

Ann. REPTS 171-80

I

STATE APPELLATE DEFENDER OFFICE
ANNUAL REPORTS ON A CALENDAR YEAR FOR
1971, 1972, 1973 & 1974

1974 STATE APPELLATE DEFENDER OFFICE

ANNUAL REPORT

INTRODUCTION

This Office was created in mid-1970 and officially began accepting assignments in September of that year. The purpose of this Office has been to provide, in criminal post-conviction matters, competent legal representation consistent with constitutional requirements of equal justice and due process.

The Defender depends on the Justices of the Supreme Court of Michigan, Court of Appeals of Michigan, the Circuit Courts in the State of Michigan and Detroit Recorder's Court for all of its appointments to represent indigents on appeal.

Once the Defender is appointed as counsel for a particular client, the court documents are processed and one of the staff attorneys is assigned to handle that case until completion. In general, the attorney's work consists of examining the lower court documents, researching issues, making motions, and oral arguments and writing briefs.

This Office has employed junior and senior law students as research assistants in an effort to utilize the attorney's time more efficiently and also to provide a continuing source of well trained criminal appellate attorneys.

The University of Michigan Law School and this Office are operating a program providing instruction in appellate practice. Approximately 20 students per semester are involved doing actual research on pending cases. All pending cases are from the Defender. The reciprocal benefits are a meaningful learning experience for the student as well as a valuable resource for this Office.

ORGANIZATION AND STAFF

The State Appellate Defender Office is supervised by a seven member commission, the Appellate Public Defender Commission. The commission is appointed by the Governor on the recommendation of various bodies. The trial courts, the Court of Appeals and the Supreme Court each have one recommendation; the State Bar, two recommendations, and the Governor, two recommendations. The present commission is composed of:

Chair Person

William R. Walsh, Jr., Esq., a Port Huron Attorney

Commission Members

The Honorable Donald S. Leonard, Recorder's
Court Judge

The Honorable George N. Bashara, Jr., Court
of Appeals Judge

John Foley, Esq., a Kalamazoo Attorney

John Emery, Esq., a Detroit Attorney

Seymour Posner, Esq., a Detroit Attorney

Hendon Hargrove, a Michigan Parole Board Member

The current State Appellate Defender is James R. Neuhard, who succeeded Arthur J. Tarnow, who resigned in the summer of 1972.

Mr. Neuhard graduated from the University of Notre Dame (undergraduate) and the University of Michigan Law School. He was an honor student throughout undergraduate school. In both undergraduate and law school he was involved in commissions dealing with black admissions, civil rights, urban problems and students' rights. Once graduated from law school, he worked two years for the Supreme Court of Michigan as a research attorney and administrative assistant. Mr. Neuhard is currently Chair Person of the Appellate Defenders Council of the National Legal Aid and Defender Association. In his capacity as an appellate defender he has argued before every level court in the State

and has represented this State before the United States Supreme Court.

STATUS OF STATE APPELLATE DEFENDER CASES AS OF DECEMBER 31, 1974

Since its inception, the State Appellate Defender Office has received 1,945 assignments. The following table shows the status of those cases unresolved as of December 31, 1974.

PRESENT STATUS OF CASES AS OF DECEMBER 31, 1974 (ACTIVE)

Cases assigned to the Office-----	61
Request to withdraw appeal by client-----	8
Transcript received-----	60
Claim filed - transcript not received-----	72
Claim filed - transcript received-----	199
Application for Leave to Appeal to the Court of Appeals filed-----	9
Motion for new trial/new sentencing filed - further action-----	31
S.A.D.O. Brief on Appeal filed-----	56
Prosecutor's Brief on Appeal filed-----	123
Oral Argument had in the Court of Appeals-----	34
Motion for Remand - Evidentiary Hearing-----	2
Court of Appeals decision rendered - further action pending (Won)-	6
Court of Appeals decision rendered - further action pending (Lost)-	12
S.A.D.O. Application Leave to Supreme Court applied for-----	17
Prosecutor's Application Leave to Supreme Court applied for-----	2
Assignment to prepare Leave to Supreme Court-----	122
Application to Supreme Court for Leave from assignment filed-----	18
Leave to Supreme Court granted-----	11
Leave to Supreme Court granted; our brief filed-----	7
Prosecutor's and our brief filed in the Supreme Court-----	15
Case remanded by Supreme Court - further action necessary-----	4
Federal District Court Habeas Corpus-----	1

Each case has been listed in only one category. The category indicates the last procedure which has been done in a particular case. For example, when a case is listed in category nine, a brief has been filed -- that means that the case has been processed to that point. Specifically, a claim of appeal has been filed, the transcript has been received, and, in certain cases, a motion for remand has been filed. When another matter listed on the chart occurs, the case is removed from the category it was previously listed under and placed under the category of the last event.

