state, and national levels will be enabled to make informed, fair, and fiscally sound criminal justice decisions. This need for better and more representative data has been stressed in the Committee on National Statistics (CNSTAT) report on BJS programs. The CNSTAT report included NSIDS as one of the important data collection program for BJS' Prosecution and Adjudications Unit and discussed the need to continue collecting data examining the organizational and administrative contours of the nation's indigent defense systems.<sup>5</sup>

The 2013 NSIDS will meet these goals by being the first study of its kind to collect data on indigent defense services at both the state and county level for each type of administration, funding, and service delivery model by which representation is provided. Specifically, the 2013 NSIDS will provide information about the different indigent defense delivery methods employed by all 50 states and the District of Columbia. It will examine the methods in which states with centralized public defender offices employ assigned counsel and contract attorneys to handle conflict of interest and caseload overload situations. It will also cover states where indigent defense is administered at the county level and in particular, examine how many counties utilize public defenders, assigned counsel, contract attorneys, or a mixture of methods to administer indigent defense. Within these various indigent defense structures, the 2013 NSIDS will examine the fiscal resources and expenditures allotted to indigent defense offices; the case-types and caseloads handled by indigent defense systems; the procedures for handling situations involving conflicts of interest and case overload; the staffing and compensation of indigent defense

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<sup>5</sup> Groves, Robert and Daniel Cork (Eds.) (2009). *Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics*. National Research Council of the National Academies. Retrieved from <http://www.nap.edu>

attorneys; the availability of non-legal support staff to assist public defenders, assigned counsel, and contract attorneys; the procedures for indigence determination; the processes for selecting the chief public defender, contract's administrator, or assigned counsel manager; the professional development opportunities provided to defense attorneys; the use of information technology mechanisms to assist in the administration of indigent defense; the adherence to formal standards and guidelines to ensure that best practices are followed and maintained; and the utilization of oversight boards/commissions among the different types of indigent defense.

The 2013 NSIDS is also the first study of its kind to utilize a census approach to gather information on all types of indigent defense services. This methodology is preferable for the proposed work as non-public defender methods of indigent defense services have rarely been examined and therefore we do not have a roster in order to draw a sample. In addition, if we were to attempt a more traditional sample-based methodology, the sample design would be complicated by within-state heterogeneity in states without state systems. A census allows us to overcome these issues and provide a more complete understanding of the variability of indigent defense in the U.S.

This survey fits within a larger BJS portfolio of establishment surveys that, together, cover all components of the administration of justice in the nation's criminal courts. The other components include BJS' National Survey of State Prosecutor Offices (OMB Control # 1121-0149) series that provides information on the administration, governance, staffing, budgets, and caseloads of the nation's state prosecutors offices and BJS' State Court Organization (OMB Control # 1121-0283) that examines the organization, governance, funding, staffing, and budgets of the nation's state trial and appellate courts. These surveys, combined, provide an organizational overview of the core components including judges, prosecutors, and defense attorneys responsible for adjudicating criminal cases in state courts.

BJS authority to conduct the 2013 NSIDS comes under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3732), which established BJS and authorized it, among other things, to collect and analyze statistical information concerning the operation of the criminal justice system at the Federal, state, tribal, and local levels (§3732(c)(4) (see Appendix). According to 42 U.S.C. 3735 Section 304, the information gathered in this data collection is used only for statistical or research purposes, and is gathered in a manner that precludes their use for law enforcement or any purpose relating to a particular individual other than statistical or research purposes. The data collected through the 2013 NSIDS involve organizational information about the administration, budgets, caseloads, staffing, and governing attributes of indigent defense systems rather than the individual attributes of attorneys or other staff persons working within these systems.

## 2. Needs and Uses

### *BJS/OJP/DOJ Needs and Uses*

Implementation of the 2013 NSIDS responds to DOJ's need for more current and comprehensive information about the nation's indigent defense systems in order to inform indigent defense programs, research, and policies. Under Attorney General Eric Holder, DOJ established the Access to Justice (ATJ) Initiative in March 2010. ATJ was established to address the access-to-

justice problems in the nation's criminal and civil justice system and to help the justice system efficiently deliver outcomes that are fair and accessible to all. Attorney General Eric Holder has referenced BJS' public defender statistics in speeches about America's indigent defense system. For example, in a speech delivered at the 2013 America Bar Association (ABA) conference in New Orleans, Mr. Holder mentioned the CPDO and upcoming NSIDS study as key components of DOJ's effort to better understand the nation's indigent defense system. The ATJ Initiative has produced reports where it cited BJS public defender data from what are now viewed as outdated surveys. In addition to the Attorney General remarks, statistics from the CPDO were cited in a report by DOJ's ATJ Initiative examining International Perspectives on Indigent Defense. The ATJ referenced the BJS public defender reports to demonstrate that many public defender offices are reporting caseloads that exceed the ABA Standards<sup>6</sup>. Staffs from both agencies have consulted each other regarding the importance of conducting indigent defense work and the research needs of the indigent defense community and have recognized the need for more current information on all phases of the indigent defense systems across the country.

Other federal agencies including the National Institute of Justice (NIJ) have used the BJS indigent defense data to formulate research strategies and agendas. NIJ recently sought proposals for the purpose of funding research examining issues related to the accessibility of counsel and the propensity of defendants to waive their defense counsel rights. In NIJ's proposal request, statistics from the BJS public defender census were cited to support the contention that indigent adults and juveniles face similar challenges in terms of having access to counsel and being able to utilize counsel without being subjected to significant fees and recoupment costs. In addition, the following publications sponsored by NIJ have cited to BJS data from the 1999 NSIDS and 2007 CPDO.

McGough, M. (2011). Indigent Defense: International Perspectives and Research Needs. *National Institute for Justice Journal*, 268, 36-42.

Wallace, S. & Carroll, D. (2003). Implementation and Impact of Indigent Defense Standards. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/205023.pdf>

The Assistant Attorney General for the U.S. Office of Justice Programs (OJP) has frequently made use of information generated from the BJS public defender census. For example, OJP cited to BJS' public defender census in a press statement regarding the announcement of funds slated to support prosecutor and public defender offices. Moreover, BJS' public defender statistics were referenced in an OJP fact sheet on indigent defense systems.

In order to address these needs and improve its data collection efforts in the area of indigent defense, BJS actively engaged the indigent defense community to learn more about emerging topics in the field and substantive issues in which data gaps exist, as well as to solicit feedback from stakeholders about how they used data from prior BJS funded indigent defense studies.

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<sup>6</sup> Jweied, M. & Jolicoeur, M. (2011). Expert Working Group: International Perspectives on Indigent Defense. Washington, DC. U.S. Department of Justice.

Discussions with key stakeholders and senior staff from OJP and the ATJ Initiative<sup>7</sup> identified several needs to which the NSIDS data collection is responding, including the following:

- The need for national level statistics on indigent defense;
- The need to collect comprehensive data on indigent defense services at both the state and county level for each type of service delivery model;
- The need to more fully examine the degree to which all indigent systems follow certain standards set by the ABA.

