



**A Report to the
Audit Committee**

Mayor
John Cooper

Chief Public Defender
Martesha Johnson

Audit Committee Members
Tom Bates
Brackney Reed
Jim Shulman
Saul Solomon

Audit of the Metropolitan Public Defender's Office

September 24, 2021

Metropolitan
Nashville
Office of
Internal Audit

Audit of the Metropolitan Public Defender's Office

EXECUTIVE SUMMARY

September 24, 2021



Why We Did This Audit

The audit was conducted due to the importance of ensuring quality services to clients of the Public Defender's Office.

What We Recommend

- Monitor caseloads within the General Sessions Court attorney team to ensure the cases are in capacity of the staff.
- Leverage technology in leave time management.

BACKGROUND

The mission of the Metropolitan Public Defender's Office is to defend the liberty, honor, and constitutional rights of the individuals whose cases have been entrusted to the Public Defender. The Public Defender's Office strives to deliver excellence in their client representation, while also standing with their clients and the community in working to create a more just, fair, and compassionate legal system. The Public Defender's Office represents clients in General Sessions Court, Criminal Court, Juvenile Court, and on cases appealed to both the Court of Criminal Appeals and the Supreme Court.

OBJECTIVES AND SCOPE

The objectives of this audit are to determine if:

- Eligible clients of the Public Defender's Office received a high quality of services.
- Employee access to Defender Data is appropriate and the least privileges to perform the job functions.
- Staff members are properly trained and certified to provide services.
- Leave time is approved, recorded, accurate, and tracked.

The scope of this audit included all activity from January 1, 2019, to December 31, 2020.

WHAT WE FOUND

The Public Defender's Office has controls in place to ensure the delivery of the highest quality services to eligible indigent clients. Policies and procedures are in place to ensure the integrity of the client's information and the competency of the staff.

However, leave time management did not meet the expectation of accuracy and periodic review. In addition, caseloads in the General Sessions team exceeded the State recommended number in fiscal year 2019.

GOVERNANCE

The Davidson County Public Defender’s Office was created by a Private Act of the Tennessee General Assembly in 1961. The first Davidson County Public Defender was elected in 1962. In 1963, the original Metro Charter recognized the continuation of the Davidson County Public Defender’s Office. The Public Defender is elected for a four-year term.

The public defender must be a person licensed to practice law in Tennessee and must be a resident of the Metropolitan Nashville area at the time of election or appointment and during the term of office. The public defender is authorized to employ one deputy or assistant public defender for managing daily operations of the office.

BACKGROUND INFORMATION

The Public Defender’s Office has several teams of attorneys and other support staff representing clients in General Sessions Court, Criminal Court, Juvenile Court, and Appellate Court. The Public Defender’s Office gets clients two ways. Defendants may come to the office to ask for representation, or a judge may assign a Public Defender’s Office attorney to the client in court.

A screening process is in place to determine eligibility for representation. Applicants complete an Affidavit of Indigency to certify the financial information provided is true. The Public Defender’s Office follows the Federal Government’s financial and poverty guidelines to determine eligibility. Individuals arrested that cannot afford to post bond will be presumptively eligible for the appointment of counsel. Applicants may be rejected either due to income requirements or attorney conflict of interest.

The Public Defender’s Office uses the Tennessee Public Defender Case-Weighting Study as a guide for monitoring workloads. Other factors will be considered as well, such as the complexity of the felony cases and current attorney workloads. Team leaders and the Deputy Public Defender monitor caseloads and work progress of each attorney. Workload conflicts may occur where too many cases prevent the desired service goal for representation, and the applicant may be rejected.

Exhibit A shows the number of closed Public Defender’s Office cases for calendar years 2019 and 2020. General Sessions Court had limited operations during the early period of the pandemic in 2020, and the arrest rate dropped considerably due to the concern of the Covid-19 spread rate in the jail. Many cases have been delayed and are waiting to be entered into the system. The number is expected to go up dramatically once all the cases are caught up and in the system.

Exhibit A – Public Defender’s Office Closed Cases by Case Type

| Year | Appeal | Contact | Criminal | Education Rights* | Guardian Ad Litem* | General Sessions | Juvenile | Social Work* |
|------|--------|---------|----------|-------------------|--------------------|------------------|----------|--------------|
| 2019 | 33 | 103 | 1,041 | 0 | 0 | 11,206 | 472 | 13 |
| 2020 | 21 | 22 | 884 | 18 | 2 | 4,556 | 315 | 432 |

Source: Metro Nashville and Davidson County Public Defender’s Office

*Categories did not exist as case types until the use of Defender Data for case management in November 2019

OBJECTIVES AND CONCLUSIONS

1. *Is employee access to Defender Data appropriate with the least privilege required for the job function?*

Yes. The Public Defender's Office established controls and procedures to ensure Defender Data user set up is according to the roles assigned to the user and the needed functions to perform the job. A review of user privileges indicated that group access levels are assigned based on the position, and the user was only given access to appropriate areas to perform job functions. Analysis of the active user accounts confirmed that only current employees in the Public Defender's Office have access to the system.