It should be noted and will be discussed later that there is a new category of "Assignment to prepare Leave to the Michigan Supreme Court." These "new" assignments resulted in a dramatic increase in the work of the Office.

The following table shows the disposition of all cases which have been closed since the formation of the State Appellate Defender Office:

CLOSED CASES AS OF DECEMBER 31, 1974, AND DISPOSITIONS - CLOSED IN 1974

Assigned in error, improper assignment, etc.-----	16
Withdrew as counsel-----	4
Client retained own counsel-----	2
Final disposition reached in trial court-----	16
Case dismissed - client died-----	1
Application for Leave to Appeal to Court of Appeals denied-----	8
Appeal withdrawn-----	39
Court of Appeals decision rendered-----	218
Supreme Court - client found not indigent-----	1
Prosecutor's Leave to Supreme Court denied-----	6
S.A.D.O. Leave to Supreme Court denied-----	81
Supreme Court decision - Won-----	19
Supreme Court decision - Lost-----	15
Writ of Habeas Corpus dismissed-----	2

It should be noted that the above are cases where action has ceased and no further action is contemplated. Although the above columns are generally self-explanatory, it is felt that more information should be given as to certain categories. The number of withdrawn appeals is attributable to several factors: The obvious reason for the appeal being withdrawn is that no substantial grounds for presenting an appeal could be found. Because of the delay in receiving transcripts, it has often been necessary to file a Claim of Appeal before the transcript is received in order to protect the client's right of appeal. Later, after the transcript was received and thoroughly reviewed, it became apparent that no issues were present and the Claim of Appeal was withdrawn. In several cases, the client was paroled during the

process of appeal and the client, having regained his freedom, chose not to pursue his appeal. In certain cases, the client was seeking non-judicial relief.

The following table shows the results obtained for cases closed in 1974:

DISPOSITION OF ALL CASES CLOSED SINCE THE FORMATION
OF THE STATE APPELLATE DEFENDER OFFICE

Assigned in error, improper assignment, etc.-----	27
Withdrew as counsel-----	6
Client retained own counsel-----	11
Assigned to advise client only-----	1
Client missing, no action possible-----	2
Case dismissed - client died-----	1
Final disposition reached by trial court-----	84
Motion to dismiss charges granted by trial court-----	4
Client released on habeas corpus-----	1
Application for Leave to Appeal to the Court of Appeals denied-----	16
Confession of error by prosecutor received after claim of appeal filed-----	1
Appeal dismissed as moot-----	4
Appeal withdrawn-----	143
Court of Appeals decision rendered-----	412
Supreme Court - client not found indigent-----	1
Prosecutor's Leave to Supreme Court denied-----	12
Prosecutor's Leave to Supreme Court granted-----	1
S.A.D.O. Leave to Supreme Court denied-----	158
S.A.D.O. Leave to Supreme Court granted; client retained own counsel-----	1
Client died during Supreme Court appeal-----	1
Supreme Court decision rendered-----	76
Writ of Habeas Corpus dismissed-----	2
Writ of Certiorari by prosecutor denied U.S. Supreme Court-----	1
United States Supreme Court argument and decision-----	1

FINANCING

During the 1974 calendar year, the State Appellate Defender Office was financed through vouchers paid by local counties and by monies supplied by the Legislature through the Office of the Supreme Court. This arrangement was a continuation of policy established in fiscal year 1973-1974. Legislation has been and will be pending in the Michigan Legislature regarding both the intermediate and long-range operation of the State Appellate Defender Office.

SUMMARY

The statistics presented in this report do not fully describe the work of the State Appellate Defender Office.

The above statistics as noted pertain only to the final action where the State Appellate Defender Office was involved in the case. On the average, each case reported had two other court actions, other than the final one here noted. Actions in the trial court have included: motions for bond pending appeal, evidentiary hearings, motions to vacate sentence and motions for disclosure and production of presentence report. Actions in the Court of Appeals have included: brief on appeal, motions for peremptory reversal, motions for bond pending appeal, interlocutory appeals, motions for disclosure and production of presentence report and applications for leave to appeal. Actions in the Michigan Supreme Court have included: applications for leave to appeal, interlocutory appeals, motions for bond pending appeal and motions for disclosure and production of presentence report. The issue regarding production and access to the presentence report has been resolved during the past calendar year through Court Rule and Supreme Court decisions.

Another factor intrinsic to an assessment of State Appellate Defender work is travel time for staff attorneys, who must visit clients and make court appearances at numerous locations throughout the State. Regular monthly appearances must also be made before the Supreme Court and at the three locations of the Courts of Appeals.

Input from senior staff attorneys, the Chief Appellate Defender, and Deputy Defender, has been sought by various committees concerned with courts, prisons and law reform. The unique mandate to this Office by the Supreme Court has created an Office specialized in the inter-actions of these areas. These committees, formed by the Legislature,

Supreme Court and the State Bar, appropriately seek to use the expertise and wide experience of the State Appellate Defender Office legal staff.

