

1980/1981 ANNUAL REPORT OF THE  
STATE APPELLATE DEFENDER OFFICE

Respectfully submitted by

STATE APPELLATE DEFENDER OFFICE  
Third Floor, North Tower  
1200 Sixth Avenue  
Detroit, Michigan 48226  
(313) 256-2814

1980/1981 ANNUAL REPORT OF THE  
STATE APPELLATE DEFENDER OFFICE

History

The State Appellate Defender Office was created in mid-1970 and officially began accepting assignments in September of that year. The office was created to provide competent legal representation in criminal post-conviction matters, consistent with constitutional guarantees of effective representation in criminal cases, equal justice and due process of law. The office had its genesis in Michigan Supreme Court Administrative Order 1970-1 and functioned under the auspices of that Court within the office of the State Court Administrator.

From 1970 to 1978 the Office was based in and operated only out of Detroit. However, in January of 1979 the Lansing division of the office began operations. That division was established to improve the delivery of services to northern and western counties, cut travel expenses and facilitate access by more individuals and agencies to the Defender Office's expertise in the area of criminal law and procedure.

The Defender Office is appointed by the Michigan Supreme Court, the Michigan Court of Appeals, the Michigan circuit courts and the Recorder's Court for the City of Detroit to represent indigent criminal defendants on regular appeals and in a variety of other post-conviction proceedings.

Once the Defender is appointed as counsel for a particular client, all the documents necessary to process the case to its completion are obtained and Deputy Defenders and Assistant Defenders are assigned to actually handle the case. In general, the work consists of reviewing lower court records, interviewing clients, investigating, researching issues, filing all necessary pleadings and conducting oral arguments.

On January 6, 1979, 1978 PA 620 (MCL 780.711 et. seq.) was enacted by the Michigan Legislature. It created the Appellate Defender Commission within the office of the State Court Administrator and gave the Commission the responsibility for supervising the State Appellate Defender. The Commission consists of seven members appointed by the Governor for terms of four years. Two members are recommended by the Supreme Court, one by the Court of Appeals, one by the Michigan Judges Association, two by the State Bar of Michigan, and one, who cannot be an attorney, is selected from the general public by the Governor.

In addition to supervising the work of the State Appellate Defender, PA 620 charges the Commission with supervision of a statewide roster of locally appointed private counsel who represent indigent criminal defendants on appeal in cases where the Defender is not assigned and requires the Commission to develop minimum performance standards for counsel providing indigent criminal appellate services and submit them to the Michigan Supreme Court for its approval and adoption. The Commission is also to provide a continuing legal education training program for the Defender's staff and the roster attorneys.

On May 25, 1979, pursuant to the provisions of Public Act 620, the Governor appointed the State Appellate Defender Commission. Its members are:

William R. Walsh, Jr., Chairman, Port Huron  
John C. Emery, Jr., Grosse Pointe  
Ms. Vesta Svenson, Detroit  
Judge Harold E. DanDomelen, Hart  
James McMillan, Grosse Pointe Shores  
John E. Scott, Detroit  
John Stenger, Lansing

During the past year the Defender Commission appointed an Advisory Committee on Assigned Appellate Counsel, composed of a cross section of interested individuals, to prepare proposed minimum standards for indigent criminal defense appellate services and to propose an administrative design for the statewide roster of private assigned counsel. These standards and administrative roster design were submitted to the Supreme Court, and on December 4, 1981 the Court issued Administrative Order 1981-7 which adopted effective February 1, 1982 a modified version of the Minimum Performance Standards submitted by the Commission and approved the proposed administrative design for operating the appellate assigned counsel system, subject to legislative appropriation of the funds to operate the system.

The State Appellate Defender Office appears as counsel at all levels of the Michigan and Federal judiciaries. Office attorneys make regular client visits and lower court appearances in virtually all areas of this state. They also appear before the Michigan Supreme Court and the Court of Appeals, and, in selected cases, before Michigan's Federal district courts, the Federal Court of Appeals for the Sixth Circuit and the United States Supreme Court.

In addition to the work produced in each case, the Office is also involved in collateral matters associated with all facets of the criminal justice system. The Legal Resources Project component of the office is now in its fourth year of operation. The project was conceived in response to demands from all sectors of the community for specialized assistance in the area of criminal law and procedure. It brought together the existing resources of the defender office and formed them into the only statewide informational resource for criminal defense attorneys. It has become a central clearinghouse for dissemination of criminal justice information. The project was originally financed by a decreasing matching grant from the Office of Criminal Justice Programs, but became a completely state-funded component of the Defender Office in October, 1980.

