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**Resources of the Prosecution and Indigent Defense  
Functions in Tennessee**

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## INTRODUCTION

In June 2006, The Spangenberg Group (TSG) contracted with The Justice Project Education Fund and The Tennessee Justice Project to collect data for the creation of a Resource Balance Sheet for a side-by-side comparison of prosecution and defense resources expended in Tennessee. To conduct the comparison, we examined fiscal year 2005 funding information from the District Attorney General's Conference; the Public Defender's Conference; court-appointed counsel fees and expenses maintained by the Director of the Administrative Office of the Courts; additional state government organizations involved in the areas of law, safety and correction; county and local funding for prosecution and defense; federal funds; and in-kind resources available to the prosecution and defense.

The primary source of data used by TSG for calculating fiscal year 2005 expenditures for both prosecution and defense was the *State of Tennessee Budget, Fiscal Year 2006-2007, Volume I: Law, Safety and Corrections*. In addition to containing the 2006-2007 budget, the report contains actual 2004-2005 expenditures for every agency or department in the state relating to law, safety and corrections. The budget report contains two sections. The first section sets out all requests for improvements in the individual agencies' budgets for 2006-2007. The second section sets out the actual expenditures for each agency in 2004-2005, the estimated budget for 2005-2006, the baseline budget for 2006-2007, the requests from the agencies for additional state funds or improvement funds for 2006-2007, and the total recommended budget for each agency for 2006-2007.

In examining the FY 2006-2007 budget of the state of Tennessee, we looked at all expenditures for each agency or sub-agency, but used only the total *actual* expenditures reported from FY 2004-2005 in our calculations.

In Part I of this report, we calculate the actual prosecution expenditures, and then the indigent prosecution expenditures. In doing this, we began with the budget of the District Attorney General Offices and Executive Director for FY 2004-2005. We then looked at the FY 2004-2005 actual expenditures for other law, safety and corrections agencies reported in the budget book. For the purposes of this report, we included those agencies or sub-agencies that devote all or a portion of their work to the prosecution function. The expenditures of most law, safety and corrections line items were reduced according to the estimated percentage of work-related time and expenses pertaining to the prosecution function. However, it was not possible to calculate the precise percentage of actual expenditures devoted to the prosecution or defense function for each agency or sub-agency in 2004-2005. In some instances we were able to estimate the percentage of the line item attributable to the prosecution function after contacting state officials from the agency or sub-agency indicated. In other instances, we assumed a percentage of the actual expenditures for the budget item attributable to the prosecution function based upon information contained in the budget book and our 30 years of experience dealing with other criminal court expenditures in over half of the states in the country.

For purposes of comparing total prosecution and defense resources, we then reduced the grand total of prosecution expenditures according to a percentage that could be fairly attributable to the prosecution of *indigent* cases – that is, cases handled by public defenders or court-

appointed counsel only, excluding those handled by private attorneys. The Administrative Office of the Courts has indicated that it does not track the percentage of all indigent cases in the state, nor is there another source for such data. However, in our knowledge and experience in studying both indigency rates and indigent defense systems across the country, we have found that in a number of jurisdictions, the average rate of indigency frequently ranges between 75% and 80%.

In Part II of this report, we calculate the actual expenditures for the indigent defense function. In doing so, we began with the actual expenditures of the District Public Defender's Conference and the Executive Director for FY 2004-2005. We included the Indigent Defense Fund of the Administrative Office of the Courts which funds assigned counsel in conflict cases as well as expert, investigative and other support services for the defense. To these state expenditures, we added other federal, county and local resources. Because all defense expenditures are attributable to the indigent defense function, 100% was used for comparison with the 75-80% prosecution expenditures.

Finally, in Part III we make the bottom-line comparison between indigent prosecution and defense funding, and we provide additional evidence in support of our conclusion. First, we calculate the attorney unit cost for both the indigent prosecution and indigent defense functions and compare the results. Second, we cite the disparity in need of additional attorney positions between the prosecution and the defense according to the Comptroller's latest updates of the prosecution and defense case-weighting studies.

**PART 1:**

**FY 2005 EXPENDITURES FOR THE PROSECUTION FUNCTION**

**I. State Funds and Expenses for the Prosecution Function**

**A. District Attorneys General Conference**

There are 31 District Attorneys General, elected in each of the state's judicial districts, who serve as the state's prosecutors for all state criminal violations.

In addition, they prosecute all criminal cases in the federal courts that are removed from a state court and give opinions to county officials on criminal law relating to their office. Further, district attorneys and their assistants consult with and advise law enforcement agencies on cases or investigations within their district. In 19 judicial districts, the district attorney has contracted with the Department of Human Services to enforce court-ordered child support obligations through the IV-D Child Support Enforcement Program.<sup>1</sup>

Because the function of the District Attorneys General is the prosecution of cases, we have attributed the full line item expenditures to the prosecution function. As with all other prosecution line items, the percentage of indigent cases will be applied later to the grand total of prosecution expenditures.