It should be noted that on December 5, 1973, the Sixth Circuit Court of Appeals decided the case of Mitchell v Perry Johnson, et al, No. 72-1481. The impact of this opinion was not felt by this Office in the calendar year of 1973, but had its effect in 1974.

In conclusion, it can be noted that the work load of the State Appellate Defender Office increased dramatically during calendar year 1974. Clearly, judging not only from the 1974 increase in work load from that of previous years, but also from the impact of Mitchell expanding the right to counsel further in the appellate process, the State Appellate Defender Office responsibilities will continue to grow.

It can be assumed that the impact of recent legislation and case law will cause increased demands for assigned counsel in Michigan. The new Mental Health Code and companion case law requires appointment of counsel for involuntary commitments. These cases statewide number in the thousands. Argersinger v Hamlin, a United States Supreme Court case requires appointment of counsel in misdemeanors where the Defendant faces the possibility of a jail term. It can be anticipated that the need for assigned counsel will therefore continue to expand at an ever increasing rate. This in turn will strain every county in this State where lawyers able to do assigned representations remain under-ratioed to the population of the county.



State of Michigan

STATE APPELLATE DEFENDER

Third Floor, North Tower
1200 6th Avenue
Detroit, Michigan 48226
Phone: 256-2814

Appellate Defender Assignments by County 1974

Alcona	0	Iron	2	Presque Isle	1
Alger	1	Isabella	0	Roscommon	0
Allegan	0	Jackson	90	Saginaw	11
Alpena	1	Kalamazoo	0	St. Clair	15
Antrim	1	Kalkaska	0	St. Joseph	4
Arenac	2	Kent	9	Sanilac	0
Baraga	0	Keweenaw	0	Schoolcraft	0
				Shiawassee	0
Barry	11	Lake	0		
Bay	14	Lapeer	0	Tuscola	0
Benzie	2	Leelanau	0	Van Buren	12
Berrien	45	Lenawee	20	Washtenaw	43
Branch	8	Livingston	0	Wayne	51
Calhoun	16	Luce	0	Wexford	1
Cass	7	Mackinac	0		
				Recorder's Court	79
Charlevoix	0	Macomb	0		
Cheboygan	0	Manistee	0		
Chippewa	6	Marquette	9		
Clare	0	Mason	0		
Clinton	0	Mecosta	0		
Crawford	2	Menominee	1		
Delta	2	Midland	1		
Dickinson	1	Missaukee	0		
Eaton	9	Monroe	20		
Emmet	0	Montcalm	0		
Genesee	0	Montmorency	0		
Gladwin	0	Muskegon	0		
Gogebic	0	Mewaygo	0		
Gnd Traverse	3	Oakland	6		
Gratiot	0	Oceana	0		
Hillsdale	2	Ogemaw	2		
Houghton	1	Ontonagon	0		
Huron	0	Osceola	2		
Ingham	0	Oscoda	0		
Ionia	0	Otsego	0		
Iosco	3	Ottawa	1		

1973 STATE APPELLATE DEFENDER OFFICE

ANNUAL REPORT

1973 ANNUAL REPORT OF THE STATE APPELLATE DEFENDER OFFICE

INTRODUCTION

This office was created in mid-1970 and officially began accepting assignments in September of that year. The purpose of this office has been to provide, in criminal post-conviction matters, competent legal representation consistent with constitutional requirements of equal justice and due process.

The Defender depends on the Justices of the Supreme Court of Michigan, Court of Appeals of Michigan, the Circuit Courts in the State of Michigan and Detroit Recorder's Court for all of its appointments to represent indigents on appeal.

Once the Defender is appointed as counsel for a particular client, the court documents are processed and one of the staff attorneys is assigned to handle that case until completion. In general, the attorney's work consists of examining the lower court documents, researching issues, making motions, and oral arguments and writing briefs.

This office has employed junior and senior law students as research assistants in an effort to utilize the attorney's time more efficiently and also to provide a continuing source of well trained criminal appellate attorneys.

The University of Michigan has commenced a program with funds provided by the State Crime Commission providing instruction in appellate practice. Approximately 20 students per semester are

learning experience for the student as well as a valuable resource for this office.

ORGANIZATION AND STAFF

The State Appellate Defender Office is supervised by a seven member commission, the Appellate Public Defender Commission. The commission is appointed by the Governor on the recommendation of various bodies. The trial courts, the Court of Appeals and the Supreme Court each have one recommendation; the State Bar, two recommendations, and the Governor, two recommendations. The present commission is composed of:

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John Foley, Esq., a Kalamazoo Attorney
John Emery, Esq., a Detroit Attorney
Seymour Posner, Esq., a Detroit Attorney
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The current State Appellate Defender is James R. Neuhard, who succeeded Arthur J. Tarnow, who resigned in the summer of 1972.