Information available through the project includes: all briefs and motions on file in the State Appellate Defender Office; a monthly criminal defense newsletter covering significant developments in Michigan and federal law; an expert witness file containing names and resumes of experts who have been used or recommended by attorneys across the state; and research memoranda on important, complex, or new areas of the law. During this year, the project responded to a total of over 3,100 requests for information, sent out more than 34,000 pages of materials, which provided indigent criminal defendants and those who represent them access to the office's over 3,500 briefs and memoranda covering more than 10,000 issues. The project's newsletter has over 1,000 subscribers. The project served 62 of Michigan's counties and 145 of its cities. It also provided information for 32 cities in some 21 different states.

The Office completed and distributed 450 copies of the 600-page Michigan Criminal Appeals Practice and Procedure Manual, which is to be used by attorneys, secretaries, law students, paralegals, and all others interested in criminal practice in Michigan.

The office also continued to conduct training seminars for attorneys representing indigent defendants in criminal proceedings in conjunction with the Criminal Defense Attorneys of Michigan. Two three-day, intensive training conferences, two one-day seminars and four video training seminars were held this year, and similar training seminars will be conducted in the upcoming year.

In December, 1980, the Special Unit was established within the Office to expeditiously handle non-trial appeals and to process cases requiring immediate action - cases where the defendants are serving short sentences and sentencing issues might be mooted by

delay; where the defendants are serving jail sentences which the trial court has the discretion to reduce by one-fourth; and where the defendants are good candidates for release on bond pending appeal. The Unit is run by two (2) staff attorneys who are assisted by several research assistants and a paralegal release specialist. It was established in part to enable the office to continue competent cost-effective representation despite staff losses due to reduced Legislative appropriations.

During the year, the Special Unit screened about 400 cases and sought relief in those requiring early action. In addition to screening cases and seeking early relief, the unit attorneys handled 180 permanently assigned cases.

During this year the Office took steps to increase its efficiency and effectiveness by introducing computer technology which permits it to develop automated systems of information processing, gathering and dissemination. This technology will permit almost instant access to a comprehensive repository of information by office personnel and ultimately attorneys throughout the state who represent indigent criminal defendants. Financing for this "Transfer To Technology Project" also was provided by the Office of Criminal Justice Programs, with matching funds coming from State Data Processing appropriations.

#### SUMMARY OF CASE ACTIVITY FROM 7/1/80 TO 6/30/81

Although new data gathering systems are being used by the office, some crucial information is still unavailable, so this report cannot fully describe all the work of the office. The average case has several actions prior to final disposition. Examples of the various types of actions taken on a particular case before final disposition may be found in the case activity reports which follow.

Included is a summary of actions taken on cases during the 1980-81 reporting period. It should be noted that many cases which are closed during the year are reopened for further proceedings at a later time. The majority of the post-conviction cases closed at the trial court and Court of Appeals levels are reopened for further appeal. Also, several of those closed in the Michigan Supreme Court are pursued at a later time in federal court or via delayed motion for new trial in the trial court.

At the close of this reporting period, the office had a total of 1,150 open, active cases, 683 new assignments had been received, and 584 cases closed.

The office received 557 of the 683 new assignments from thirty-nine (39) circuit courts, one-hundred-twenty (120) from Recorder's Court, five (5) from the Court of Appeals and eleven (11) from the Michigan Supreme Court. Fifteen Circuits did not appoint the office this year: The 1st, 5th, 7th, 8th, 12th, 14th, 15th, 16th, 22nd, 33rd, 35th, 44th, 45th, 48th, 52nd and the 54th.

ANNUAL REPORT  
STATE APPELLATE DEFENDER OFFICE

|   |       |
|---|-------|
| TOTAL NEW ASSIGNMENTS 7/1/80 to 6/30/81 | 683   |
| TOTAL ACTIVE CASES as of 6/30/81        | 1,150 |
| TOTAL CASES CLOSED 7/1/80 to 6/30/81    | 584   |
| TOTAL CASES PROCESSED 7/1/80 to 6/30/81 | 1,732 |

LAST ACTION ON CASES OPEN 7/1/80 to 6/30/81

I. TRIAL COURT

|  |     |
|--|-----|
| Cases assigned to SADO, no claim filed - transcript not received | 95  |
| Cases assigned to SADO, no claim filed - transcript received     | 31  |
| Leave case - no transcript                                       | 23  |
| Leave case - transcript  | 21  |
| Remanded, hearing/decision pending                               | 22  |
| Motion New Trial with supporting Memorandum of Law               | 15  |
| Motion Resentence  | 12  |
| Motion Vacate Plea/Conviction/Sentence                           | 3   |
| Brief  | 1   |
| Motion Dismiss   | 1   |
| TOTAL  | 224 |

