



**Testimony for the House Judiciary Committee
March 20, 2015**

HB 1119 Office of the Public Defender - Caseload Standards

SUPPORT

The ACLU of Maryland supports HB 1119, which would limit representation by the Office of the Public Defender to the caseload standards articulated in the Maryland Attorney and Staff Workload Assessment of 2005. Under the bill, panel attorneys will represent indigent defendants whose cases fall beyond this capacity.

Courts have held that the mere appointment of counsel is not enough to satisfy the Sixth Amendment right to counsel. Although the denial of counsel will invalidate a resulting criminal conviction, less extreme circumstances will also amount to a denial of the Sixth Amendment.¹

An alarming 80% of defendants in the United States are poor enough to qualify for a court-appointed lawyer, which speaks to the need for adequately funded public defense systems and the importance of caseload standards—public defense operations bear the lion's share of criminal defense representation and are therefore responsible for the plight of a majority of defendants. Over-capacity public defense systems necessarily translate to underserved defendants.

Limits for a reasonable caseload were first proposed in the 1970's by a federal commission, the National Advisory Commission on Criminal Justice Standards (NAC). The NAC recommended:

- No more than 150 felonies per year, per attorney.
- No more than 200 juvenile cases per year, per attorney.
- No more than 25 appeals per year, per attorney.

A 2003 study found that Maryland's public defenders' caseloads exceeded even these standards. At that time for example, in urban OPD offices, attorneys handled an average of 272 felonies per year, as compared with the 150 recommended by the NAC. Rural OPD attorneys handled 314 juvenile cases per year, compared with the 200 recommended by the NAC.²

Over capacity caseloads present a direct threat to the right to counsel under the Sixth and Fourteenth Amendments to the U.S. Constitution.³ It is therefore unsurprising that caseload standards have been the subject of litigation throughout

¹ U.S. Dist. Ct for Western District of Washington (No. C11-1100RSL, Dec. 4, 2013).

² Maryland Attorney and Staff Workload Assessment, 2005—Maryland Office of the Public Defender (available at

<http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Workload%20Assessment/ResWorkLdMDAttyStaffWkLdAs05.ashx>).

³ U.S. Const. amends. VI, XIII.

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the country—the ACLU has filed class action lawsuits across the country to aid inadequately funded defense counsel in Montana, Idaho, Utah, Connecticut, Pennsylvania and Washington. In a recent decision requiring better funding in Pennsylvania, the court noted:

“The people have ordained that the right to counsel exist as a bulwark against tyranny. It is the duty of those entrusted with the administration of our government that constitutional obligations be implemented in an effective way. Even when resources may be scarce, constitutional obligations must be afforded priority. Anything less would offend the sacrifice of those who created and defended our constitutional democracy.”⁴

Therefore, it is imperative, for both public defenders and indigent defendants, that reasonable caseload standards be enforced in order to safeguard the Sixth Amendment right to counsel.

For the foregoing reasons, the ACLU of Maryland urges a favorable report on HB 1119.

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⁴ *Flora v. Luzerne County*, United States District Court for Pennsylvania, Case No. 3:2012cv00665.