Mr. Neuhard graduated from the University of Notre Dame (undergraduate) and the University of Michigan Law School. He was an honor student throughout undergraduate school. In both undergraduate and law school he was involved in commissions dealing with black admissions, civil rights, urban problems and students' rights. Once graduated from law school, he worked two years for the Supreme Court of Michigan as a research attorney and administrative assistant.

As of December 31, 1973, the office employed 12 staff attorneys

STATUS OF STATE APPELLATE DEFENDER CASES AS OF DECEMBER 31, 1973

Since its inception, the State Appellate Defender Office has

received 1,235 assignments. The following table shows the status of those cases unresolved as of December 31, 1973.

PRESENT STATUS OF CASES AS OF DECEMBER 31, 1973 (Active)

Cases assigned to the office.....	64
Request to withdraw appeal by client.....	1
Transcript received.....	30
Claim filed - transcript not received.....	40
Claim filed - transcript received.....	136
Application for Leave to Appeal to the Court of Appeals filed.....	6
Motion for new trial/new sentencing filed - further action pending.....	23
State Appellate Defender Office - Brief on Appeal filed.....	45
Prosecutor's Brief filed on Appeal.....	9
Oral argument requested in Court of Appeals.....	100
Oral argument had in Court of Appeals.....	25
Court of Appeals decision rendered - further action pending.....	15
Leave to Supreme Court applied for.....	72
Leave to Supreme Court granted.....	9
Leave to Supreme Court granted; our brief filed.....	6
Prosecutor's and our brief filed in Supreme Court.....	8
Case remanded by Supreme Court; further action necessary.....	1
Federal District Court - Habeas Corpus.....	4

Each case has been listed in only one category. The category indicates the last procedure which has been done in a particular case. For example, when a case is listed in category nine, a brief has been filed -- that means that the case has been processed to that point. Specifically, a claim of appeal has been filed, the transcript has been received, and, in certain cases, a motion for remand has been filed. When another matter listed on the chart occurs, the case is removed from the category it was previously listed under and placed under the category of the last event.

CLOSED CASES AS OF DECEMBER 31, 1973 AND DISPOSITIONS
(Closed in 1973 Only)

The following table shows the disposition of all cases which have been closed since the formation of the State Appellate Defender Office:

Assigned in error, improper assignment, etc.....	4
Withdrew as counsel.....	2
Client retained own counsel	6
Final disposition reached in trial court.....	24
Application for Leave to Appeal to Court of Appeals Denied....	7
Appeal dismissed as moot.....	2
Appeal withdrawn.....	44
Court of Appeals decision rendered.....	109
Prosecutor's Leave to Supreme Court denied.....	4
Prosecutor's Leave to Supreme Court granted.....	1
State Appellate Defender Office Leave to Supreme Court denied.....	38
State Appellate Defender Office Leave to Supreme Court granted, then client retained own counsel	1
Supreme Court decision rendered.....	21
Writ of Certiorari by prosecutor denied U.S. Supreme Court....	1
U.S. Supreme Court Argument and Decision.....	1

Although the above columns are generally self-explanatory, it is felt that more information should be given as to certain categories. The large number of withdrawn appeals is attributable to several factors: The obvious reason for the appeal being withdrawn is that no substantial grounds for presenting an appeal could be found. Because of the delay in receiving transcripts, it has often been necessary to file a Claim of Appeal before the transcript is received in order to protect the client's right of appeal. Later, after the transcript was received and thoroughly reviewed, it became apparent that no issues were present and the Claim of Appeal was withdrawn. In several cases, the client was paroled during the process of appeal and the client, having regained his freedom, chose

not to pursue his appeal. In certain cases, the client was seeking non-judicial relief.

The following table shows the results obtained for cases closed in 1973:

DISPOSITION OF ALL CASES CLOSED SINCE THE FORMATION
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Assigned in error, improper assignment, etc.....	11
Withdrew as counsel.....	2
Client retained own counsel	9
Assigned to advise client only	1
Client missing, no action possible.....	2
Final disposition reached by trial court.....	68
Motion to dismiss charges granted by trial court.....	4
Client released on habeas corpus.....	1
Application for Leave to Appeal to the Court of Appeals denied.....	8
Confession of error by prosecutor received after claim of appeal filed.....	1
Appeal dismissed as moot.....	4
Appeal withdrawn.....	104
Court of Appeals decision rendered.....	194
Prosecutor's Leave to Supreme Court denied.....	6
Prosecutor's Leave to Supreme Court granted.....	1
State Appellate Defender Office Leave to Supreme Court denied.....	77
State Appellate Defender Office Leave to Supreme Court granted, then client retained own counsel.....	1
Client died during Supreme Court appeal.....	1
Supreme Court decision rendered.....	42
Writ of Certiorari by prosecutor denied U.S. Supreme Court.....	1
U.S. Supreme Court argument and decision.....	1

FINANCING

During the 1973 calendar year, the State Appellate Defender Office was financed through vouchers paid by local counties and by monies supplied by the Legislature through the office of the Supreme Court. This arrangement was a continuation of policy established in fiscal year 1972-1973. Legislation is currently pending in the Michigan Legislature regarding both the intermediate and long-range operation of the State Appellate Defender Office.