II. COURT OF APPEALS

|   |     |
|---|-----|
| Claim filed - transcript received                   | 216 |
| Brief filed   | 243 |
| Oral Argument had                                   | 140 |
| Claim filed - no transcript                         | 80  |
| Remanded, jurisdiction retained                     | 15  |
| Application for Delayed Appeal pending              | 13  |
| Motion Rehearing/Reconsideration                    | 11  |
| Supplemental Brief                                  | 11  |
| Held in abeyance                                    | 5   |
| Motion Remand                                       | 4   |
| Remanded, decision pending (Michigan Supreme Court) | 4   |
| Motion Clarification                                | 3   |
| Stipulation Dismiss pending                         | 3   |
| TOTAL   | 748 |

III. SUPREME COURT

|   |     |
|---|-----|
| Application for Leave to Appeal with Brief                  | 110 |
| Application for Leave to Appeal - Order holding in abeyance | 20  |
| Application for Leave to Appeal (Prosecutor appeal)         | 11  |
| Leave granted - Oral Argument had                           | 11  |
| Cases assigned to SADO - transcript received                | 6   |
| Leave granted, brief filed                                  | 5   |
| Leave granted, no action this year                          | 4   |
| Prosecutor Answer to Show Cause                             | 2   |
| TOTAL   | 169 |

IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME

|                                |   |
|--------------------------------|---|
| Motion Dismiss                 | 4 |
| Notice of Appeal               | 1 |
| Petition Writ of Habeas Corpus | 1 |
| TOTAL                          | 6 |

ANNUAL REPORT  
STATE APPELLATE DEFENDER OFFICE

ACTIVITY ON CASES CLOSED 7/1/80 to 6/30/81

|   |       |            |
|---|-------|------------|
| I. TRIAL COURT                                      |       |            |
| Substitute counsel appointed                        |       | 30         |
| Motion Resentence granted/denied                    |       | 25         |
| Appointment vacated/terminated                      |       | 11         |
| Motion New Trial granted/denied                     |       | 10         |
| Dismissed by motion/stipulation                     |       | 5          |
| Reversed Plea/Sentence/Conviction                   |       | 4          |
| Affirmed - Parole Board appeal                      |       | 1          |
|   | TOTAL | <u>86</u>  |
| II. COURT OF APPEALS                                |       |            |
| Regular disposition                                 |       | 254        |
| Appeal dismissed by stipulation                     |       | 51         |
| Appeal dismissed by motion                          |       | 15         |
| Rehearing denied                                    |       | 12         |
| Application for Delayed Appeal denied               |       | 7          |
| Emergency Application for Leave to Appeal denied    |       | 1          |
| SADO Motion Withdraw as counsel granted             |       | 1          |
|   | TOTAL | <u>341</u> |
| III. SUPREME COURT                                  |       |            |
| Leave denied - SADO                                 |       | 92         |
| Leave denied - Prosecutor appeal                    |       | 20         |
| Reversed and remanded                               |       | 23         |
| Reconsideration denied                              |       | 6          |
| Affirmed  |       | 3          |
| Appointment vacated                                 |       | 3          |
| Other disposition                                   |       | 3          |
|   | TOTAL | <u>150</u> |
| IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME |       |            |
| Writ of certiorari denied                           |       | 3          |
| Writ of habeas corpus denied                        |       | 2          |
| Rehearing denied                                    |       | 1          |
| Substitute counsel appointed                        |       | 1          |
|   | TOTAL | <u>7</u>   |

FILINGS BY SADO 7/1/80 to 6/30/81

| COURT                    | Closed<br>Cases | Open<br>Cases | Reporting<br>Year Total |
|--------------------------|-----------------|---------------|-------------------------|
| I. TRIAL COURT           | 55              | 77            | 132                     |
| II. COURT OF APPEALS     | 329             | 1,281         | 1,610                   |
| III. SUPREME COURT       | 101             | 201           | 302                     |
| IV. UNITED STATES COURTS | 4               | 3             | 7                       |
| TOTAL                    | <u>489</u>      | <u>1,562</u>  | <u>2,051</u>            |