**The need for national level statistics on indigent defense:** BJS' overarching goal of the 2013 NSIDS is to yield national statistics about the provision of indigent defense services in all states and county jurisdictions in the United States. Although the term "indigent defense system" is commonly used to define the system of services provided to indigent people accused of a crime, there is no single indigent defense system in our country. Instead, each jurisdiction applies its own combination of attributes to the administration, funding, and service delivery model in the provision of indigent representation. Moreover, states and counties differ in regards to the types of cases in which representation is provided and the types of defendants considered eligible to receive that representation.

Past data collection efforts pertaining to indigent defense systems and services were limited to a particular type of service delivery model (e.g., surveys of public defender offices only) or a particular size of jurisdiction (e.g., all forms of indigent defense systems operating in centralized state systems or the nation's 100 most populous counties). As a result, BJS cannot make any national level statements about the manner in which the right to counsel is being provided, let alone the number of clients represented each year. The 2013 NSIDS will be the first study of its kind to collect comprehensive data on indigent defense services at both the state and local level for each type of administration, funding, and service delivery model by which representation is provided. Conducting a census of all forms of indigent delivery systems will allow BJS to provide national level statistics about the provision of indigent defense. Moreover, by surveying all forms of indigent delivery systems including public defenders, assigned counsel, and contract attorneys, BJS will be able to provide information about differences in the resources, caseloads, and administrative structures that exist among these types of indigent defense systems.

**The need to collect comprehensive data on all forms of indigent defense services:** Through the NSDIS, BJS will expand the scope of its data collection beyond public defender programs to encompass indigent defense representation that utilizes private attorneys including assigned counsel and contract attorney programs. The need to examine these non-public defender forms of indigent defense is important because these systems are commonly used in states where indigent defense is administered at the county level and are employed as methods of handling conflict cases in public-defender systems. Although frequently utilized, these non-public defender systems have never been extensively researched and hence are poorly understood in terms of their staffing, budgets, adherence to formal standards, conflict resolution protocols, resource

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<sup>7</sup> The U.S. Department of Justice established the ATJ Initiative in March 2010 to address the access-to-justice crisis in the nation's criminal and civil justice system. ATJ's mission is to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. For more details about ATJ, please see their website at <http://www.justice.gov/atj/>.



constraints, etc. BJS plans to use the 2013 NSIDS to obtain a more complete understanding of the various types of indigent defense delivery systems utilized throughout the U.S.

**The need to examine the adherence of indigent defense to the standards set by the ABA:**

Discussions with key stakeholders revealed the need to more fully examine the degree to which all indigent systems follow certain standards set by the ABA. Some of these standards include whether the indigent defense system includes mandatory or advisory guidelines regarding the presence of defense counsel within certain hours after arrest or at specific hearings including juvenile detention or bail proceedings. The 2013 NSIDS expands upon previous surveys to include more questions about adherence to formal guidelines and standards.

In order to address the needs described above, the data collection instrument for NSIDS is divided into several different components including fiscal resources and expenditures; the case-types and caseloads handled by indigent defense systems; procedures for handling situations involving conflicts of interest; the staffing and compensation of indigent defense attorneys; the procedures for indigence determination; the processes for selecting the chief public defender, contract administrator, or assigned counsel manager; professional development opportunities; use of information technology mechanisms; adherence to formal standards and guidelines; and utilization of advisory boards/commissions. BJS will make use of these components by producing a series of reports that examine and analyze the following indigent defense issues<sup>8</sup>:

- **Fiscal resources and expenditures:** The NSIDS will collect information on the operating expenditures, revenues, and sources of funds for each state's indigent defense system. BJS will use this information to produce detailed information on the nation's indigent defense budgets, compare budgets across states, and examine differences in budgets and revenues for public defenders, assigned counsel, and contract attorney systems. This part of the NSIDS will be able to illuminate the contribution of states, counties, cities, federal funds, and private grants to indigent defense budgets. Of particular importance will be the role that client fees and recoupment practices, in which an indigent defendant is assessed a monetary fee for services rendered, has on indigent defense budgets. Comparisons of revenue sources across states and indigent defense systems will also be feasible through this project.
- **Case-types and caseloads:** Information will be collected by the NSIDS on the types and number of cases handled by indigent defense attorneys including capital felony, non-capital felony, misdemeanor, appeals, probation/parole revocations, juvenile, and civil matters. This information will be utilized by BJS to obtain a better understanding of the workloads of indigent defense systems. As with funding, caseload information can be applied by BJS to examine disparities in case volume between states and across public defenders, assigned counsel, and contract attorney systems. In addition, this information can be used to ascertain how frequently defense attorneys are involved with certain case types that typically do not involve criminal defense such as child protection or parental rights litigation.
- **Procedures for handling situations involving conflicts of interest:** Conflicts of interests arise in cases involving multiple co-defendants, irreconcilable differences between clients and

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<sup>8</sup> See project schedule section for a summary of some of the major reports BJS plans to produce with the NSIDS data.

their attorneys, and case overload. BJS will be able to utilize the NSIDS to explore the protocols indigent defense systems apply when conflict of interest situations arise and the procedures for obtaining another defense attorney. BJS will analyze differences in conflict of interest protocols across public defender, contract attorney, and assigned counsel systems.

- Staffing and compensation of indigent attorneys: BJS will obtain information on staffing numbers, compensation structures, and salaries for public defenders, assigned counsel, and contract attorneys. BJS will use this information to provide an overview of the number of legal and non-legal persons working in the area of indigent defense for every state and by type of defense delivery method. BJS will also examine the level of support staff provided to the various forms of indigent defense. Of particular importance will be the frequency in which non-attorney support staffs including indigence screeners, clerical and administrative staff are provided to public defenders, assigned counsel, and contract attorneys. Also, an analysis of compensation structures and salaries across states and for the different forms of indigent defense will be provided. This area is particularly important in terms of examining whether non-public defender systems compensate their attorneys at levels similar to that of public defenders. Compensation levels could also differ between rural and urban jurisdictions.
- Processes for selecting the chief public defender, contract administrator, or assigned counsel manager: These items focus on the methods in which the chief public defender, contract administrator, or assigned counsel manager are appointed to oversee either a state or locality's indigent defense system. There are a variety of bodies that can appoint these indigent defense heads including a statewide board or commission, state bar association, governor, state's Supreme Court chief justice, state court administrator, or local county executive, legislator, or chief trial court justice. BJS will use this information to ascertain whether the appointing methods for these indigent defense heads differ by type of counsel.
- Procedures for indigence determination and adherence to formal standards: These items pertain to the guidelines indigent defense systems employ when determining whether a client is indigent. They also examine the degree to which indigent systems follow certain standards set by the ABA for the provision of indigent defense.<sup>9</sup> Some of these standards include guidelines on when an attorney/client communication should occur, the need for attorney presence at certain hearings including juvenile proceedings and bail hearings, and attorney performance review standards. BJS will use this information to provide an overview of how indigent determinations occur and examine the number of systems that have adopted certain ABA standards on the provisions of indigent defense. BJS will also use this information to make comparisons between states and across the different modes of indigent defense delivery systems. For example, BJS will be able to explore whether assigned counsel and contract attorney systems have adopted certain ABA standards. Moreover, these data will afford BJS an opportunity to investigate whether states with centralized defense systems utilize certain ABA standards more frequently than states without centralized defense systems.