SUMMARY

The statistics presented in this report do not fully describe the work of the State Appellate Defender Office.

The above statistics as noted pertain only to the final action where the State Appellate Defender Office was involved in the case. On the average, each case reported had two other court actions, other than the final one here noted. Actions in the trial court have included: motions for bond pending appeal, evidentiary hearings, motions to vacate sentence and motions for disclosure and production of presentence report. Actions in the Court of Appeals have included: brief on appeal, motions for peremptory reversal, motions for bond pending appeal, interlocutory appeals, motions for disclosure and production of presentence report and applications for leave to appeal. Actions in the Michigan Supreme Court have included: applications for leave to appeal, interlocutory appeals, motions for bond pending appeal and motions for disclosure and production of presentence report.

Another factor intrinsic to an assessment of State Appellate Defender work is travel time for staff attorneys, who must visit clients and make court appearances at numerous locations throughout the State. Regular monthly appearances must also be made before the Supreme Court and at the three locations of the Courts of Appeals.

Input from senior staff attorneys, the Chief Appellate Defender, and Deputy Defender, has been sought by various committees concerned with courts, prisons and law reform. The unique mandate to this Office by the Supreme Court has created an office specialized in the interactions of these areas. These committees, formed by the Legislature, Supreme Court and the State Bar, appropriately seek to use the expertise and wide experience^{of} the State Appellate Defender Office legal staff.

It should be noted that while in the process of preparing this report, on December 5, 1973, the Sixth Circuit Court of Appeals decided the case of Mitchell v Perry Johnson, et al, No. 72-1481. While the ramifications of this opinion and future United States Supreme Court action on a similar case now pending in that Court remain unclear, it is apparent that counsel will now be supplied to indigent defendants for purposes of preparing an Application for Leave to Appeal from decision of the Michigan Court of Appeals to the Michigan Supreme Court. The impact of this opinion was not felt by this Office in the calendar year of 1973, but will have its maximum effect early in 1974.

In conclusion, it can be noted that the work load of the State Appellate Defender Office increased during calendar year 1973. Clearly, judging not only from the 1973 increase in work

load from that of previous years, but also from the impact of Mitchell expanding the right to counsel further in the appellate process, the State Appellate Defender Office responsibilities will continue to grow.

1972 STATE APPELLATE DEFENDER OFFICE
ANNUAL REPORT

PART XI

State Appellate Defender

INTRODUCTION

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The Defender depends on the Justices of the Supreme Court of Michigan, Court of Appeals of Michigan, the Circuit Courts in the State of Michigan and Detroit Recorder's Court for all of its appointments to represent indigents on appeal.

Once the Defender is appointed as counsel for a particular client, the court documents are processed and one of the staff attorneys is assigned to handle that case until completion. In general, the attorney's work consists of examining the lower court documents, researching issues, making motions, and oral arguments and writing briefs.

This office has employed junior and senior law students as research assistants in an effort to utilize the attorney's time more efficiently and also to provide a continuing source of well trained criminal appellate attorneys.

The University of Michigan has commenced a program with funds provided by the State Crime Commission providing instruction in appellate practice. Approximately 20 students per semester are involved doing actual research on pending cases. Many of the pending cases are from the Defender. A professor works closely with the attorney in charge of the case. The reciprocal benefits are a meaningful learning experience for the student as well as a valuable resource for this office.

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The State Appellate Defender office is supervised by a 7 member commission, the Appellate Public Defender Commission. The commission is appointed by the Governor on the recommendation of various bodies. The trial courts, the Court of Appeals and the Supreme Court each have one recommendation; the State Bar, two recommendations and the Governor, two recommendations. The present commission is composed of:

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As of December 31, 1972, the office employed 7 attorneys.

