

RIGHT TO COUNSEL NATIONAL CAMPAIGN:

STAKEHOLDER ENGAGEMENT REPORT

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JUSTICE PROGRAMS OFFICE

SCHOOL of PUBLIC AFFAIRS



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Every person in the United States accused of a crime whose liberty is at stake has the constitutional right to an attorney. Today, this right to counsel—a right so fundamental that it is written into our constitution—is being denied across the country. Our public defense system too often has proven inadequate. Innocent people are going to jail, young lives are being derailed, and people of color and those from low-income households are being disproportionately affected by the failures of our criminal justice system. Meanwhile, our public defenders are overburdened with overwhelmingly high caseloads and few resources, limiting their ability to provide effective, or sometimes even adequate, counsel.

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Thankfully, over the past years state and local policymakers, as well as the public, have recognized and confronted the inadequate justice system, embarking on comprehensive reforms.

Seventy-one percent of voters think that reducing the prison population is important and 66 percent support funding public defense with tax dollars.¹ While the cultural consciousness is sympathetic to these problems, reform efforts have too often left out public defense providers and have failed to see the import of reforming our public defense systems to instill sustainable change. Comprehensive reforms have included statewide task forces, Justice Reinvestment Initiatives, and participation in the MacArthur Foundation’s Safety + Justice Challenge and the National Association of Counties’ Stepping Up Initiative, among others. Each effort has a role for public defense, and if defense is incorporated and integrated into these reform efforts, reforms will have a greater likelihood of sustainability and of achieving the goals sought out.

This document highlights how criminal justice reforms can and should incorporate the voices of public defenders, seeking to elevate the criminal justice reform conversation.¹ Working together,

criminal justice stakeholders can effectuate change and implement sustainable reforms. This document will identify pressure points in the justice system where we can make real change regarding the state of public defense systems and create a strategic plan for engagement, building on the Right to Counsel National Campaign’s existing theory of change.² While investment in direct public defense reforms is critically important, investing in and involving public defense providers in systemic reform efforts, such as the ones detailed in this report, are essential for comprehensive, sustainable system change. We then hope to show how defense, instead of being an obstacle to reform or a separate component of the criminal justice system, can be a solution for many criminal justice challenges.

Investing in and involving public defense providers in systemic reform efforts, such as the ones detailed in this report, are essential for comprehensive, sustainable system change.

¹ In the preparation of this document, the authors consulted the following organizations: the Council for State Governments Justice Center, the Justice Management Institute, National Association of Counties, the National Conference for State Legislatures, the National Criminal Justice Association, the National Governors Association, Pew Charitable Trusts, the Sixth Amendment Center, and Zealous, as well as state representatives, heads of public defense organizations, and criminal justice advocates. The authors thank everyone who contributed their time.

² See Appendix A for the Right to Counsel National Campaign theory of change.

CRIMINAL JUSTICE REFORM: WHY HAS PUBLIC DEFENSE BEEN LEFT OUT?

Often public defense reform has been seen as a “separate” reform effort from overall criminal justice reform. Public defense providers, unlike other criminal justice system actors, do not have dedicated positions for advocacy, public policy, or lobbyists to articulate their critical connection to every other part of the justice system. With an already overburdened system and overwhelming caseloads, public defense providers lack the time, and perhaps the experience and training, to fully participate in the policymaking process. Therefore, to ensure that criminal justice reform policies incorporate the full spectrum of perspectives, it is incumbent on the other system actors to encourage and provide space for public defense providers’ participation.

As stated in a 2019 RAND report evaluating holistic defense practices,

[G]iven that court-appointed counsel will critically shape the experience of these defendants—many of whom also struggle with drug addiction, mental illness, homelessness, and other chronic problems—it is notable that, to date, little attention has been paid to indigent defense in the ongoing conversation about criminal justice reform and the seemingly intractable problem of mass incarceration in the United States.”ⁱⁱ

Public defenders provide a wealth of information, balance, and an alternative perspective to criminal justice reform conversations. They are storytellers, amplifying the voices of the impacted individuals who are most often silenced. They provide a counterweight and can hold other system actors accountable, just as they are held accountable by other stakeholders. **Public defenders are key actors who can question and challenge the systemic issues driving injustice by “1) confronting injustice head-on ... 2) engaging in conversations with prosecutors to enact compromises and reforms that benefit clients, and 3) providing counternarratives to harmful myths in the criminal justice system such as the notion that everyone has a public defender or that people that are arrested are different from the broader public.”ⁱⁱⁱ**

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Public defenders are first responders who can provide critical information at the beginning of a criminal case. Empowered and well-resourced public defenders can help divert people from traditional criminal sentences on the front end, thereby both improving individual outcomes and reducing corrections spending down the line. Not including public defenders in these key criminal justice conversations is thus short-sighted and costly, and contributes to unsuccessful policy changes. When other system actors recognize public defenders’ value, the whole system can run more efficiently while remaining intact.