ANNUAL REPORT  
STATE APPELLATE DEFENDER OFFICE

DISPOSITION OF ALL CASES CLOSED  
SINCE THE 1970 FORMATION OF THE STATE APPELLATE DEFENDER OFFICE

|   |                          |              |
|---|--------------------------|--------------|
| I. TRIAL COURT  |                          |              |
| Assigned in error, improper assignment, etc.                    |                          | 35           |
| Assigned to advise client only                                  |                          | 1            |
| Withdrew as counsel   |                          | 38           |
| Client retained own counsel                                     |                          | 16           |
| Client missing, no possible action                              |                          | 2            |
| Case dismissed  |                          | 17           |
| Appeal withdrawn  |                          | 29           |
| Client released on habeas corpus                                |                          | 1            |
| SADO withdrew as counsel by request/appointed returned          |                          | 51           |
| Substitute counsel appointed                                    |                          | 74           |
| Final disposition reached                                       |                          | <u>264</u>   |
|   | TOTAL                    | 528          |
| II. COURT OF APPEALS  |                          |              |
| Client retained own counsel                                     |                          | 4            |
| Client missing, deceased  |                          | 9            |
| SADO motion to withdraw as counsel granted                      |                          | 225          |
| Prosecutor's motion to dismiss appeal granted                   |                          | 2            |
| Application for Delayed Appeal denied                           |                          | 46           |
| Confession of error by prosecutor                               |                          | 2            |
| Appeal dismissed as moot  |                          | 7            |
| Appeal dismissed by motion or stipulation                       |                          | 572          |
| Appeal dismissed for lack of progress                           |                          | 1            |
| Final disposition reached                                       |                          | <u>2,203</u> |
|   | TOTAL                    | 3,071        |
| III. SUPREME COURT  |                          |              |
| SADO removed as counsel, client found not indigent              |                          | 3            |
| Withdrew as counsel   |                          | 5            |
| Client withdrew appeal  |                          | 3            |
| Case dismissed - client missing                                 |                          | 3            |
| Appointment vacated   |                          | 30           |
| Appeal dismissed  |                          | 8            |
| Prosecutor's leave denied                                       |                          | 93           |
| Prosecutor's leave granted                                      |                          | 35           |
| SADO leave denied   |                          | 768          |
| Disposition by Supreme Court on plea cases for Court of Appeals |                          | 10           |
| SADO leave granted - client retained own counsel                |                          | 5            |
| Final disposition reached                                       |                          | <u>359</u>   |
|   | TOTAL                    | 1,322        |
| IV. UNITED STATES COURTS  |                          |              |
| Writ of habeas corpus denied                                    |                          | 6            |
| Writ of certiorari by prosecutor granted                        |                          | 3            |
| Writ of certiorari by prosecutor denied                         |                          | 5            |
| Substitute counsel appointed                                    |                          | 1            |
| Final disposition reached                                       |                          | <u>3</u>     |
|   | TOTAL                    | 18           |
|   | TOTAL FINAL DISPOSITIONS | <u>4,939</u> |



# State of Michigan

## STATE APPELLATE DEFENDER

James R. Neuhard  
State Appellate Defender

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

F. Martin Tieber  
Deputy Defender, Lansing

Norris J. Thomas, Jr.  
Chief Deputy Defender, Detroit

720 Plaza Center  
125 W. Michigan Avenue  
Lansing, Michigan 48913  
(517) 373-2463

December 1, 1982

Ms. Barbara Buffington  
Court Information Services  
State Court Administrative Services  
P. O. Box 30048  
Lansing, Michigan 48909

Re: 1980/1981 Annual Report Of The  
State Appellate Defender Office

Dear Ms. Buffington:

Enclosed is the above captioned report in accordance with our recent telephone conversation. If you have any questions concerning this report, do not hesitate to contact us.

Very truly yours,

Norris J. Thomas, Jr.  
Chief Deputy Defender

NJT:vm

Enclosures: 2 copies annual report

1981

ANNUAL REPORT  
STATE APPELLATE DEFENDER OFFICE

|   |       |
|---|-------|
| TOTAL NEW ASSIGNMENTS 7/1/80 to 6/30/81 | 683   |
| TOTAL ACTIVE CASES as of 6/30/81        | 1,150 |
| TOTAL CASES CLOSED 7/1/80 to 6/30/81    | 582   |
| <br>                                    |       |
| TOTAL CASES PROCESSED 7/1/80 to 6/30/81 | 1,732 |

LAST ACTION ON CASES OPEN 7/1/80 to 6/30/81

I. TRIAL COURT

|  |          |
|--|----------|
| Cases assigned to SADO, no claim filed - transcript not received | 95       |
| Cases assigned to SADO, no claim filed - transcript received     | 31       |
| Leave case - no transcript                                       | 23       |
| Leave case - transcript  | 21       |
| Remanded, hearing/decision pending                               | 22       |
| Motion New Trial with supporting Memorandum of Law               | 15       |
| Motion Resentence  | 12       |
| Motion Vacate Plea/Conviction/Sentence                           | 3        |
| Brief  | 1        |
| Motion Dismiss   | 1        |
|  | <u>1</u> |
| TOTAL  | 224      |