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<sup>9</sup> See American Bar Association. (2002). *ABA Ten Principles of a Public Defender Delivery System*. Washington, D.C. for a detailed overview of the standards indigent defense systems should utilize in the provision of indigent defense.

- Professional development opportunities and use of information technology mechanisms: The NSIDS will cover whether indigent attorneys have opportunities for professional development and the information available to these attorneys through case management information systems (MIS). As with the other components of the NSIDS, BJS will employ this information to provide national data on the availability of professional development opportunities and the capacity for MIS to assist attorneys in their daily practice.

Advisory board or commission: This component will examine whether the state or locality employs an advisory board to oversee the administration of indigent defense. Advisory boards have a variety of responsibilities including administering indigent defense system budgets, establishing policymaking and performance standard rules, and hiring chief system executives. BJS will use this information to examine the frequency in which indigent defense systems employ advisory boards and the role of these boards across the various systems of indigent defense.

Upon completion of the 2013 NSIDS data collection effort, BJS will review the data collection process and the results in order to inform future data collection efforts in indigent defense including the possibility of incorporating NSIDS as a permanent collection in BJS. Towards this end, BJS will review the survey design and content, data collection protocols, challenges respondents faced when providing data, responses to the different modes of survey administration, strategies for engaging data providers, etc.

#### *Assessment of Others' Needs and Uses*

In addition to the needs and uses of the 2013 NSIDS among stakeholders in the indigent defense community, other users include the U.S. Congress, other federal agencies, nonprofit organizations, independent researchers, the media, and the public. Below is a list of those users, along with specific descriptions and examples of the ways in which statistics from the 1999 NSIDS and 2007 CPDO were utilized. Based on the utilization patterns of previous BJS surveys on public defense, it is expected that the findings from the 2013 NSIDS will be used by many to understand the diverse ways in which indigent defense systems are structured, organized, and administered

**U.S. Congress** – The United States Government Accountability Office (GAO) recently used the frame of the BJS public defender census as a basis for drawing a sample for a web-based survey of public defender offices in order to ascertain the extent to which these offices applied for and received federal funding.<sup>10</sup>

**National Legal Aid and Defender Association (NLADA)** –NLADA is America's oldest and largest nonprofit association devoted to the delivery of legal services to those who cannot afford counsel. NLADA has pioneered access to justice at the national, state and local levels. NLADA also serves as the collective voice for our country's civil, legal aid and public defender services and provides advocacy, training, and technical assistance. The NLADA has used data from the BJS public defender studies through a variety of methods including highlighting findings from

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<sup>10</sup> GAO. (2013). Indigent Defense: DOJ Could Increase Awareness of Eligible Funding and Better Determine the Extent to Which Funds Help Support this Purpose. Washington, D.C. Government Accountability Office.

the BJS reports at its annual conference and stressing the findings in its monthly newsletter *Cornerstone*.

**Other non-profit organizations** – A variety of non-profit organizations have either emphasized or used the BJS public defender census data in their reports examining the challenges or issues facing the nation’s indigent defense systems. The Justice Policy Institute, for example, published in 2011 a report titled “System Overload: The Costs of Under-Resourcing Public Defense.” In this report, the authors cite to the BJS public defender statistics to justify their arguments for increasing the budgets, staffing, and overall resources employed by indigent defense systems. Other reports by non-profit organizations that have cited to the BJS public defender census data for educational or advocacy purposes include:

Benner, Laurence A. (2011). When Excessive Public Defender Workloads Violate the Sixth Amendment Right to Counsel Without a Showing of Prejudice. Retrieved from [http://www.acslaw.org/files/BennerIB\\_ExcessivePD\\_Workloads.pdf](http://www.acslaw.org/files/BennerIB_ExcessivePD_Workloads.pdf)

National Center for Justice Planning. (2011). Cornerstone for Justice: Byrne JAG and its Impact on the Criminal Justice System. Retrieved from <http://www.navaa.org/misc/ByrneJAGReport.pdf>

Stop Abusive and Violent Environments. (2013). Unequal Justice in the Criminal Justice System. Retrieved from <http://www.saveservices.org/wp-content/uploads/SAVE-Criminal-Justice-System.pdf>

The Smart on Crime Coalition. (2011). Smart on Crime: Recommendations for the Administration and Congress. Retrieved from <http://www.besmartoncrime.org/pdf/Complete.pdf>

**State Governments** – State officials have begun using the BJS public defender data for the purpose of policy development, reform efforts, and budget enhancement advocacy. For example, Massachusetts recently initiated an effort to increase the percent of indigent defendants represented by public defenders rather than assigned counsel. The Massachusetts Committee for Public Counsel Services used the BJS data as benchmarks for comparing their public defender caseloads to that of similarly situated states.

**Independent researchers** – Independent researchers have primarily relied on data from the BJS 2007 CPDO and 1999 NSIDS to support their contentions about the resource pressures facing indigent defense systems. Some articles that cited to the BJS indigent defense studies in articles examining the caseloads, budgets, and staffing sources of indigent defense systems include:

Durocher, C. and Benson, A. (2011). A Reform Roadmap for the Criminal Justice System. *Judicature*, 95, 38-44. Retrieved from [http://www.constitutionproject.org/pdf/83111\\_judicature\\_focus\\_cjreform.pdf](http://www.constitutionproject.org/pdf/83111_judicature_focus_cjreform.pdf)

Slieter, R. and Randa, E. (2011). The Minnesota Public Defender System: A Change of Governance Should Occur for the State to Effectively Fulfill its Constitutional Obligation.

William Mitchell Law Review, 37, 599-629. Retrieved from <http://www.wmitchell.edu/lawreview/Volume37/documents/Slieter.pdf>

Mann, P. (2010). Ethical Obligations of Indigent Defense Attorneys to Their Clients. Missouri Law Review, 75, 715-749. Retrieved from <http://law.missouri.edu/lawreview/files/2012/11/Mann.pdf>

Lemos, M. (2000). Civil Challenges to the Use of Low-Bid Contracts for Indigent Defense. New York University Law Review, 75, 1808-1842. Retrieved from [http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5191&context=faculty\\_scholarship](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5191&context=faculty_scholarship)

**The media** – Numerous media outlets have utilized data from the BJS indigent defense surveys. For example, the Crime Report published an article in October 2010 titled *In Public Defense* which focused on issues affecting the nation’s public defender systems. In this article, the Crime Report cited to statistics from the BJS public defender reports to support the contention that public defender systems are being inundated with significant caseloads.