<b>Table 1: District Attorney General Conference's Annual Appropriation for 2004-2005</b>			
<b>Line Item</b>	<b>Total Expenditure for Line Item</b>	<b>Percent of Expenditure to Prosecution Function</b>	<b>Total Expenditure Allocated for Prosecution Function</b>
304.01 - District Attorney General	\$53,188,200	100%	\$53,188,200
304.05 - District Attorney General Conference	\$361,500	100%	\$361,500
304.10 - Executive Director	\$1,864,500	100%	\$1,864,500
<b>Department Total</b>	<b>\$55,414,200</b>		<b>\$55,414,200</b>

**B. Other State Expenditures Attributable to District Attorneys General from the Law, Safety and Corrections Budget for FY 2005**

In addition to the direct appropriations set out in Table 1, the District Attorneys General receive additional state funds either directly or indirectly from a number of other state agencies, including the following:

<sup>1</sup> State of Tennessee Budget, Fiscal Year 2006-2007, Volume 1, p. B-197.

1. Attorney General and Reporter

The Attorney General and Reporter is Tennessee's chief legal officer. The responsibilities related to the prosecution function include prosecuting criminal cases in the appellate courts and providing departments, agencies and the General Assembly with legal advice. The Attorney General under Tennessee law represents the state in all criminal appeals whereas the appellate function for indigent defendants is provided by the district public defenders and assigned counsel. The Attorney General also represents the state in criminal appellate matters in federal court.

It is estimated that 14 percent of the Attorney General and Reporter budget statewide in 2004-2005 was attributable to the prosecution function.<sup>2</sup> The total expenditure amount allocated to the Attorney General and Reporter in FY 2005 was \$24,991,900. Therefore, the funds allocated to the prosecution function from the Attorney General and Reporter totaled **\$3,498,866.**<sup>3</sup>

2. Board of Probation and Parole

The Board of Probation and Parole manages the release and supervision of adult felons and conducts parole hearings in state and local prisons and jails. The Field Services Division of the board has eight district offices and 37 field offices. This division is responsible for writing pre-sentence investigation reports for use by the court and the board in sentencing considerations. Probation/parole officers in the division "report violations of probation and parole to the court and the Board, and may recommend what action should be imposed." In addition, they are responsible for "presenting facts and evidence to the court and board at revocation hearings as well as other formal hearings, conducting home and employment visits, monitoring community service work, providing intensive supervision... and locating absconders."<sup>4</sup>

It is estimated that 5 percent of the Probation and Parole Services line item is attributable to the prosecution function; this work includes preparing pre-sentence investigation reports, investigating probationers/parolees, and preparing for and testifying at revocation hearings and other hearings. Since the total allocations for the Probation and Parole Services were \$50,759,500, we have estimated that **\$2,537,975** should be charged against the state's prosecution function.

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<sup>2</sup> We were informed by officials in the Attorney General's Office that approximately 25 attorneys are assigned to criminal matters, which amounts to approximately 14% of the office's budget for line item 303.01 in FY 2005.

<sup>3</sup> The Attorney General's Office handles all appeals for the prosecutor while the Public Defender's Office handles all of its own appeals. Therefore, we have included the estimated time that attorneys in the Attorney General's Office work on an appeal to the prosecution function.

<sup>4</sup> Tennessee Board of Probation and Parole, Field Services Division, Statutory Authority and Responsibilities; see [http://www2.Tennessee.gov/bop/bop\\_fs\\_SAR.htm](http://www2.Tennessee.gov/bop/bop_fs_SAR.htm).

### 3. Tennessee Bureau of Investigation

“The Tennessee Bureau of Investigation (TBI) is responsible for assisting the District Attorneys General and local law enforcement agencies in the investigation and prosecution of criminal offenses.” Each of the five divisions of TBI are either directly involved in the investigation and prosecution of crime or directly support those efforts. The Criminal Investigation division provides “expertise in investigative support to district attorneys and state and local law enforcement agencies” and conducts independent investigations of misconduct and fraud. “The Drug Investigations division has original jurisdiction to investigate violations of Tennessee’s drug control laws.” The Forensic Services division “provides forensic examinations for the law enforcement community and medical examiners statewide.” “The Information Systems division provides support to investigative activities through records management, systems operations, fingerprint identification, and uniform crime reporting.” Finally, “[t]he Administrative Services division provides overall direction and support for the bureau.”<sup>5</sup>

Given that all divisions of TBI are involved in investigating and prosecuting crime or supporting such work, all **\$50,546,200** of TBI’s budget is attributable to the prosecution function.