Status of State Appellate Defender Cases as of December 31, 1972

Since its inception, the State Appellate Defender Office has received 849 assignments. The following table shows the status of those cases unresolved as of December 31, 1972:

PRESENT STATUS OF CASES

Cases assigned to the office	69
Transcript received	23
Claim filed but transcript not received	69
Claim filed, transcript received	68
Application for Leave to appeal to the Court of Appeals	
Appeals filed	11
Motion for new trial/new sentencing filed	39
Motion for new trial/new sentencing denied	11
State Appellate Defender Office's Brief on Appeal filed	32
Prosecutor's Brief filed on appeal	10
Oral argument requested in the Court of Appeals	96
Oral argument had in the Court of Appeals	24
Court of Appeals' decision rendered; advisability of seeking Leave to the Supreme Court being considered	39
Leave to the Supreme Court applied for	30
Leave to the Supreme Court granted; our brief filed	4
Prosecutor's brief filed in the Supreme Court	10
Oral argument had in the Supreme Court	4
Prosecutor applying for rehearing	1
Case remanded by Supreme Court; further action necessary	1

Each case has been listed in only one category. The category indicates the last procedure which has been done in a particular case. For example, when a case is listed in category nine, a brief has been filed—that means that the case has been processed to that point. Specifically, a claim of appeal has been filed, the transcript has been received, and, in certain cases, a motion for remand has been filed. When another matter listed on the chart occurs, the case is removed from the category it was previously listed under and placed under the category of the last event.

CASE DISPOSITION AS OF DECEMBER 31, 1972

The following table shows the disposition of all cases which have been closed since the formation of the State Appellate Defender Office:

Assigned in error, improper assignment, assignment revoked or assignment returned because of conflict of interest	7
Client retained own counsel	3
Assigned to advise client only	1
Client missing, no action possible	2
Motion for new trial or motion for new sentencing granted by the trial court	44
Motion for new trial denied by trial court; no further action deemed advisable	2
Motion to dismiss charges granted by trial court	2
Client released on habeas corpus	1
Application for Leave to appeal to the Court of Appeals denied	1
Confession of error by prosecutor received after Claim of Appeal filed	1
Appeal dismissed as moot	2
Appeal withdrawn	60
Won at Court of Appeals (complete or partial relief)	72
Lost at Court of Appeals, no further action taken	13
Prosecutor's Leave to the Supreme Court denied	2
State Appellate Defender Office Leave to the Supreme Court denied	39
Client died during Supreme Court appeal	1
Won at Supreme Court (by Motion, Order or full Opinion)	20
Lost at Supreme Court	1

Although the above columns are generally self-explanatory, it is felt that more information should be given as to certain categories. The large number of withdrawn appeals is attributable to several factors: The obvious reason for the appeal being withdrawn is that no substantial grounds for presenting an appeal could be found. Because of the delay in receiving transcripts, it has often been necessary to file a Claim of Appeal before the transcript is received in order to protect the client's right of appeal. Later, after the transcript was received and thoroughly reviewed, it became apparent that no issues were present and the

Claim of Appeal was withdrawn. In several cases, the client was paroled during the process of appeal and the client, having regained his freedom, chose not to pursue his appeal. In certain cases, the client was seeking non-judicial relief. As the table below shows, the number of withdrawn appeals has declined by 33% in 1972. This is explainable by the fact that cases without appealable issues are closed as soon as possible and thus the earlier cases in this category have been closed.

Of the 199 cases in which decisions were rendered, the Defender obtained favorable decisions in 143 cases, or 72% of the cases.

The following table shows the results obtained for cases closed in 1972:

Assigned in error, improper assignment, assignment revoked or assignment returned because of conflict of interest	4
Client missing, no action possible	1
Motion for new trial or motion for new sentencing granted by the trial court	32
Motion for new trial denied by the trial court; no further action taken	2
Motion to dismiss charges granted by trial court	1
Client released on habeas corpus	1
Application for Leave to appeal to the Court of Appeals denied	1
Confession of error by prosecutor received after Claim of Appeal filed	1
Appeal dismissed as moot	2
Appeal withdrawn	24
Won at Court of Appeals (complete or partial relief)	69
Lost at Court of Appeals, no further action taken	9
Prosecutor's leave to the Supreme Court denied	2
State Appellate Defender Office Leave to the Supreme Court denied	33
Client died during Supreme Court appeal	1
Won at Supreme Court	17

FUNDING

The Defender has been funded by the Office of Criminal Justice Programs since its inception in 1970. If it is to continue, it will be necessary that it be funded by the State Legislature.

Source: Supreme Court of Michigan 1972 Annual Report

1971 STATE APPELLATE DEFENDER OFFICE

ANNUAL REPORT

II. PRESENT ACTIVE CASELOAD AND TOTAL ASSIGNMENTS

As of December 31, 1971, the active caseload of the State Appellate Defender's Office stood at 358. Cases disposed of at that time totalled 66. * The total number of cases assigned to the office since its inception was 424.

It is expected that as the judges throughout the state become acquainted with the activities of this office, its expertise and efficiency in conducting criminal appellate proceedings, more assignments will be forthcoming. In addition the increasing volume of criminal trials and criminal appeals (see Annual Report of the Michigan Court of Appeals 22 Mich App xviii) also protends a proportionate increase in the caseload. Estimates of between 400-450 assignments in fiscal 1972 (July 1 to June 30) do not appear unreasonable.