**The Public** – The prosecution and adjudication unit staff at BJS receive regular inquiries from ASKBJS, BJS’ online information request mechanism. Both data from the 2007 CPDO and 1999 NSIDS are relied on to answer questions about public defender caseloads, budgets, staffing, administration, and the utilization of national standards in the implementation of indigent defense. BJS has made the 2007 CPDO and 1999 NSIDS data available to stakeholders in the indigent defense community, data providers, professional and advocacy associations, Congress, components of the U.S. Department of Justice, researchers, the media, and the public through multiple products, including tables published on the BJS website, timely press releases, and special reports on the most recent national findings related to the administration of indigent defense in the US. These reports include *State Public Defender Programs, 2007* and *County-based and Local Public Defender Programs, 2007*.

### 3. Use of Information Technology

Historically, the BJS surveys examining indigent defense systems have been primarily a mail questionnaire; however, an online survey instrument option was provided to respondents for the 2007 CPDO. The use of the online option for the 2007 CPDO varied depending on whether the public defender services were delivered by a state-wide or county-based system. Public defender offices have two primary forms of administration and funding. For 2007, 22 states had a state-wide public defender program with responsibility for overseeing the operations, policies, administration, budgets, and practices of all public defender offices in the state. In the remaining states, public defender offices were county-based, administered at the local level, or funded principally by the county or through a combination of county and state funds.<sup>11</sup> For the 2007 CPDO, 82% of state level public defender offices and 29% of local county-based public defender offices completed the survey using the web questionnaire. Among the county-based public defender offices, there was variation in the use of the web survey based on the size of the office

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<sup>11</sup> For the 2013 NSIDS, 28 states and the District of Columbia were identified as having state based centralized systems. This number differs from the 2007 CPDO because of changes in the administration of indigent defense in some states. Please see section B for a discussion of how data collection strategies will take into account the different systems of indigent defense representation employed by the states.

as represented by their caseloads. Approximately 25% of offices with 5,000 or fewer cases completed the 2007 CPDO using the web survey, while 50% of offices with more than 30,000 cases completed the 2007 CPDO via the web survey. Table 1 displays the number and percentage of local public defender offices completing the 2007 CPDO survey by mode of data collection.

**Table 1. Mode of data collection for county-based public defender offices, 2007**

Local Public Defender Office Caseload	Number of offices	Percent of public defender offices completing survey via -			
		Web survey	Mail survey	Fax	Phone
Less than 5,000	401	25%	65%	7%	3%
5,001-10,000	76	37%	58%	4%	1%
10,001-20,000	35	43%	51%	3%	3%
20,001-30,000	18	39%	61%	0%	0%
30,001 and above	28	50%	46%	4%	0%

Note: Fifteen offices were unable to provide information on their caseload numbers.

For the 2013 NSIDS, BJS will utilize a multi-mode design in which respondents will be directed to the primary mode of data collection (i.e., the web) by providing them with instructions for submitting their data via the web. The web option will display individual questions in a similar format as the paper version except that only questions that should be asked of the respondent will display. The web option will include the OMB number, general information/contact information, instructions, and burden statement. Paper forms, including electronic PDF copies, will continue to be available as a back-up mode of submission if respondents indicate they prefer that mode. Respondents can submit the hardcopy survey instrument via mail or fax. Respondents also will have the option to complete the survey over the telephone.

BJS will make every attempt to achieve the goal of having the majority of respondents utilize the web-based survey option for the 2013 NSIDS. There are a variety of advantages to using web-based surveying compared to other modes, including the following: reduced costs for data entry; dynamic error checking capability; minimization of missing items thereby reducing the need for data retrieval; the ability to incorporate complex skip patterns thereby reducing the potential for response errors; the inclusion of pop-up instructions for selected questions; and the use of drop-down boxes.<sup>12</sup> The web questionnaire was tested in an iterative manner. Feedback regarding the user interface, question wording, and skip logic was incorporated into the electronic version of the survey. The web survey was then re-tested to confirm ease of usability and that question text and skip patterns were correct. The web survey also has the capability to break off and resume at the stopping point. This allows users to stop the survey and resume at a later date. Most of these advantages are not possible for paper surveys.

The publications based on 2013 NSIDS will be generated in both printed and electronic formats. The 2013 NSIDS report will be available on the BJS webpage in a PDF file. In addition, the data for the 2013 NSIDS will be available for downloading and further analysis at the Inter-

<sup>12</sup> Dillman, D.A. (2000). *Mail and Internet surveys: the tailored design methods*. Second edition. New York: John Wiley & Sons, Inc; Cobanoglu, C., Warde, B., & Moreo, P.J. (2001). *A comparison of mail, fax, and Web-based survey methods*. *International Journal of Market Research*, 43(4), 441-452.

University Consortium for Political and Social Research. Study documentation (i.e. codebook and variable list) will also be available for download.

#### 4. Efforts to Identify Duplication

BJS staff have completed reviews of other surveys, other federal data collections, and of the literature in order to identify duplication. This review has led to the conclusion that the 2013 NSIDS project will provide information that is not collected elsewhere. In terms of national level data collections examining the organization and administration of indigent defense systems, the BJS has done most of the work in this subject area. BJS funded the 1999 NSIDS study for the purpose of examining all forms of indigent systems in states with state-funded indigent defense systems and in the nation's 100 most populous counties. In 2007, BJS conducted the CPDO which was a census of all state and locally funded public defender offices (excluding other indigent defense delivery mechanisms). These BJS sponsored data collection programs represent most of the efforts to survey the nation's indigent defense delivery systems.

The data collected through the 2013 NSIDS are also unique from other surveys conducted by BJS that collect some data on defense attorneys. For example, the State Court Processing Statistics (SCPS) project (OMB Control # 1121-0306) collects case-level information on felony cases filed in a sample of the nation's 75 most populous counties during the month of May and tracks these cases from filing to disposition. Specific information collected in SCPS includes the types of arrest charges filed against felony defendants, conditions of pretrial release, and adjudication and sentencing outcomes. The SCPS project also obtains data on the types of defense attorneys, (e.g., public defender, assigned counsel, and private attorney), representing defendants in these felony cases. Although SCPS provides information on representation of felony defendants, it does not delve into the staffing, administration, budgets, and governance of the nation's indigent delivery systems. Moreover, SCPS focuses on felony case processing in the nation's most populous counties and hence, cannot provide information on indigent defense representation for less populous jurisdictions and for misdemeanor level cases.

Other BJS surveys that obtain some information on types of defense counsel representing defendants at the time of case adjudication include the inmate surveys for the National Survey of Prison Inmates in State and Federal Correctional Facilities and Survey of Inmates in Local Jails. The inmate surveys collect data from a nationally representative sample of prison and local jail inmates through personal interviews. Specific topics include criminal history, socioeconomic conditions, drug and alcohol use and treatment, and mental health and medical problems. In addition, both inmate surveys obtain information on whether the inmate was represented by a private or public attorney. While the inmate surveys provide another source of information about defense attorneys, they are also subjected to a variety of limitations. Specifically, these surveys focus only on a sample of inmates incarcerated in jails or prison facilities on a particular date and hence are unable to address broader questions related to the administration and types of indigent delivery systems utilized throughout the U.S.