### 4. Department of Safety

The Department of Safety enforces the laws governing the use of state and federal roads, which includes criminal investigation. The department also provides training assistance to local law enforcement officers. The Administrative Support Services division is responsible for overall administration of the department and includes a legal section that provides general legal counsel and administers asset forfeiture cases stemming from the Drug Control Act. The Motor Vehicle Operations unit provides support to the personnel who investigate violations of motor vehicle laws. The Tennessee Highway Patrol enforces all motor vehicle and driver license laws and investigates accidents. The Criminal Investigations Division (CID) investigates and prosecutes violations of Tennessee’s auto theft laws, and provides investigative support in felony cases. The Technical Services division maintains general records and data for the Department of Safety.

Table 2 provides the total FY 2005 expenditures for sub-agencies of the Department of Public Safety and the percentage of each sub-agency to which we have allocated prosecution funding. When taking all of the sub-agencies of the Department of Safety into account, the total amount allocated to the prosecution function from the Department of Safety is **\$18,828,970**.

### 5. Governor’s Highway Safety Office

The Governor’s Highway Safety Office distributed a total of **\$2,551,651** in grants in FY 2005 to eighteen Judicial District Attorney Generals’ Offices from the National Highway Traffic Safety Administration. The grant awards were made to provide resources that allow drunken driving prosecutors to decrease the number of dismissed or reduced DUI charges. Therefore, all of these funds are attributable to the prosecution function.

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<sup>5</sup> State of Tennessee Budget, Fiscal Year 2006-2007, Volume 1, p. B-221.

On this and the following page, Table 2 sets out the FY 2005 state agency and sub-agency spending with ten line items that we believe provided direct or indirect services to the prosecution function.

**Table 2: Other State 2004-2005 Funds Attributable to the Prosecution Function**

<b>Attorney General and Reporter 2004-2005 Funds Attributable to the Prosecution Function</b>			
<b>Line Item</b>	<b>Total Expenditure for Line Item</b>	<b>Percent of Expenditure to Prosecution Function</b>	<b>Total Expenditure Allocated for Prosecution Function</b>
303.01 Attorney General and Reporter	\$24,991,900	14%	\$3,498,866
<i>Subtotal</i>			<i>\$3,498,866</i>

<b>Board of Probation and Parole 2004-2005 Funds Attributable to the Prosecution Function</b>			
<b>Line Item</b>	<b>Total Expenditure for Line Item</b>	<b>Percent of Expenditure to Prosecution Function</b>	<b>Total Expenditure Allocated for Prosecution Function</b>
324.02 - Probation and Parole Services	\$50,759,500	5%	\$2,537,975
<i>Subtotal</i>			<i>\$2,537,975</i>

<b>Tennessee Bureau of Investigation 2004-2005 Funds Attributable to the Prosecution Function</b>			
<b>Line Item</b>	<b>Total Expenditure for Line Item</b>	<b>Percent of Expenditure to Prosecution Function</b>	<b>Total Expenditure Allocated for Prosecution Function</b>
348.00 - Tennessee Bureau of Investigation	\$50,546,200	100%	\$50,546,200
<i>Subtotal</i>			<i>\$50,546,200</i>

**Table 2 (continued)**

<b>Department of Safety 2004-2005 Funds Attributable to the Prosecution Function</b>			
<b>Line Item</b>	<b>Total Expenditure for Line Item</b>	<b>Percent of Expenditure to Prosecution Function</b>	<b>Total Expenditure Allocated for Prosecution Function</b>
<u>Administrative Support Services</u>			
349.01 - Administration	\$6,515,500	10%	\$651,550
349.07 - Motor Vehicle Operations	\$7,382,100	10%	\$738,210
<u>Enforcement</u>			
349.03 - Highway Patrol	\$82,427,600	20%	\$16,485,520
349.06 - Auto Theft Investigations	\$76,700	10%	\$7,670
349.14 - C.I.D. Anti-Theft Unit	\$688,700	10%	\$68,870
<u>Technical Services</u>			
349.13 - Technical Services	\$8,771,500	10%	\$877,150
<i>Subtotal</i>			\$18,828,970

<b>Governor's Highway Safety Office 2004-2005 Funds Attributable to the Prosecution Function</b>			
<b>Line Item</b>	<b>Total Expenditure for Line Item</b>	<b>Percent of Expenditure to Prosecution Function</b>	<b>Total Expenditure Allocated for Prosecution Function</b>
National Highway Traffic Safety Administration Grant Allocation	\$2,551,651		\$2,551,651
<i>Subtotal</i>			\$2,551,651

**Grand Total**

**\$77,963,662**

**II. Federal, County and City Funds Allocated to the Prosecution Function**

In determining the funding set forth in this section, we reviewed reports by the Comptroller. We reviewed the *Study of Funds Outside the State Accounting System Available to the Administrative Office of the Courts, the District Attorneys General, and the District Public Defenders* (Audit of Non-State Funds). This study is conducted annually by the Office of the Comptroller of the Treasury, Division of County Audit and Office of Research and the Office of Legislative Budget Analysis and is reported to the Office of Finance Ways and Means Committee. We also reviewed the Comptroller's *Review of Funds Administered by District Attorneys General and Judicial District Drug Task Forces, First Through Thirty-First Judicial Districts for FY 2005*.