With a staff of six attorneys, the present average caseload is 56. Given the same number of attorneys, 400 assignments would constitute an individual average caseload of 67. Since it has been determined undesirable for a attorney's caseload to exceed a range of from 40 to 50 cases per annum, plans have been made to hire four new attorneys this spring. (See budget previously filed.)

Three new attorneys are expected to start at the beginning of next quarter. One attorney, Larry Farmer, has resigned effective the first quarter. An additional attorney has been hired on an interim basis. Thus, the caseload will be closer to the desired forty per attorney. A further addition to staff may be necessary depending on the number of assignments.

Fn. * These figures do not include those cases of the Appellate Division of the Legal Aid and Defender Association - Defenders Office. These cases will be discussed separately infra.

† A program with the University of Michigan provides the service of an attorney, which makes the effective caseload closer to 45.

III. PRESENT STATUS OF CASES

The following chart indicates the present status of all cases assigned to this office to date.

1. Case has been assigned to the office.....	33
2. Application for leave or delayed appeal has been made....	7
3. Claim of Appeal has been made - awaiting transcript.....	53
4. Order to extend time to file Motion for New Trial has been entered, awaiting transcript.....	11
5. Transcript received.....	75
6. Stipulation to Withdraw filed.....	3
7. Motion for remand filed with Brief.....	1
8. Motion for New Trial filed.....	23
9. Motion for Peremptory Reversal and brief has been filed..	4
10. Brief has been filed - awaiting prosecutor's brief.....	37
11. Case ready for submission to Court of Appeals; oral argument requested.....	73
12. Oral Argument has been made - awaiting Court's decision..	13
13. Reversed, Court of Appeals, Prosecution appealing.....	1
14. Preparing application for leave to appeal to the Supreme Court.....	6
15. Application for leave to appeal to the Supreme Court has been filed.....	7
16. Supreme Court brief has been filed - awaiting prosecutor's brief.....	2
17. Case ready for submission to Supreme Court; Oral arguments requested.....	4
18. Oral Arguments have been made, awaiting Court's decision.	5
19. Application has been made to enter the Federal Court System.....	

20. Substance of cases completed to date	TOTAL	66
A. Cases completed, awaiting final court order	3	
B. Ready to voucher	16	
C. Voucher filed	11	
D. Payment has been received	20	
E. Closed - no fee	<u>16</u>	
		66

The above chart indicates the present status of all cases assigned to the office as of December 31, 1971. Each case will be listed only in one category. That category indicates the last procedure which has been done in a particular case. For example, when a case is listed in category ten, a brief has been filed -- that means that the case has been processed to that point. Specifically, a claim of appeal has been filed, the transcript has been received and, in certain cases, a motion for remand has been filed. When another of that listed on the chart occurs, the case is removed from the category it was previously listed under and placed under the category of the last event.

FIGURE 1

PRESENT ACTIVE CASELOAD 358
CASES DISPOSED OF TO DATE 66 *
TOTAL ASSIGNMENTS TO DATE 424

* This figure includes 16 cases which were disposed of with no fee

SOURCE: L.E.A.A. Quarterly Report, Period ending December 31, 1971.

II

COMMISSION MEMBERS -- REIMBURSEMENTS FOR ACTUAL EXPENSES ON
MEALS, MILEAGE, TELEPHONES & POSTAGE

COMMISSION MEMBERS -- REIMBURSEMENT FOR ACTUAL EXPENSES ON
MEALS, MILEAGE, TELEPHONES & POSTAGE

The members of the State Appellate Defender Commission are appointed by the Governor of the State of Michigan. They are appointed to two year terms upon the recommendation of the trial judges, the Court of Appeals, two by the Michigan Supreme Court, two by the Governor and one by the State Bar. The current commission members are:

William R. Walsh, Jr. - Chairman
Attorney
Port Huron, Michigan

The Honorable George Bashara
Court of Appeals Judge
Detroit, Michigan

The Honorable Donald S. Leonard
Recorder's Court Judge
Detroit, Michigan

Seymour Posner
Attorney
Detroit, Michigan

John Emery
Attorney
Detroit, Michigan

Hondon Hargrove
Lay Appointee of the Governor
Parole Board Member
Lansing, Michigan

John Foley
Attorney
Vicksburg, Michigan

There have been regularly scheduled commission meetings occurring approximately every quarter of the year. The commission members drive in from their various locations around the State for an evening meeting at the State Appellate Defender Office in Detroit.