II. COURT OF APPEALS

|   |          |
|---|----------|
| Claim filed - transcript received                   | 216      |
| Brief filed   | 243      |
| Oral Argument had                                   | 140      |
| Claim filed - no transcript                         | 80       |
| Remanded, jurisdiction retained                     | 15       |
| Application for Delayed Appeal pending              | 13       |
| Motion Rehearing/Reconsideration                    | 11       |
| Supplemental Brief                                  | 11       |
| Held in abeyance                                    | 5        |
| Motion Remand                                       | 4        |
| Remanded, decision pending (Michigan Supreme Court) | 4        |
| Motion Clarification                                | 3        |
| Stipulation Dismiss pending                         | 3        |
|   | <u>3</u> |
| TOTAL   | 748      |

III. SUPREME COURT

|   |          |
|---|----------|
| Application for Leave to Appeal with Brief                  | 110      |
| Application for Leave to Appeal - Order holding in abeyance | 20       |
| Application for Leave to Appeal (Prosecutor appeal)         | 11       |
| Leave granted - Oral Argument had                           | 11       |
| Cases assigned to SADO - transcript received                | 6        |
| Leave granted, brief filed                                  | 5        |
| Leave granted, no action this year                          | 4        |
| Prosecutor Answer to Show Cause                             | 2        |
|   | <u>2</u> |
| TOTAL   | 169      |

IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME

|                                |          |
|--------------------------------|----------|
| Motion Dismiss                 | 4        |
| Notice of Appeal               | 1        |
| Petition Writ of Habeas Corpus | 1        |
|                                | <u>1</u> |
| TOTAL                          | 6        |

1981

ANNUAL REPORT  
STATE APPELLATE DEFENDER OFFICE

|   |       |
|---|-------|
| TOTAL NEW ASSIGNMENTS 7/1/80 to 6/30/81 | 683   |
| TOTAL ACTIVE CASES as of 6/30/81        | 1,150 |
| TOTAL CASES CLOSED 7/1/80 to 6/30/81    | 582   |
| TOTAL CASES PROCESSED 7/1/80 to 6/30/81 | 1,732 |

LAST ACTION ON CASES OPEN 7/1/80 to 6/30/81

I. TRIAL COURT

|  |     |
|--|-----|
| Cases assigned to SADO, no claim filed - transcript not received | 95  |
| Cases assigned to SADO, no claim filed - transcript received     | 31  |
| Leave case - no transcript                                       | 23  |
| Leave case - transcript  | 21  |
| Remanded, hearing/decision pending                               | 22  |
| Motion New Trial with supporting Memorandum of Law               | 15  |
| Motion Resentence  | 12  |
| Motion Vacate Plea/Conviction/Sentence                           | 3   |
| Brief  | 1   |
| Motion Dismiss   | 1   |
| TOTAL  | 224 |

II. COURT OF APPEALS

|   |     |
|---|-----|
| Claim filed - transcript received                   | 216 |
| Brief filed   | 243 |
| Oral Argument had                                   | 140 |
| Claim filed - no transcript                         | 80  |
| Remanded, jurisdiction retained                     | 15  |
| Application for Delayed Appeal pending              | 13  |
| Motion Rehearing/Reconsideration                    | 11  |
| Supplemental Brief                                  | 11  |
| Held in abeyance                                    | 5   |
| Motion Remand                                       | 4   |
| Remanded, decision pending (Michigan Supreme Court) | 4   |
| Motion Clarification                                | 3   |
| Stipulation Dismiss pending                         | 3   |
| TOTAL   | 748 |

III. SUPREME COURT

|   |     |
|---|-----|
| Application for Leave to Appeal with Brief                  | 110 |
| Application for Leave to Appeal - Order holding in abeyance | 20  |
| Application for Leave to Appeal (Prosecutor appeal)         | 11  |
| Leave granted - Oral Argument had                           | 11  |
| Cases assigned to SADO - transcript received                | 6   |
| Leave granted, brief filed                                  | 5   |
| Leave granted, no action this year                          | 4   |
| Prosecutor Answer to Show Cause                             | 2   |
| TOTAL   | 169 |

IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME

|                                |   |
|--------------------------------|---|
| Motion Dismiss                 | 4 |
| Notice of Appeal               | 1 |
| Petition Writ of Habeas Corpus | 1 |
| TOTAL                          | 6 |