BJS recently enlisted Census to extract state government indigent defense expenditures from the Annual Survey of State Government Finances (ASSGF) for fiscal years 2008-2012. The ASSGF collects a significant portion of its expenditure data from administrative records provided by

each state government. The data extracted includes only state government indigent defense expenditures and does not include any local government indigent defense expenditures. Therefore, states cannot be compared in terms of their total government indigent defense expenditures, except for the states where indigent defense services are funded entirely by the state.

The expenditure data requested through the NSIDS overcomes the limitations of the data extracted from the ASSGF by including expenditure data associated with all forms of indigent defense delivery methods including public defenders, assigned counsel, and contract attorneys in operation at the state and county levels throughout the U.S. This represents a much more comprehensive set of data compared to the limited state government expenditure data extracted from the ASSGF. In doing so, the NSIDS provides a thorough analysis of the sources of funding for indigent defense, yielding more accurate state-level estimates of indigent defense funding, and allowing for comparisons in funding levels between states. The NSIDS collects a comprehensive set of data on the majority of administrative and operational characteristics of jurisdictions in addition to the expenditure data, allowing for comparisons between expenditure data and other jurisdictional characteristics such as caseload sizes and staffing levels. This detailed level of analysis relating expenditure data to indigent defense administrative structure and operations is of critical importance to stakeholders interested in “access to justice” issues associated with indigent defense such as the amount spent per case, levels of public defender compensation related to workload, etc. While the NSIDS data includes a more comprehensive set of indigent defense expenditure data, subsets of the NSIDS data focusing on state level expenditures will be compared to the data extracted from the ASSGF in order to determine the feasibility of using administrative data to collect state government indigent defense expenditures and for purposes of determining the best source for indigent defense expenditure data.

Outside BJS, the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (ABA-SCLAID) is another group that has sponsored studies examining various components of the nation’s indigent defense systems. The ABA-SCLAID studies have primarily focused on indigent defense expenditures, oversight and administration, salaries, and compensation. The ABA-SCLAID expenditure reports describe each state’s indigent defense delivery system and detail the total indigent defense expenditures for all 50 states. The most recent report covered statewide indigent defense expenditures for fiscal year 2008, while earlier reports included indigent defense expenditure information for fiscal years 1997, 2002, and 2005.<sup>13</sup> Another ABA-SCLAID series describes the extent that each of the nation’s 50 states has centralized the administration, funding, and oversight of their indigent defense systems. These reports detail whether a state utilizes statewide public defender systems, the duties and responsibilities of indigent defense commissions, and the selection processes and qualifications for chief public defenders for the years 2004 through 2006.<sup>14</sup> Lastly, ABA-SCLAID has

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<sup>13</sup> The Spangenberg Group. (2010). *State, County, and Local Expenditures for Indigent Defense Services, Fiscal Year 2008*. The ABA-SCLAID, Washington, DC. For earlier ABA-SCLAID reports on indigent defense expenditures see ABA-SCLAID webpage at <http://www.americanbar.org>.

<sup>14</sup> The Spangenberg Group. (2006). *Statewide Indigent Defense Systems: 2006*. The ABA-SCLAID, Washington, DC. For earlier ABA-SCLAID reports on statewide indigent defense systems see ABA-SCLAID webpage at <http://www.americanbar.org>.



produced several reports examining the salaries of public defenders and appointed counsel in both capital and non-capital felony cases for the years 2001 and 2007.<sup>15</sup>

The ABA-SCLAID has produced information that compliments but does not duplicate BJS efforts in the area of indigent defense. For example, although both the NSIDS and ABA-SCLAID collect budget information, the ABA reports cover expenditures only at the state-level and do not disaggregate expenditures by defense counsel type. The NSIDS will not only provide expenditure information by type of indigent defense delivery system but will also attempt to determine whether the budget's source hails primary from the state, county, city, client fees, recoupment costs, or other sources. In addition, while both ABA-SCLAID and NSIDS inquire about the different types of indigent defense delivery systems in use, the ABA-SCLAID examines the primary method of indigent defense at the state level. For example, the ABA-SCLAID reports highlight the number of states that fully or partially fund and administer their indigent defense systems; however, these reports are unable to detail the percent of counties or cases in which either a public defender, assigned counsel, or contract attorney provides representation. Moreover, the ABA-SCLAID reports do not cover other critical aspects of the indigent defense system that will be examined by the 2013 NSIDS including the differences between public defenders, assigned counsel, and contract attorneys in mandatory caseload restrictions, conflict attorney protocols, indigence determination criteria, professional development, and adherence to formal standards and guidelines.

## 5. Efforts to Minimize Burden

In order to create data collection forms and instructions that are accurate, easy to understand, and which impose the least possible burden on the subjects being surveyed, BJS and the data collection agent, the National Opinion Research Center (NORC), sought feedback from experts in the substantive and policy issues of indigent defense and in survey design. Representatives from the NLADA and the National Association of Counties (NACo) reviewed the survey instrument and provided feedback. A pilot of state and county based systems was conducted and debriefing interviews held to elicit information about any questions that were unclear or difficult to understand

In response to this feedback, the survey has undergone numerous revisions to shorten and condense the questions. For example, the initial survey instrument contained questions requesting respondents to provide information on the number of cases handled by indigent defense attorneys for a wide variety of case types. Subsequent discussions revealed that respondents would find it difficult to complete many of these caseload number questions and would find it burdensome to attempt to do so. After several revisions, questions about caseload numbers were reduced to a smaller number of caseload categories that are more realistic for the respondents to complete.

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<sup>15</sup> The Spangenberg Group. (2001). *Comparative Central Administrative Salary Information of State Funded Indigent Defense Systems, 2001*. The ABA-SCLAID, Washington, DC; The Spangenberg Group. (2007). *Rates of Compensation for Court-Appointed Counsel in Capital and Non-Capital Felony for Trial: A State By State Overview, 2007*. The ABA-SCLAID, Washington, DC. For earlier ABA-SCLAID reports on indigent defense compensation see webpage at <http://www.americanbar.org>.

The surveys were drafted using definitions of indigent defense terms commonly used by the indigent defense community. We have also attempted to minimize the complexity of the survey and to provide clear instructions for each question. The expert panel meeting confirmed that the majority of survey items request data that are normally captured in the record keeping systems of indigent defense systems. Moreover, through our experiences with the public defender census in which the final item response rates were over 90%, we anticipate that the majority of data requested on the survey form will be accessible.

In terms of minimizing burden, results from the pilot test in 19 county-based and 5 state-based indigent defense systems found that respondents were able to provide the necessary information to questions within the survey. Respondents were able to consult financial records, staff members, and caseload records to provide the answers to each of the sections. Those who participated in the pilot stated that the help screens and definitions allowed them to easily understand what was being asked and answer accordingly. For the county and court administrators who completed the survey, respondents indicated that they had access to the records needed to provide the information.