Chapter 464 of the Public Acts of 2001 directs the Office of the Comptroller of the Treasury and the Office of Legislative Budget Analysis to study the issue of any funds maintained by judges, public defenders or district attorneys outside the state accounting system. Specifically, the mandate states:

From funds appropriated to the Office of the Comptroller of the Treasury and the Office of Legislative Budget Analysis, such offices are directed to study the issue of funds maintained outside of the state accounting system that the Administrative Office of the Courts, the District Attorney Generals Conference, and the District Public Defenders Conference, do not report to the Senate House Finance Ways and Means Committee, as to the following matters:

1. The source of any funds maintained outside of the state's public accounting system;
2. The disposition of such funds;
3. The statutory basis for disposition of such funds; and
4. Accountability controls that are in place or are needed with respect to such funds.

For several years, the auditor has raised issues regarding frequent failure to place non-state funds within the state accounting system as required by law.

The recent Audit of Non-State Funds found that “some local governments appropriated and expended general funds of the local government to enhance operation of state court judges, district attorneys general, and district public defenders. District attorneys general also have funds available to spend at their sole discretion for the operation of their offices.”

The study also revealed the following key issues:

1. In some instances, state court judges use personal funds to establish petty cash accounts.
2. The salaries of some state employees in the Office of the District Attorney General were supplemented with local funds appropriated by the local legislative body and with funds available locally to the District Attorneys General to be used at their discretion. Also, some employees' salaries in the Office of District Public Defenders were supplemented with local funds appropriated by the local legislative body. These supplements resulted in state employees being compensated at a salary higher than the salary provided by the state for that position. In some instances, local government fully funded employees' salaries, and those employees are considered county employees.
3. Salary supplements paid to state employees with local funds were not uniformly reported to the Tennessee Consolidated Retirement System.
4. Local funds were provided to state employees for travel when state funds were not available for that purpose, and in some instances exceeded state travel regulations.
5. Funds expended locally for the state court judges, district attorneys general, and public defenders were not actively monitored by the Administrative Office of the Courts, the District Attorneys General Conference, and the District Public Defenders Conference, respectively, but are subject to audit by the Comptroller of the Treasury.

Funds available to state court judges, district attorneys general, and district public defenders that are not expended to their administrative bodies and conferences and are not on

that state's accounting system raise serious concerns for accountability. The funds not on the state's accounting system are audited; however, there is no system in place to provide legislators with a clear and total picture of the staffing and operating needs of the courts, the district attorneys and public defenders.

A number of federal, county and city funds are allocated to the prosecution function each year. Below we describe portions of the auditor's report for FY 2005 that provide information on the distribution of federal, county and city funds allocated to prosecution function.

**A. Funds Administered by District Attorneys General**

1. District Attorney General Fund

The District Attorney General Fund is used primarily to account for fees received from the Fraud and Economic Crimes Prosecution Act of 1984. In addition, this fund is also used to account for other sources of revenues received by the District Attorneys General, such as investment income, miscellaneous refunds, copy fees, contributions, proceeds from confiscated property, and other local revenues. The revenue from the District Attorney General Fund for FY 2005 totaled **\$1,161,040**.

2. Drug Task Force Fund

Some judicial districts have established multi-jurisdictional drug task forces under the leadership of the District Attorneys General. These drug task forces were created by contract between the participating district attorneys general, and city and county governments, and approved by their respective legislative bodies. Drug Task Force funds are to be deposited with the county trustee in each judicial district, and county trustees credit these funds to a Judicial District Drug Fund. The total funding received by the District Attorneys General from the Drug Task Force Fund for FY 2005 was **\$13,295,009**.

3. Federal Asset Forfeiture Fund

Under the United States Department of Justice Comprehensive Crime Control Act of 1984, the Office of the U.S. Attorney General has the authority to share federally forfeited property with cooperating state and local law enforcement agencies. The purpose of this Act is to punish and deter criminal activity by depriving criminals of property used for or acquired through illegal activities; to enhance cooperation among federal, state, and local law enforcement agencies through equitable sharing of assets recovered through the program; and to procure revenues to enhance forfeitures and strengthen law enforcement. The Offices of the District Attorney General in the Thirtieth Judicial District and the Twentieth Judicial District are participating in the forfeiture program. The total revenue received from this fund by the District Attorneys General was **\$127,934** in FY 2005.