For example, in 2003, Oregon reduced the Public Defense Services account by 17 percent, and according to

the Public Defense Services Commission chair, the whole system came out in opposition to the cuts: “police chiefs, sheriffs, district attorneys, all coming to the legislature and saying, ‘The system can’t work if we don’t fund defense.’”^{iv} The funding was restored after several district attorneys joined a federal lawsuit to compel appointment of counsel, and the suit was dropped once funding was reinstated.^v

ISSUE AREAS

Two main areas that criminal justice advocates are currently invested in reforming are behavioral health and community supervision. While at first glance, there may not appear to be a role for public defenders in these conversations, further examination makes clear that public defenders can dramatically impact the outcomes of these efforts. If engaged fully, and early on, they can not only support such efforts but provide solutions to the challenges currently existing in our criminal justice system.

BEHAVIORAL HEALTH³

Our jails and detention facilities are overwhelmed by the number of individuals entering their facilities with behavioral health needs and are ill equipped to provide proper treatment. According to the Stepping Up Initiative, approximately 2 million people suffering from serious mental illness cycle through our jails every year.^{vi} Further, once incarcerated they tend to remain so for longer periods of time and have a higher recidivism rate than individuals without serious mental illness. Lacking diversion and alternative options, once these individuals touch the criminal justice system, they often find themselves behind bars and on a path that is more expensive and less likely to address the underlying behavior.

Early intervention by appointed defense counsel can help divert individuals with behavioral health needs from the jail system, identify more appropriate responses, and ensure that individuals do not fall through the cracks. Defenders are encouraged to advocate for diversion, to build partnerships with behavior health professionals to integrate services and case management into defense teams, and to develop agreements for the use of behavior health assessments for their clients. The Substance Abuse and Mental Health Services Administration (SAMHSA) further suggests that defenders “lend expertise to community initiatives on improving criminal justice outcomes,”^{vii} including with Criminal Justice Coordinating Councils and/or behavioral health subcommittees, and advocate for systems change by meeting with community leaders, leveraging knowledge of the legal system, communicating needs via media, and raising awareness in the community regarding behavioral health in the criminal justice system. SAMHSA further states that,

Public defenders often have first-hand knowledge of the challenges faced by people with behavioral health problems who come in contact with the criminal justice system. Joining this with a deep understanding of the rights of individuals going through the justice system, the Public Defender’s perspective can help shape meaningful improvements in the local behavioral health service continuum.^{viii}

³ See Case Study on page 15 for an in-depth example of how public defenders can make a difference addressing behavioral health.

COMMUNITY SUPERVISION

Despite its origins as an alternative to incarceration, community supervision has pushed incarceration rates even higher; in 2017, technical supervision violations accounted for almost a quarter of all state prison admissions.^{ix} Due to overly burdensome rules, unmet behavioral health needs, and overextended supervision officers, community supervision needs effective policy solutions at multiple points in the process.

To address this area of growing concern, the Pew Charitable Trust convened an Advisory Council on Community Supervision—a group of experienced system actors that includes public defense, prosecution, courts and the judiciary, law enforcement, corrections, probation and parole, and advocacy groups—and released a report in April of this year. Recognizing the import of public defense, the Council’s recommendations included multiple roles for public defenders in addressing mass supervision.

Public defense has a role to play at both the front and back ends of the justice system in the effort to improve community supervision: identifying individuals for diversion up front, advocating for mitigating circumstances at sentencing, and zealously representing individuals at parole and probation revocation hearings. The Council emphasized the importance of alternatives to traditional arrest, incarceration, and supervision for people with behavioral health needs or a low risk of recidivism. Early intervention strategies that address underlying needs, such as mental health or substance use issues, housing, employment, education, and healthcare needs, “can encourage lawful conduct rather than intensifying an individual’s involvement in the criminal justice system.”^x Diversion of this kind can occur 1) prearrest, 2) presentencing, or 3) at the time of sentencing. The second of these diversions, known as “deferred prosecution,” involves a formal agreement between the prosecutor and the defendant and can result in a dismissed case and/or an expunged record, thereby reducing the number of individuals who could potentially be on community supervision.