#### 6. Consequences of Less Frequent Collection

In determining the frequency of data collection, BJS considers whether or not there is a reasonable expectation of significant change in key statistics between collections. Findings presented by stakeholders in the indigent defense community have identified changes in key statistics since the last census was completed in 2007; these changes need to be systematically assessed and documented. For example, there is some evidence that public defender budgets and staff were reduced during the economic downturn, as highlighted in a report released by The Justice Policy Institute on defense counsel overload.<sup>16</sup> Conducting the 2013 NSIDS will allow indigent defense administrators and policymakers to assess how the recession has affected the staffing, budgets, administration, and governance of the nation's public defender programs. An updated NSIDS will provide crucial information on which state-level public defender programs have been affected most dramatically by the recession.

Based in part on recommendations from key stakeholders, BJS has determined that it is necessary to improve the timeliness of the publications on indigent defense in order to provide more current and useful information to stakeholders. The reduced frequency of data collection on indigent defense resulting from budgetary and staffing constraints has forced stakeholders in the indigent defense community to rely on outdated information, with possible negative impacts on agency programs and operations. For example, DOJ and associated agencies like the National Institute of Justice depend on information about the nation's indigent defense systems in order to formulate policy positions, draft reports, and devise research agendas. DOJ's major indigent defense initiative, Access to Justice, produced reports citing BJS public defender data from what are now viewed as outdated surveys.

In addition, the President's 2015 budget includes a \$330 million dollar indigent defense initiative, including over 5 million dollar designated for conducting research on indigent defense. This initiative specifically allocates 2.5 million dollars for BJS to conduct a national study of

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<sup>16</sup> The Justice Policy Institute. (2011). *System Overload: The Costs of Under-Resourcing Public Defense*. The Justice Policy Institute. Washington, DC.

public defenders and a national public defenders reporting program<sup>17</sup>. If the proposed NSIDS data collection is delayed or not conducted, BJS will not have enough information on the variability of indigent defense services at the state and local levels to conduct the studies proposed in the president's budget. Accordingly, it is imperative that BJS implement the NSIDS now in order to meet DOJ's need for more current and comprehensive information about the nation's indigent defense systems and to support DOJ's future plans.

#### 7. Special Circumstances

There are no special circumstances in conducting this information collection. Collection is consistent with the guidelines as listed in 5 CFR 1320.6. These data will be collected in a manner consistent with the guidelines in 5 CFR 1320.6.

#### 8. Adherence to 5 CFR 1320.8(d) and Outside Consultations

The research under this clearance is consistent with the guidelines in 5 CFR 1320.6. The 60-day notice for public commentary was published in the Federal Register, Volume 79, Number 7, page 1891 on January 10, 2014. The 30-day notice for public commentary was published in the Federal Register, Volume 79, Number 50, page 14539, on March 14, 2014. No public comments were received in response to the 60-day or 30-day notice.

BJS consulted with policymakers, research specialists, and practitioners who specialize in the administration of indigent defense systems and trial courts. Some of the specialists consulted include staff from the National Legal Aid and Defender Association, the National Association of Counties, the National Association of Criminal Defense Lawyers, American Bar Association Standing Committee on Legal Aid and Indigent Defendants, and the U.S. Department of Justice's Access to Justice initiative. Finally, there have been extensive consultations with research specialists from the data collection agent for this project – the National Opinion Research Center. The following individuals from these various organizations provided valuable advice and comments on the content and design of the data collection instrument:

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<sup>17</sup> FY2015 Budget and Performance Summary, Office of Justice Programs. Retrieved from <http://www.justice.gov/jmd/2015summary/pdf/ojp.pdf>

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## 9. Paying Respondents

Not Applicable. Participation in the 2013 NSIDS is voluntary and no gifts or incentives will be given.

## 10. Assurance of Confidentiality

According to 42 U.S.C. 3735 Section 304, the information gathered in this data collection shall be used only for statistical or research purposes, and shall be gathered in a manner that precludes their use for law enforcement or any purpose relating to a particular individual other than statistical or research purposes. The data collected through the 2013 NSIDS represent institutional characteristics of publicly-administered or funded systems and are, therefore, in the public domain. In addition, the information collected in the NSIDS involves organizational information about the administration, budgets, caseloads, staffing, and governing attributes of indigent defense systems rather than the individual attributes of attorneys or other staff persons working within these systems. For example, while the NSIDS will attempt to collect information about the number of attorneys working within an indigent defense system, it will not seek to obtain individual level information about these attorneys including their race/ethnicity, age, gender, education, legal specialization, work habits, or job satisfaction. Moreover, the organizational focus of this data collection effort precludes the information collected from being used to readily identify individuals working within the surveyed indigent defense systems.

Although BJS' confidentiality statute (42 U.S.C. § 3789g) is not being invoked for this project, the names of respondents who completed the data collection forms will be kept confidential. BJS, through collaboration with its data collection agent, NORC, will take all precautions to ensure that no outside parties will be able to identify respondents participating in the 2013 NSIDS project. First, NORC has several safeguards in place to maintain confidentiality of the participating respondents. These include the utilization of firewalls, virus protection software, and security logins checks to safeguard the confidentiality of the data collected for this project. NORC will also store any paper data collection forms submitted in a locked file. Before submitting the final dataset to BJS, NORC will remove any information from the dataset that could be used to identify individual respondents who assisted in the 2013 NSIDS data collection. NORC will delete subject identifiers three years after the conclusion of the project, in accordance with the Privacy Certificate.

## 11. Justification for Sensitive Questions

The 2013 NSIDS focuses on publicly available agency level information, which is not considered sensitive. In addition, the data collected and published from the surveys are aggregate counts from which the identity of specific private persons cannot reasonably be determined.

## 12. Estimate of Respondent Burden

In order to estimate respondent burden, it is necessary to understand the general configuration of indigent defense systems throughout the U.S. The overall universe of indigent defense systems can be categorized into two primary groups, state-based and county-based.<sup>18</sup> The first group, which includes 28 states and the District of Columbia (herein referred to as 29 states), has some sort of statewide public defense system. In these states, indigent defense is administered, funded, and organized at the state level; consequently, the survey can be sent to a single respondent who will have the capacity to provide information on the indigent system for the entire state. Since all 29 of these states organize their indigent defense service delivery at the state level, only one survey instrument per state will be completed.

For the other 22 states without a statewide public defense system, indigent defense is administered primarily at the local (generally county) level and funded principally by the county or through some combination of county or state funds. In these states, there are approximately 1,533 county-based indigent defense systems, typically corresponding with the county's geographical boundaries; in some states, boundaries are based upon judicial circuits. One survey instrument will be completed for each county-based indigent defense system by the court administrator (or equivalent).