2. *Are controls in place to ensure the indigency application approval process follows policies and procedures and the highest services were provided to eligible clients?*

Generally, yes. Controls were in place to ensure the indigency screening and approval followed federal income guideline. Established procedures and detailed instructions were in place to ensure in-take employees performed thorough reviews and made informed decisions. Most clients were in custody at the time and could not afford to post bond. They automatically received representation services. A review of 25 clients during the audit period noted 23 of the clients were in custody at the time, and 2 clients were walk-ins that filed indigency applications. No exceptions were noted in the eligibility review.

Processes are in place to monitor and evaluate caseloads to ensure high quality services can be provided to each client. However, a review of caseloads in 2019 indicated the General Sessions team should monitor caseloads more closely to ensure the number of cases are under the State recommended workload. (See Observation A.)

3. *Are Public Defender employees properly trained and licensed to meet job expectations?*

Yes. The Public Defender's Office has an established training program for new staff members and attorneys. Training records were recorded and maintained in the audit period. A review of attorneys' licenses confirmed all the licenses are in active status and comply with the requirement of the Public Defender's Office.

4. *Is leave time approved, recorded, and balance tracked correctly?*

Generally, no. There are procedures covering the leave time management. Procedures include leave time approval, payroll reporting, and leave time recording. However, a review of employee leave time indicates there are recording errors in vacation and sick time taken which leads to discrepancies in leave time balance. (See Observation B.)

AUDIT OBSERVATIONS

Internal control helps entities achieve important objectives and sustain and improve performance. The Committee of Sponsoring Organizations of the Treadway Commission, *Internal Control – Integrated Framework (COSO)*, enables organizations to effectively and efficiently develop systems of internal control that adapt to changing business and operating environment, mitigate risks to acceptable levels, and support sound decision making and governance of the organization. The audit observations listed are offered to assist management in fulfilling their internal control responsibilities.

Observation A – Caseload Standards

The Public Defender’s Office’s service delivery goal of providing the highest representation services to eligible indigents is at risk of being achieved. Based on the number of attorneys residing in different courts, the State of Tennessee issues a caseload standard for Public Defender’s Offices as a guideline to monitoring their case numbers. Caseloads were reviewed for fiscal years 2019 and 2020. All teams kept caseloads within capacity except the General Sessions Court attorney team. The team handled 8,704 cases in fiscal year 2019, whereas the State standard recommends 7,995 cases. The General Sessions Court attorney team exceeded the caseload standard in fiscal year 2019 by 709 cases. Taking more cases than the caseload standard increases the risk of compromised representation services. Monitoring caseloads periodically and having a plan for when capacity is reached helps decrease the risk.

Additionally, the caseload standards used are from a study performed in 1999. Standards used should be reflective of current technology and procedures to ensure they are representative and attainable. More up to date standards are needed to ensure caseloads match the current environment.

Criteria:

- *Tennessee Public Defender Case-Weighting Study*, The Spangenberg Group, April 1999
- *COSO, Control Activities—Principle 10—*The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.
- *COSO, Control Activities—Principle 12 –* The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.

Assessed Risk Rating:

Medium

Recommendations for management of the Public Defender’s Office to:

1. Establish policies and procedures to closely monitor caseload within each attorney team and have a plan of action for when capacity is reached.
2. Request a new workload standards study be performed. Utilize the study to push for additional resources and fewer assigned cases if the standard of representation cannot be performed with the current staffing levels.

Observation B – Leave Time Management

The goal of providing employees accurately recorded leave time is not being met. A sample of 9 out of 85 employees’ leave time was reviewed. Of the sampled employees, five had discrepancies in their leave time balances. Both vacation and sick time balances were wrong for one employee, and either vacation or sick time balances were wrong for the other four employees. Inaccurate leave time records leads to discrepancies in benefits received by employees and can damage the trust between employees and employer.

Criteria:

- Metropolitan Nashville Civil Service Rules, Chapter 4, Attendance and Leave
- COSO, Control Activities—Principle 10—The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.
- COSO, Control Activities—Principle 12 – The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.

Assessed Risk Rating:

Low

Recommendation for management of the Public Defender’s Office to:

Implement leave time technology, such as Kronos, to minimize human errors and provide accurate leave time information to employees.

GOVERNMENT AUDITING STANDARDS COMPLIANCE

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives.