Pursuant to the original L.E.A.A. Grant and the provisions that would be provided for in the Legislation for the State Appellate Defender Office, the commission members are only reimbursed for their

actual mileage expenses, meals, postage or telephone incurred for the State Appellate Defender Commission. It has never been necessary to provide lodging for a commission member in conjunction with a commission meeting. The Chairman, William R. Walsh, Jr. has traveled to Lansing on many occasions to meet with the Supreme Court or with the Legislature regarding the ongoing functioning of the Office. Other than meals, the only expenses paid for commission members has been the mileage and phone expenses of Mr. Walsh. No other commission members have submitted vouchers for payment.

Therefore, the only money paid to the commission members has been for reimbursement of actual expenses. The commissioners have followed this policy since the formal opening of the Office in the fall of 1970. There have been no exceptions to this.

Appended to this Section are the portions of the original House Bill No. 4455 and House Bill No. 4272 which reflect the past and present policy regarding reimbursement for expenses to commissioners.

SUBSTITUTE FOR HOUSE BILL No. 4455

A bill relating to criminal procedure; to provide for the defense of persons accused or convicted of criminal offenses; to create the appellate defender commission; to provide for an appellate defender; to prescribe powers and duties; to provide facilities, personnel and related assistance and services for the appellate defender and the commission; and to provide for the financing of the administration of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as
2 the "appellate defender act".

3 Sec. 2.(1)An appellate defender commission is created

486 '71 - Sub. (H-1)

1 within the office of the court administrator. The appellate
2 defender commission consists of 5 members appointed by the
3 governor for terms of 4 years.. One of the members shall not
4 be an attorney.

5 (2) Initially 2 members of the commission shall be
6 appointed for terms of 4 years and 1 member each for terms of
7 1, 2 and 3 years respectively.

8 (3) Members of the commission shall not receive a salary
9 in that capacity but shall be reimbursed for their reasonable
10 actual and necessary expenses by the state treasurer upon the
11 warrant of the state treasurer.

12 Sec. 3. (1) An appellate defender shall be appointed
13 and serve at the pleasure of the appellate defender commission.

14 (2) The appellate defender shall appoint and supervise
15 the work of a deputy appellate defender and such assistant
16 appellate defenders and supporting personnel as are authorized
17 by the commission.

18 Sec. 4. The appellate defender, deputy appellate defender
19 and each assistant appellate defender shall:

20 (a) Be an attorney licensed to practice law in this state.

21 (b) Take and subscribe to the oath required by the con-
22 stitution before taking office.

23 (c) Perform such duties as may be provided by law.

24 (d) Not engaged in the practice of law or as an attor-

HOUSE BILL No. 4272

February 26, 1973, Introduced by Reps. Warner, Traxler,
Vaughn, Bullard, Geerlings and O'Neill and referred
to the Committee on Judiciary.

A bill relating to criminal procedure; to provide for the defense of persons accused or convicted of criminal offenses; to create the appellate defender commission; to provide for an appellate defender; to prescribe powers and duties; to provide facilities, personnel and related assistance and services for the appellate defender and the commission; and to provide for the financing of the administration of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "appellate de-
2 fender act".

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4 office of the court administrator. The appellate defender commission consists
5 of 5 members appointed by the governor for terms of 4 years. One of the mem-
6 bers shall not be an attorney.

7 (2) Initially 2 members of the commission shall be appointed for terms

582 '73

HOUSE BILL No. 4272

1 of 4 years and 1 member each for terms of 1, 2, and 3 years respectively.

2 (3) Members of the commission shall not receive a salary in that capa-
3 city but shall be reimbursed for their reasonable actual and necessary expenses
4 by the state treasurer upon the warrant of the state treasurer.

5 Sec. 3. (1) An appellate defender shall be appointed and serve at the
6 pleasure of the appellate defender commission.

7 (2) The appellate defender shall appoint and supervise the work of a
8 deputy appellate defender and such assistant appellate defenders and support-
9 ing personnel as are authorized by the commission.

10 Sec. 4. The appellate defender, deputy appellate defender, and each
11 assistant appellate defender shall:

12 (a) Be an attorney licensed to practice law in this state.

13 (b) Take and subscribe to the oath required by the constitution before
14 taking office.

15 (c) Perform such duties as may be provided by law.

16 (d) Not engage in the practice of law or as an attorney or counselor in
17 any court of this state except in the exercise of his duties under this act.

18 (e) May only represent the indigent defendant subsequent to his convic-
19 tion or entry of a guilty plea or plea of nolo contendere at the trial court
20 level.

21 Sec. 5. (1) The salaries of the appellate defender, deputy appellate
22 defender, assistant appellate defenders, and supporting personnel shall be
23 established by the commission.

24 (2) The appellate defender, deputy, assistants, and supporting personnel
25 shall be reimbursed for their reasonable actual and necessary expenses by the
26 state treasurer upon the warrant of the state treasurer.

27 (3) All salaries and expenses attributable to the office of appellate