The number hours needed to complete the instrument will vary by the type of defense counsel system surveyed. For the 29 state based systems, the estimated burden hours will range from 2 hours per state for the 17 states with only a public defender system to 4 hours per state for states in which public defenders provide primary services and conflicts cases are handled by a separate system of assigned counsel and/or contract attorneys. This divergence in burden hours occurs because states with only public defender offices need not concern themselves with questions related to assigned counsel and/or contract attorneys, while states with multiple forms of indigent defense will have to complete questions related to potentially all three types of indigent delivery systems (i.e., public defender, assigned counsel, and contract attorney). Among the county-based systems, the average burden hours will also vary according to whether the county utilizes one or multiple forms of indigent defense. Since little information is available on the specific methods of indigent defense employed by the county-based systems, we estimate an average of 3 hours to complete the NSIDS survey instrument based on an average utilization of two service delivery methods per county.

The total estimated burden hours for the 29 states with centralized indigent systems are 80 hours. This estimate includes:

- 34 hours for the 17 states with only one public defender system to complete the survey instrument (17 states \* 2 hours = 34 hours)
- 6 hours for the 2 states with separate primary and conflict public defender offices to complete the instrument (2 states \* 3 hours = 6 hours) and
- 40 hours for the 9 states and the District of Columbia with separate systems of public defenders handling primary cases and assigned counsel and/or contract attorneys handling conflict cases (10 states \* 4 hours = 40 hours)

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<sup>18</sup> This section provides a general overview of the nation's indigent defense systems for burden hour calculation purposes. Please see Section B for a more detailed overview of the universe of state and county-based indigent defense systems and the effect of these indigent defense structures on data collection strategies.

For the states with county-based indigent defense systems, the total estimated burden hours are 4,599 hours. The burden hours for the county-based systems includes:

- 4,599 hours to complete the survey instrument in these counties (1,533 indigent defense systems \* 3 hours = 4,599 hours).

In all, the total estimated burden hours for the NSIDS project is estimated to be 4,679 hours (80 hours for state based systems + 4,599 hours for county based systems = 4,679 hours). The burden hours to complete the NSIDS survey are further detailed below:

<b>Table 2. Estimate respondent burden for the National Survey of Indigent Defense Systems</b>				
<b>STATE-BASED SYSTEMS</b>	<b>Number of States</b>	<b>Number of Indigent Defense Systems Surveyed</b>	<b>Average Burden</b>	<b>Total Estimated Burden Hours</b>
<b>Estimated burden for completing survey instrument</b>				
State based public defender office responsible for both primary and conflict defense services	17 states	17 indigent defense systems 1 respondent per indigent defense system (chief public defender or commission executive)	2 hours per indigent defense system to complete survey	17 indigent defense systems * 2 hours = <b>34 total hours</b>
State based public defender office responsible for primary defense services; separate state based public defender office responsible for conflict services	2 states	2 indigent defense systems 2 respondents per indigent defense system (1 primary chief public defender or commission executive and 1 conflict chief public defender or commission executive)	3 hours per indigent defense system to complete survey	2 indigent defense systems * 3 hours = <b>6 total hours</b>
State based public defender office responsible for primary defense services only; separate administrator(s) oversees conflict services involving assigned counsel and/or contract attorneys on statewide basis	9 states and the District of Columbia	10 indigent defense systems 2-3 respondents per indigent defense system (1 primary chief public defender or commission executive and 1 or 2 administrators overseeing assigned counsel/contract attorneys)	4 hours per indigent defense system to complete survey	10 indigent defense systems * 4 hours = <b>40 total hours</b>
<b>Total Respondent Burden, State-Based Systems: 80 hours</b>				
<b>COUNTY-BASED SYSTEMS</b>	<b>Number of States</b>	<b>Number of Indigent Defense Systems Surveyed</b>	<b>Average Burdens</b>	<b>Total Estimated Burden Hours</b>
<b>Estimated burden for completing survey instrument</b>				
County-based office(s) responsible for primary and conflict defense services through a single method or combination of public defender offices, assigned counsel, and contract attorneys.	22 states	1,533 county-based indigent defense systems 1-3 respondents per indigent defense system (depending on the number of delivery methods utilized)	3 hours per indigent defense system surveyed	1,533 indigent defense systems * 3 hours = <b>4,599 total hours</b>
<b>Total Respondent Burden, County-Based Systems: 4,599 hours</b>				

**Total Respondent Burden: 4,679 hours**

The estimated burden hours per indigent system were determined based on the 2007 CPDO and include time both to complete the survey instrument and address issues related to missing and/or inconsistent responses.

### 13. Estimate of Respondent’s Cost Burden

We do not anticipate that respondents will incur costs to complete the survey form. We expect that the only cost to respondents is time to complete and return the survey form. The information requested is within data normally collected in the indigent defense systems records and no special hardware, accounting software or system is necessary to provide information for this data collection.

### 14. Costs to Federal Government

The total expected cost to the Federal Government for this data collection is \$1,340,979 all to be borne by the BJS. Currently, the division of labor for a data collection cycle on the 2013 NSIDS is as follows: NORC will collect the data and prepare a dataset for BJS analysis, while BJS staff will analyze the data, prepare statistical tables, write reports based on these data, and archive the data for public use. A BJS GS-Level 13 statistician will be responsible for overseeing the NORC’s work on this project. The budget for this project is shown below:

<b>Table 3. Estimated Costs for the National Survey of Indigent Defense Systems Project</b>	
<b>BJS Costs</b>	<b>Costs</b>
<b>Staff salaries</b>	
GS-12 Statistician (25%)	\$18,000
GS-13 Statistician (33%)	\$30,000
GS-15 Supervisory Statistician (5%)	\$7,000
GS-13 Editor (10%)	\$10,000
Other Editorial Staff	\$5,000
Front-Office Staff (GS-15 & Editors)	\$2,000
Subtotal Salaries	\$72,000
Fringe Benefits (28% of salaries)	\$20,160
Subtotal: Salary & Fringe	\$92,160
Other Administrative Costs of Salary and Fringe (15%)	\$13,824
<b>Subtotal BJS Costs</b>	<b>\$126,144</b>
<b>Data Collection Agent Costs (NORC)</b>	
Personnel	\$365,726
Fringe Benefits	\$132,318
Travel	\$1,814
Supplies	\$13,291
Consultant/Contracts	\$253,618
Other	\$99,322
Total Indirect	\$348,746
<b>Subtotal Data Collection Agent Costs</b>	<b>\$1,214,835</b>



Total Estimated Costs	\$1,340,979
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#### 15. Reason for Change in Burden

The number of burden hours increased from 1,400 hours for the 2007 CPDO to 4,679 hours for the 2013 NSIDS. There are a variety of reasons for this increase. First, the 1,400 hour request for the 2007 CPDO was derived by estimating one hour to complete the survey instrument for each of the nation's 1,400 public defender offices.<sup>19</sup> Although this estimate was based on our best understanding of the hours needed to complete the CPDO survey, the estimate did not adequately cover the number of hours that would be required to collect and verify the requested information. At the time, BJS had not attempted to collect information on public defender offices since 1999 and hence did not have an entirely accurate understanding of the hours required to obtain information for the public defender survey. As stated in the burden hour section, the estimated range of 2 to 4 hours to complete each survey instrument is based on our experience with the 2007 CPDO, discussions with NLADA staff responsible for collecting information for the 2007 CPDO surveys as public defenders, and the pilot test of the survey instrument.