METHODOLOGY

To accomplish our audit objectives, we performed the following steps:

- Studied applicable public defender laws and regulations.
- Interviewed key personnel within the Public Defender’s Office.
- Evaluated internal controls currently in place.
- Performed analytics on case load, leave time, and Defender Data user privileges.
- Reviewed sample selections to determine the effectiveness of internal controls.
- Considered risk of fraud, waste, and abuse.

AUDIT TEAM

Nan Wen, CPA, In-Charge Auditor

Lauren Riley, CPA, CIA, CFE, ACDA, CMFO, Metropolitan Auditor



404 James Robertson Parkway, Suite 2022, Nashville, TN 37219
615-862-5730 ● 615-862-5736 (fax)
Publicdefender.nashville.gov

September 13, 2021

Ms. Lauren Riley
Metropolitan Auditor
Office of Internal Auditor
404 James Robertson Parkway
Nashville, TN 37219

Re: Audit of the Metropolitan Nashville & Davidson County Public Defender

Dear Ms. Riley:

This letter acknowledges the Metropolitan Nashville & Davidson County Public Defender's receipt of the interim draft report for the above referenced audit. We have reviewed your observations and will implement your recommendations as indicated in the Management Response related to leave time technology and managing workloads. As to the recommendation in relation to workload management, we will:

- a. Establish policies and procedures for monitoring caseloads and have a plan of action for when capacity is reached.
- b. Request appropriate resources to support the caseload needs of our office.
- c. Advocate for being appointed fewer cases when we have reached our workload capacity.
- d. Determine if this finding could serve as a basis to have a new study done that will work to establish new, local workload standards.

We appreciate the methodology used when examining the policies and procedures of the Public Defender's Office, particularly the understanding and recognition of how managing workloads are essential in providing high quality representation for indigent people in Davidson County.

Regards,

A handwritten signature in black ink, appearing to read "Martesha L. Johnson".

Martesha L. Johnson
Chief Public Defender



Martesha L. Johnson, Chief Public Defender

APPENDIX A – MANAGEMENT RESPONSE AND ACTION PLAN

We believe that operational management is in a unique position to best understand their operations and may be able to identify more innovative and effective approaches and we encourage them to do so when providing their response to our recommendations.

| | Recommendations | Concurrence and Action Plan | Proposed Completion Date |
|---|---|--|--------------------------|
| <i>Recommendations for management of the Public Defender's Office to:</i> | | | |
| M | A.1: Establish policies and procedures to closely monitor caseload within each attorney team and have a plan of action for when capacity is reached. | Accept – We will establish policies and procedures for monitoring caseloads and have a plan of action when capacity is reached. | 9/30/2022 |
| M | A.2: Request a new workload standards study be performed. Utilize the study to push for additional resources and fewer assigned cases if the standard of representation cannot be performed with the current staffing levels. | Accept – We will: <ul style="list-style-type: none"> - request appropriate resources to support the caseload and needs of our office - Advocate for being appointed fewer cases when we have reached our workload capacity. - Determine if this finding could serve as a basis to have a new study done that will work to establish new, local workload standards. | 9/30/2022 |
| L | B.1: Implement leave time technology, such as Kronos, to minimize human errors and provide accurate leave time information to employees. | Accept – We will work to implement a system for more accurate reporting. | 9/30/2022 |

APPENDIX B – ASSESSED RISK RANKING

Observations identified during the course of the audit are assigned a risk rating, as outlined in the table below. The risk rating is based on the financial, operational, compliance or reputational impact the issue identified has on the Metropolitan Nashville Government. Items deemed “Low Risk” will be considered “Emerging Issues” in the final report and do not require a management response and corrective action plan.

| Rating | Financial | Internal Controls | Compliance | Public |
|---------------------------------|--|---|--|---|
| HIGH | Large financial impact >\$25,000 Remiss in responsibilities of being a custodian of the public trust | Missing, or inadequate key internal controls | Noncompliance with applicable Federal, state, and local laws, or Metro Nashville Government policies | High probability for negative public trust perception |
| MEDIUM | Moderate financial impact \$25,000 to \$10,000 | Partial controls Not adequate to identify noncompliance or misappropriation timely | Inconsistent compliance with Federal, state, and local laws, or Metro Nashville Government policies | Potential for negative public trust perception |
| LOW/ Emerging Issues | Low financial impact <\$10,000 | Internal controls in place but not consistently efficient or effective Implementing / enhancing controls could prevent future problems | Generally complies with Federal, state, and local laws, or Metro Nashville Government policies, but some minor discrepancies exist | Low probability for negative public trust perception |
| Efficiency Opportunity | An efficiency opportunity is where controls are functioning as intended; however, a modification would make the process more efficient | | | |