4. Metro/County Appropriations Fund

This consists of funds appropriated by the counties and cities in the Twenty-Third Judicial District. The revenue generated from this fund was **\$482,649** in FY 2005.

5. Mediation Services Fund

The Mediation Services Fund consists of funds received from a one dollar litigation tax that is assessed on all cases in the General Sessions and Juvenile Courts in Davidson County and other appropriations received by the Twentieth Judicial District for the support and operation of victim-offender mediation centers. The District Attorneys General received **\$57,820** from the Mediation Services Fund in FY 2005.

Table 3 below summarizes the total funds received by the District Attorneys General from the sources listed above.

<b>Table 3: FY 2005 Revenue from Funds Administered by the District Attorneys General</b>	
<b>Funds</b>	<b>Revenue</b>
General Fund	\$1,161,040
Drug Task Force Fund	\$13,295,009
Federal Asset Forfeiture	\$127,934
Metro/County Appropriations	\$482,649
Mediation Services	\$57,820
Other Funds	\$278,451
<b>Total</b>	<b>\$15,402,903</b>

**B. Other Funds Available to District Attorneys General**

The District Attorneys General have two additional funds available to them. *The FY 2006-2007 Tennessee State Budget Office of State Comptroller, Audit of Non-State Funds for FY 2005*, shows Attorney General reserve funds (as of 6/30/05) totaling **\$12,026,756**. These reserve funds are end-of-the-year non-state funds that remain available for each of the 31 District Attorneys General Offices. The same Audit of Non-State Funds also shows an additional **\$13,415,159** in non-state (federal, county and local) appropriations and states as follows: In addition to the above-noted revenues, some counties and cities appropriated and “expended funds for the benefit of the judicial districts, primarily for salaries.” The total amount of these county/city funds for FY 2005 amounted to **\$25,441,915** statewide.

**III. Total FY 2005 Funds for Prosecution in Tennessee**

Together, state and non-state funds for the prosecution in Tennessee for FY 2005 are set out in Table 4:

<b>Table 4: FY 2005 TOTAL PROSECUTION FUNDING</b>	
<b>Funds</b>	<b>Revenue</b>
State Appropriations (Table 1)	\$55,414,200
Other State Prosecution Funds (Table 2)	\$77,963,662
Funds Administered by District Attorneys General (Table 3)	\$15,402,903
Non-State Reserve Funds	\$12,026,756
Other Non-State Funds	\$13,415,159
<b>Total</b>	<b>\$174,222,680</b>

The total figure for prosecution funding is a conservative one for two reasons. First, it does not include in-kind resources (discussed below). Second, in some cases, we excluded from Other State Prosecution Funds (Table 2) state agencies for which we were unable to confirm a specific function relevant to the prosecution of cases, although it appears such function may exist. For instance, the Department of Correction (DOC) has a State Prosecutions line item. According to the budget book, State Prosecutions “provides payments to counties for other correctional expenditures, such as witness fees, criminal court costs and transportation, jury boarding, and medical costs for convicted felons.”<sup>6</sup> While the budget item for DOC State Prosecutions is \$108,810,400, no portion of this was used in this report.

Finally, in order to determine the total prosecution funding in indigent cases, Table 5 applies the average range of 75%-80% for the indigency rate to the grand total of prosecution funding in Table 4 from all sources.

<b>Table 5: FY 2005 TOTAL INDIGENT PROSECUTION FUNDING</b>		
<b>Prosecution Funding</b>	<b>Indigency Rate</b>	<b>Indigent Prosecution Funding</b>
\$174,222,680	75%	\$130,667,010
\$174,222,680	80%	\$139,378,144
<b>Total Indigent Prosecution Funding Range: \$130 - \$139 Million</b>		

#### **IV. In-Kind Prosecution Resources**

In addition to the state and non-state appropriated funds available to the prosecution function in Tennessee, each District Attorneys General Office in the state has available to it the resources of state, county and local law enforcement agencies to assist in the investigation and preparation of the prosecution’s case, including the investigation of witnesses, collection of evidence, and use of state experts. These resources are provided by each law enforcement agency to the District Attorneys General at no direct cost to them. In addition to these state and local resources, all District Attorneys General also have the in-kind resources of the federal

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<sup>6</sup> *Id.* at B-207.

government, including the services of federal law enforcement agencies and federal crime labs. While it is not possible to allocate specific dollar amounts to these federal state, county and local in-kind services, it is safe to state that they raise the FY 2005 appropriated figure to well in excess of the \$174.2 million calculated in Table 4.