Another reason for the burden hour change involves the fact that the 2013 NSIDS will expand the universe of respondents included in the data collection. The 2007 CPDO collected information on public defender offices only and did not include systems in which the service is administered through an assigned counsel or contract attorney systems. For the 29 states with centralized systems, the 2007 CPDO only collected information on the primary method of indigent defense --- which would be public defender programs. It did not obtain information on the mechanisms of indigent defense applied in conflict of interest situations (i.e., where a public defender could not provide representation because of the presence of multiple co-defendants, irreconcilable differences between clients and their attorneys, and case overload). Among the 22 states with county-level indigent systems, the CPDO did not cover counties where indigent defense was administered through assigned counsel or contract attorney systems. Moreover, it did obtain information on how county-level public defender offices utilized these other forms of indigent defense in conflict situations. Therefore, the 2013 NSIDS will cover a larger breadth of indigent defense systems and organizations compared to the 2007 CPDO study.

In addition to expanding the overall scope of the study, discussions with various groups with expertise in the area of indigent defense including the NLADA, NACo, NACDL, ABA-SCLAID, and the Department of Justice's ATJ Initiative has resulted in several revisions to the survey that have been tested through the generic clearance agreement OMB Number 1121-0339. Specifically, sections on indigent defense budgets, client fees and recoupment policies, and conflict of interest procedures were expanded to take into account the study's broader scope and the interest of state and federal indigent defense experts. For example, the budget section was revised to include the specific dollar amounts received from state, county, city, federal, and other sources to fund indigent defense systems. The budget section differs from the 2007 CPDO where

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<sup>19</sup> The 1,400 office number reflects the fact that the 2007 CPDO was initially envisioned as a survey that would examine all public defender offices at the county level including those in states with centralized systems. The attempt to obtain county-level information for state-level public defender offices was abandoned after several efforts. It was determined that many state systems share staffing, budget, and resources across several counties, precluding a county-level examination of these indigent defense characteristics.

only the percent contributions from states, counties, cities, and other sources were requested. Revisions to the budget section were made because discussions with the abovementioned experts indicated that many indigent defense systems had the capacity to provide actual dollar amounts and that utilizing dollar figures was less burdensome than trying to recalculate the dollar figures into percent contributions. Another revision involved questions related to conflict of interest procedures and policies. Since the 2007 CPDO only focused on public defenders offices, it was unable to obtain detailed information about the utilization of contract and/or assigned counsel attorneys in conflict situations. The expansion of the 2013 NSIDS allows for the inclusion of additional questions related to how frequently public defender systems rely on these other service delivery methods to alleviate situations where a conflict has arisen because of case overload or multiple co-defendants.

Another change in the survey instrument involves the inclusion of additional questions focusing on assigned counsel and contract attorney systems tested through the generic clearance agreement OMB Number 1121-0339. Since the 2013 NSIDS has been expanded to include these other forms of indigent defense, it's important to devise questions related to the structure of assigned counsel and contract attorneys systems. For example, the 2013 NSIDS requests information on the compensation structures of assigned counsel and contract attorneys, the methods in which assigned counsel and contract attorneys are selected to represent defendants, and the processes in which an administrator is appointed to oversee either an assigned counsel or contracts system. Moreover, the 2013 NSIDS will request information on the budgets, fees and recoupment polices, staffing, caseloads, training policies, and adherence to formal standards of the surveyed assigned counsel and contract attorney systems.

#### 16. Project Schedule

The projected schedule for the 2013 NSIDS is as follows:

<b>Table 4. NSIDS Project Tasks</b>	<b>Start Date</b>	<b>End Date</b>
Project planning, preparation, and development (includes OMB and IRB review)	October, 2011	June, 2014
Roster development	January, 2014	April, 2014
Data Collection Period	July, 2014	January, 2015
• State IDS Data Collection	July, 2014	September, 2014
• County IDS Data Collection	July, 2014	January, 2015
• Nonresponse follow-up by mail, e-mail, fax and telephone	August, 2014	January, 2015
• Data editing, verification, and final callbacks	August, 2014	January, 2015
State IDS data finalized	October, 2014	October, 2014
State IDS analysis	October, 2014	October, 2014
State IDS report writing	October, 2014	November, 2014

Table 4. NSIDS Project Tasks	Start Date	End Date
State IDS report released	December, 2014	December, 2014
County IDS data finalized	February, 2015	February, 2015
County IDS analysis	February, 2015	April, 2015
County IDS report writing	February, 2015	April, 2015
County IDS report released		June, 2015
2013 National Survey of Indigent Defense Systems Full Report	September, 2015	December, 2015
NSIDS data archived with NACJD		December, 2015

Data collection is anticipated to begin after securing OMB approval in June, 2014. Data collection will involve a series of mailings and non-response follow-up activities that will begin in July, 2014 and end in January, 2015. Processing of the data, including editing, data entry and retrieval, will occur in tandem with the data collection period from July, 2014 through January, 2015. Preliminary analyses of the data to ensure proper instrument skip patterns, range checks, and accurate reporting will begin shortly after the start of data collection and will continue throughout data collection.

NORC will focus initially on data collection for the 29 state-based IDS. State-based data collection is scheduled for three months beginning in July 2014 and ending in September 2014. NLADA will conduct follow up telephone calls to state IDS respondents. The state IDS data set will be delivered to BJS in October, 2014. The initial report on state-based indigent defense systems will be written during October, 2015, with the press release and projected publication date for this first report occurring December, 2014. The county-based IDS data collection will also begin in July 2014. The number of county-based IDS is considerably greater than the state IDS respondents. NORC anticipates a 6-month data collection period is needed to collect information from the county-based IDS. The final data set will be delivered to BJS in February, 2015 and analysis will be conducted from February, 2015 through April, 2015, with a report on county-based IDS published during June, 2015.

After publication of the initial state and county based reports, a full summary report will be developed and published in 2015 that will examine the frequency with which public defenders, assigned counsel and contract attorney are utilized to administer indigent defense, the budgets and funding sources for these indigent defense delivery systems, the fees and recoupment policies utilized to compensate indigent defenders, the policies and practices related to the administration of indigent defense, and the extent to which indigent defense systems adhere to caseload limits, training requirements, and conflict of representation standards.

The dataset, and supporting documentation, will be made available for download without charge at the National Archive of Criminal Justice Data at the Inter-University Consortium for Political and Social Research (ICPSR) and at Data.gov. It is expected the data will be available to the public for download in December 2015. Access to these data permits analysts to conduct statistical analyses.

17. Display of Expiration Date

The expiration date for the 2013 NSIDS OMB approval will be displayed on the survey form. See Appendix for screenshots of the web-reporting option in which the OMB control number is visible to respondents.

18. Exception to the Certificate Statement

There are no exceptions to the Certification Statement. The Collection is consistent with the guidelines in 5 CFR 1320.9.