

## **The Tennessee Justice Project's Summary Analysis of:**

### ***Resources of the Prosecution and Indigent Defense Functions in Tennessee*** **(June 2007)**

**By The Spangenberg Group**

The Spangenberg Group, one of the nation's leading experts on state criminal justice systems, has issued the results of its recent study of prosecution and indigent defense funding in Tennessee. This is one of the most comprehensive studies of its kind in the country, and it has uncovered further evidence that the Tennessee indigent defense system is in dire need of reform.

The Spangenberg study discloses an astonishing disparity between the financial resources made available to the defense versus the prosecution in indigent cases: for indigent cases, **defense attorneys receive less than half the financial resources that are available to the prosecution.** For fiscal year 2005, the funds made available to the prosecution and defense functions<sup>1</sup> in indigent cases were as follows:

<b>Prosecution Function:</b>	<b>\$ 130 million to \$ 139 million<sup>2</sup></b>
<b>Defense Function:</b>	<b>\$ 56.4 million</b>

This extreme disparity in prosecution versus defense resources jeopardizes the fairness and accuracy of the Tennessee indigent defense system. On this uneven playing field, there is a high risk that even the most capable and hard-working public defenders and other defense lawyers cannot provide reasonably adequate counsel and effectively advocate for their clients' best interests, which inevitably leads to unreliable results and creates an unjust system.

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<sup>1</sup> In this Study, the "function" of the prosecution and defense includes the work of counsel and support staff and services, including investigators and forensic experts, in the prosecution and defense of indigent adult and juvenile criminal cases. All of the funds spent for investigative and forensic expert services used in the defense function, including public defenders and private court-appointed defense counsel, are included in the computation of the \$56.4 million figure. Only a fraction, however, of the funds spent for investigators and forensic experts used in the prosecution function, such as that from the TBI, is included in the computation of the \$130 million to \$139 million range. The millions of dollars spent on the prosecution function by other federal, state, county, and municipal resources for investigative, forensic expert services, or other services were too inaccessible for The Spangenberg Group to attribute a dollar amount, and were deemed "in-kind" services.

<sup>2</sup> The calculation of the range of funds available for the prosecution of indigent cases – between \$130 million and \$139 million – is derived from Spangenberg Group's estimate that indigent criminal prosecutions constitute between 75% and 80% of all criminal prosecutions in Tennessee. This estimate is based upon the Spangenberg Group's professional judgment from their years of experience and expertise in this field and is confirmed by estimates reflected in reports by the Tennessee Comptroller and in legislative policy (such as T.C.A. § 16-2-518 which assumes that 75% of the district attorneys' budgets are devoted to the prosecution of indigent cases).

**In fact, in indigent cases the total resources available for the prosecution are more than four times the resources available for the defense.** As the Spangenberg report points out, its analysis does not represent the full scope of the disparity between the prosecution and defense functions. Spangenberg's analysis did not factor in the additional resources provided to the prosecution in the form of federal, state, county, and local "in-kind" services for which state-wide financial information was not available. Such "in-kind" services, which are provided to the prosecution but which cannot be quantified on a state-wide basis, include the services provided by local law enforcement agencies in the 95 counties and hundreds of towns and cities throughout the state as well as federal law enforcement and crime lab agencies. The Spangenberg study estimates that if these additional "in-kind" services were taken into account in addition to the identifiable financial resources, they would at least double the value of all resources that are actually available to the prosecution. This means that the disparity between prosecution resources and defense resources is at least twice what the numbers in the Spangenberg report would indicate.

In performing the study, the Spangenberg Group examined fiscal year 2005 funding information from a variety of sources, including the Tennessee Administrative Office of the Courts, the District Attorney Generals' Conference, the Public Defenders' Conference, and other federal state, county and local governmental funding sources involved in criminal prosecution and defense. Fiscal year 2005 is the most recent year for which reliable and extensive funding information is available.

Spangenberg's findings were bolstered and corroborated by two additional analyses. First, Spangenberg performed a "per unit" comparison, dividing the funds available for prosecution and for defense annually by the total numbers of attorneys in the district attorneys' and public defenders' offices, respectively. According to this comparison, district attorneys receive financial resources equal to **\$379,000 per district attorney** per year, and public defenders receive financial resources equal to only **\$182,500 per public defender**<sup>3</sup> per year, a ratio of more than two-to-one in favor of the prosecution. Again, this "per unit" comparison of resources does not account for the "in-kind" services made available to the prosecution function.

Second, the Tennessee Comptroller, in his *FY2005-2006 Tennessee Weighted Caseload Study Update*, found that in order for Tennessee to meet previously stated caseload standards for prosecutors and public defenders, the district attorneys need an additional **22** attorney positions while public defenders need an additional **123** attorney positions.<sup>4</sup> (According to the

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<sup>3</sup> The "per unit" number for the defense function is high, because it divides all funds provided for indigent defense, including funds to private court-appointed counsel who are not public defenders, by only the number of public defenders without including the number of private court-appointed counsel who handle indigent cases. If only the funds provided to public defenders were considered in order to arrive at a true "per unit" cost for the public defender system exclusive of private court-appointed appointed counsel, the dollar amount per unit would be significantly lower.

<sup>4</sup> The computation of these additional attorney positions needed for public defenders does not take into consideration, as part of the whole amount that funded indigent defense, the \$13.5 million spent for the compensation of court-appointed private counsel and the compensation of investigators and forensic experts that were authorized for the defense of indigent defendants by court-appointed private counsel.

*Weighted Caseload Study*, in fiscal year 2005-2006 there were 459 prosecutors and 309 public defenders in Tennessee.) These numbers further highlight the vast discrepancies between the resources made available to the prosecution versus the defense in indigent cases.

It is a long held constitutional principle that legal representation is a fundamental component of a fair criminal justice system. “The assistance of counsel is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty.... The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not ‘still be done.’” *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963). Fairness and reliability in the adversarial system require a “balance of forces between the accused and the accuser.” *Wardius v. Oregon*, 412 U.S. 470, 474 (1973). For justice to be served, the playing field must be level.

The results of the Spangenberg study demonstrate that the playing field is not level and highlight the need for reform in Tennessee’s indigent criminal justice system. Bridging the funding gap between the defense and prosecution is critical to our concept of justice. When attorneys representing indigent clients lack adequate resources to do their job, an excessive number of wrongful prosecutions will occur; and, too often innocent people will be incarcerated, other defendants will receive unfairly excessive sentences, and guilty people may never be prosecuted. A malfunctioning system ultimately leads to greater financial and human costs and reduced public confidence in our criminal justice system.

The Spangenberg Group is one of the nation’s foremost research and consulting firms that specializes in the evaluation of state criminal justice systems. Robert Spangenberg has over 30 years experience in this field, and during the past 20 years The Spangenberg Group has worked in all 50 states and has conducted comprehensive statewide studies of criminal justice systems in more than half of the states. The Spangenberg Group has conducted several criminal justice system studies in Tennessee, including a 1999 *Tennessee Public Defender Case Weighting Study* for the Tennessee Comptroller of the Treasury.

The Tennessee Justice Project (TTJP), a nonprofit organization committed to increasing the fairness and accuracy of the Tennessee indigent criminal justice system, commissioned The Spangenberg Group to conduct the study comparing the financial resources furnished to the prosecution with the resources furnished to the defense in indigent criminal cases.