## **PART 2:**

### **FY 2005 EXPENDITURES FOR THE INDIGENT DEFENSE FUNCTION**

#### **I. District Public Defenders Conference**

In each of Tennessee's 31 judicial districts, the voters publicly elect a public defender to serve their district. Each of these judicial districts has an independent public defender office. The state funds these public defender offices with the exception of Shelby County (Memphis) and Davidson County (Nashville), which have their own separate public defender offices funded through a combination of state and local monies. Public defenders are appointed in any indigent criminal prosecution or juvenile delinquency proceeding involving the possible deprivation of liberty, or in any habeas corpus or other post-conviction proceeding.

Each elected public defender participates in the Tennessee District Public Defenders Conference. The Conference helps public defenders across the state discharge their official duties and assists with the enactment of laws and rules of procedure necessary for the effective administration of justice. The Executive Committee of the District Public Defenders Conference is the decision-making body of the Conference.

The Office of the Executive Director of the Conference is the central administrative office for all but two of the district public defenders (Nashville and Memphis). The Executive Director is responsible for budgeting, payroll, purchasing, personnel, and administration of all fiscal matters pertaining to the operation of district public defender offices. Other duties include coordinating defense efforts of the various district public defenders, development of training programs, and maintaining liaison with various state government agencies. The Executive Director is elected by the district public defenders for a four-year term.

One hundred percent of the Public Defenders Conference 2004-2005 state budget of **\$30,438,300** was attributable to the defense function. These funds also include the budget of the Executive Director of the Conference and state funds provided to the Shelby and Davidson public defender program.

#### **II. Office of the Post-Conviction Defender**

In addition to the District Public Defenders Conference, Tennessee has an Office of the Post-Conviction Defender which was established in 1995. The commission oversees the budget for, and appoints the head of, the statewide Post-Conviction Defender Office that is responsible for representing indigent persons convicted and sentenced to death in collateral actions and some direct appeals in state court. "The office also provides continuing legal education and consulting services to attorneys representing indigent defendants in capital cases and recruiting qualified members of the private bar who are willing to provide representation in state death penalty proceedings."<sup>7</sup>

One hundred percent of the 2004-2005 state Office of the Post-Conviction Defender

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<sup>7</sup> State of Tennessee Budget, Fiscal Year 2006-2007, Volume 1, pg. B-201.

budget of **\$1,176,600** was attributable to the defense function.

Table 6 sets out the total FY 2005 state appropriation for the District Public Defenders Conference and the Office of the Post-Conviction Defender.

<b>Table 6:</b>	
<b>FY 2005 District Public Defenders Conference and Post-Conviction Defender Appropriations</b>	
<i>District Public Defenders Conference</i>	
<b>Line Item</b>	<b>Expenditure</b>
306.01 - District Public Defenders	\$25,176,100
306.03 - Executive Director of the Public Defenders Conference	\$939,800
306.10 - Shelby County Public Defender	\$2,840,400
306.12 Davidson County Public Defender	\$1,482,000
306.00 - Department Total	\$30,438,300
<i>Office of the Post-Conviction Defender</i>	
<b>Line Item</b>	<b>Expenditure</b>
308.00 - Office of the Post-Conviction Defender	\$1,176,600
<b>Total</b>	<b>\$31,614,900</b>

### **III. Assigned Counsel Fees and Expenses**

From a fund often referred to as the Indigent Defense Fund (IDF), the Administrative Office of the Courts (AOC) pays for the compensation of court-appointed private counsel and for the costs of necessary supporting defense services, such as investigative and forensic expert services, as authorized by the court. To the extent expenses for the same type of supporting defense services are not covered by their own budget, public defender attorneys also draw from these funds for the same type of supporting defense services. The 2005 Executive Secretary to the Supreme Court's Fees and Expenses for Court-Appointed Counsel amounted to \$18,728,784 in FY 2005; however, \$5,175,940 of these funds involved payments to court-appointed guardian ad litem, termination of parental rights, and abuse and neglect cases. Because the resource comparison in this study is limited to adult criminal and juvenile delinquency cases, the result was an expenditure of **\$13,552,844** for criminal cases in FY 2005.

### **IV. Non-State Public Defender Resources**

#### **A. 75 Percent of Prosecution's Local Funding Increase**

According to the Tennessee Code Annotated:

From and after July 1, 1992, any increase in local funding for positions or office expense for the district attorney general shall be accompanied by an increase in funding of seventy-five percent (75%) to the office of the public defender in such district for the purpose of indigent criminal defense.<sup>8</sup>

<sup>8</sup> TENN. CODE ANN. § 16-2-518 (1992).

Each judicial district was required to report a baseline figure for each District Attorney General Office as of 1992 for the purposes of calculating annual increases. It has been reported to us that for public defenders to obtain a funding increase of 75 percent of a district attorney general office's local funding, the public defender must obtain these additional funds from the county by applying to the county legislative body. At the present time, we are only aware of three Public Defender Offices that are receiving these funds: Knox County, which receives \$1,220,502; Hamilton County, which receives \$272,000; and Shelby County, which receives \$304,677, for a total of **\$1,797,179**.

**B. \$12.50 Local Assessment on Criminal Prosecutions**

There is an additional statute that provides for non-state general fund appropriation for the district public defender offices. Tennessee Code Annotated § 40-14-210 allows each county to supplement the funds of the district public defender offices by assessing a \$12.50 fee on every misdemeanor and felony prosecution. The money is collected by the courts in the county, and by vote of the county legislature disbursed to the county public defender. However, as Table 7 shows, not all District Public Defender Offices receive these funds. The total amount generated from the assessments is **\$1,248,563** for FY 2005.

<b>Table 7: Money Distributed to District Public Defender Offices in FY 2005 from the \$12.50 Fee on Criminal Prosecutions</b>	
<b>District</b>	<b>2005 Collection</b>
District 5	\$75,000
District 6	\$220,000
District 7	\$12,000
District 8	\$62,534
District 13	\$118,061
District 15	\$182,492
District 19	\$165,630
District 20	\$151,700
District 22	\$55,645
District 30	\$205,501
<b>Total</b>	<b>\$1,248,563</b>

**C. Other District and Local Government Funding**

District and local governments can also contribute additional funds to the public defender offices in their jurisdiction, but it is unclear if any public defender offices across the state receive such funds. Again, the Knoxville District Public Defender Office receives local contributions. In addition, both the Davidson and Shelby Public Defender Offices receive a large annual appropriation from their district governments. Davidson County received \$3,352,000 and Shelby County received \$4,834,000 in FY 2005 totaling **\$8,186,000**.

Total statewide public defender and assigned counsel resources for FY 2005 from state, county and local funds are set out in Table 8.

<b>Table 8: FY 2005 TOTAL PUBLIC DEFENDER AND ASSIGNED COUNSEL FUNDING</b>	
<b>Funds</b>	<b>Revenue</b>
Total District Public Defender's Conference and Post-Conviction Defender Appropriations	\$31,614,900
Private Assigned Counsel Fees and Expenses (State)	\$13,552,844
75% District Attorney Yearly Increase	\$1,797,179
\$12.50 Local Assessment on Criminal Prosecution	\$1,248,563
Davidson and Shelby District Appropriations	\$8,186,000
Federal Grant Monies <sup>9</sup>	\$14,230
<b>Total</b>	<b>\$56,413,716</b>

#### **IV. In-Kind Public Defender Resources**

There is no comparison between the in-kind services provided to prosecution and indigent defense. The only in-kind resources that we could find for indigent defense programs and court-appointed attorneys were negligible, consisting of some small amount of space, telephone, and other miscellaneous expenses provided by a few counties for indigent defense.

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<sup>9</sup> The Shelby County Public Defender Office received a federal grant in FY 2005.

## PART 3:

### CONCLUSION AND ADDITIONAL EVIDENCE

#### **I. Bottom-Line Comparison**

In studying the FY 2005 funding from all sources appropriated to both the prosecution and the defense through both direct and indirect appropriations, and comparing that portion that is attributable to indigent cases, we find **\$130 – 139 million** available to the prosecution function, compared to **\$56.4 million** available for indigent defense. Therefore, indigent prosecution funding is between two and two-and-a-half times greater than indigent defense funding. In addition, this comparison does not factor in the additional resources that are provided to the prosecution in the form of federal, state, county, and local in-kind services that we believe well exceed the dollar amount cited.

#### **II. Additional Evidence in Support of Findings**

In addition to the bottom-line comparison of total FY 2005 budget expenditures, below we cite two additional comparisons that bolster our findings. First, we calculate the indigent unit cost per prosecuting attorney and public defender, using funding from all sources and statewide attorney positions. Second, we cite the great disparity between the prosecution and defense in the need for additional attorney positions, as reported recently by the Comptroller's case-weighting updates.

##### **A. Attorney Unit Cost**

The Tennessee General Assembly created the District Public Defenders Conference in 1989. The state legislature relied on several different mechanisms for determining the number of district public defenders needed, but staffing was never based upon the caseload or workload of the public defenders. When the conference was first created, a statutory provision required that public defender offices receive half the number of state-funded staff attorney positions that were allocated in the district attorney offices in their respective districts. This ratio was subsequently modified so that public defender offices would receive attorney positions equivalent to 75 percent of those provided to the district attorney offices. However, the district attorneys successfully lobbied for another change to the statutory scheme with the result that public defenders are now entitled to 75 percent of only *locally* funded positions provided by the district attorneys. As we stated earlier, very few counties provide these additional funds for public defenders throughout the state.

In an effort to determine the workload needs and devise a solid workload standard among public defenders, prosecutors, and judges, the Tennessee legislature provided funds for a quantitative case-weighting study of each of the three agencies in 1998. In 1999, the National Center for State Courts, The Spangenberg Group, and the American Prosecutor's Research Institute (APRI) joined together to conduct the case-weighting study in Tennessee under the direction of the Office of the Comptroller. After completion of the study, in September/October

of 1999, APRI presented a paper that noted the variety of funding sources available to the prosecution in Tennessee:

Many of the offices of the District Attorney General have been successful in securing funding from sources other than the state appropriation such as municipal and county funding, or state and federal grants. Nearly half of the existing assistant positions in three urban districts are funded by non-state funds.

This statement bolsters our findings in the current study (some eight years later) comparing the limited resources of public defenders to those of the prosecutors in Tennessee.

Following the completion of the case-weighting study, the legislature passed a statute that requires courts, public defenders, and district attorneys to determine workload based upon a common definition of case. After accepting the case-weighting study, the legislature required that the Comptroller of the Treasury's Office of Research perform an annual update of the results of the 1999 study to determine what progress had been made and what problems continued to exist.

In February 2007, the Comptroller of the Treasury updated the 1999 reports as mandated by the Tennessee legislature, producing *FY 2005-2006: Tennessee District Attorney Weighted Caseload Study Update* and *FY 2005-2006: Tennessee Weighted Caseload Study Update, District Public Defenders*. At the time that the reports were updated, there were a total of 425 full-time district attorneys and assistant district attorneys in Tennessee among the 31 judicial districts. According to the Comptroller, of these 425 positions, 291 are assistant district attorney (ADA) positions funded by direct state appropriation and 103 full-time ADA positions are locally funded; 31 elected district attorney (DA) positions are state funded. In addition to these 425 positions supported by state and local funds, a footnote in the Comptroller's report indicates that another 34 attorneys are funded by federal grants. Therefore, the total number of district attorneys and assistant district attorneys in Tennessee at the time of the study was **459**.

As we calculated in Table 4 of this report, the total funds from all sources available to the district attorneys in FY 2005 was \$174,222,680. In Table 5, we multiplied this figure by 75 and 80 percent to provide a range of funding for the prosecution of indigent cases only, and this produced a range of \$130,667,010 to \$139,378,144. In Table 9 below, using the total figures of indigent prosecution funding, we calculated an annual cost for each full-time prosecutor in Tennessee handling indigent cases. First, we multiplied the total number of full-time district attorneys and assistant district attorneys from the FY 2005-2006 Comptroller's report, 459, by the indigency rates of 75 percent and 80 percent. This produced figures of 344 attorneys and 367 attorneys, respectively. We then divided these figures into the respective shares of indigent prosecution funding to produce two estimates for the cost of one indigent prosecuting attorney unit – that is, the amount of total funding provided from all sources per single prosecuting attorney position. This produced two figures for indigent prosecution attorney unit cost. As displayed in Table 9, the attorney unit cost is nearly equivalent at 75 percent and 80 percent and produces an approximate cost of **\$379,800**.

<b>Table 9: Indigent Prosecution - Attorney Unit Cost</b>			
		<b>@ 75% Indigency</b>	<b>@ 80% Indigency</b>
Total Prosecution Funding	\$174,222,680	\$130,667,010	\$139,378,144
Total DA/ADA Positions	459	344	367
<b>Positions/Funding = Total Attorney Unit Cost</b>		<b>\$379,846</b>	<b>\$379,777</b>

We then examined equivalent Comptroller's FY 2005-2006 case-weighting report for the public defender. The auditor reported a total of **309** full-time public defender attorneys from all funding sources in the state, including those attorneys who filled investigator positions. We divided the 309 full-time attorney positions into the total resources available to public defense from all sources for FY 2005, or \$56,413,716. As displayed in Table 10, this produced a public defender unit cost of **\$182,569**. It should be noted that in order to equally compare the prosecution and defense unit costs, we included assigned counsel (conflict) funding in the total indigent defender figure even though such funds are employed almost entirely for private court-appointed counsel.

<b>Table 10: Indigent Defense Attorney Unit Cost</b>	
Total Indigent Defense Funding	\$56,413,716
Total Public Defender Positions	309
<b>Positions/Funding = Total Attorney Unit Cost</b>	<b>\$182,569</b>

Thus, the attorney unit cost for indigent prosecution is just over double that of the attorney unit cost for indigent defense.

### **B. Attorney Positions Needed**

Finally, the Comptroller's latest updates of the case-weighting reports for the prosecution and defense indicate that statewide, in order to meet the standards of the original case-weighting study, district attorneys needed an additional **22** attorney positions while public defenders needed an additional **122.8** attorney positions.