In Harris County, Texas, the “Responsive Interventions for Change” (RIC) docket, a FY 2017 Safety + Justice Challenge project, diverts people charged with low-level felony drug offenses pretrial and boasts an 89 percent completion rate.^{xi} The Harris County Criminal Justice Coordinating Council, which includes the county’s chief public defender, led the effort to form the docket. RIC has the services of multiple court-appointed attorneys and one full-time public defender who is well versed in RIC’s procedures and practices solely in this docket. The Harris County Public Defender’s Office’s holistic defense approach means that, unlike the contract attorneys who practice in RIC, the RIC public defender has access through the Office to social workers, attorneys who practice in different areas, and various staff.^{xii} In this way, Harris County’s RIC docket ensures that individuals have access to both knowledgeable defenders and thorough defense

Public defense can also be an effective tool in limiting supervision-related incarceration at the back end of the system.

resources as they move through the pretrial diversion process. Several studies have shown that diversion programs that intervene pre-adjudication, such as Harris County’s, have resulted in lower recidivism rates than post-

adjudication diversion programs.^{xiii} The role of defense within Harris County’s RIC docket plays a pivotal role in the docket’s high success rate.

Public defense can also be an effective tool in limiting supervision-related incarceration at the back end of the system. According to the Council, ensuring the right to counsel at community supervision revocation hearings is key to limiting incarceration for supervision violations. Acknowledging the 1973 Supreme Court decision in *Gagnon v. Scarpelli* that states are not obliged to automatically provide counsel at revocation hearings,^{xiv} the Council, nonetheless, recommends that each individual facing a revocation hearing be provided counsel due to the threat of incarceration and the relative power of the State. As the Pew report asserts, “the consequences of a parole or probation revocation hearing can be at least as severe as those of a criminal proceeding. Further, the burden of proof required for revocation is significantly lower than for a criminal conviction in many states, making legal counsel even more important.”^{xv}

Despite their high stakes, providing counsel at these revocation hearings is not common practice. While most states allow individuals facing revocation hearings to request counsel, only two states guarantee counsel at these hearings: New Hampshire and North Carolina. New Hampshire appoints counsel to indigent individuals at every stage of their criminal proceedings, which includes probation revocation hearings.^{xvi} North Carolina does not guarantee counsel at every stage of proceedings, but the state’s Office of Indigent Defense Services does provide counsel for indigent individuals at probation revocation hearings.^{xvii} In the 2019 legislative session, New York introduced a bill to establish counsel at revocation hearings, but it failed to pass. Pew and the Council encourage state administrators and supervision administrators across the country to ensure counsel for everyone facing revocation hearings as a way to “promote fairness and reduce criminal justice costs.”^{xviii}

Unfortunately, there is a lack of data-driven research on the effects of counsel at revocation hearings, just as there is a lack of research on the effects of counsel at first appearance. This is a problem; without research that evaluates the roles of every system actor, including defense, it is difficult to develop system-wide reforms that effectively engage all the resources at a jurisdiction’s disposal. **There is a need for studies that assess**

the effects of counsel at parole and probation revocation hearings. Despite this ongoing need, however, Pew encourages states to integrate defenders into the revocation process to promote fairness and defray correctional costs. Further, without counsel, the conditions of such hearings suggest an imbalance of power. The presence of counsel at a revocation hearing that carries the possibility of reincarceration is as important as the presence of counsel at a hearing earlier in the case that carries the possibility of initial incarceration. If every state guaranteed counsel at revocation hearings, system-involved individuals would have a greater understanding of the system and potentially a higher chance of success; in addition, there is a good chance that system costs would decrease.

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The Advisory Council on Community Supervision is not alone in recommending counsel at revocation hearings. The National Center for State Courts (NCSC) includes a similar, though more restrictive,

suggestion in a report on administrative responses to probation violations. Emphasizing the need to protect due process, NCSC recommends furnishing counsel for indigent individuals “where a custodial sanction is at stake, the fact of the violation or the appropriateness of the sanction is contested, it is manifest that the probationer is unable to represent his or her own interests adequately, and the probationer has not waived the right to counsel.”^{xix} Ensuring representation at revocation hearings protects the liberty of the accused, ensures the rights guaranteed in the Constitution, and can decrease the unnecessary reliance on community supervision.

STATE AND LOCAL LEADERS

Currently, most criminal justice reform efforts have been led by state and local executive and legislative leaders. Specifically, governors and criminal justice coordinating councils are positioned to define criminal justice priorities, gather subject matter experts, and lead comprehensive reform efforts. **Therefore, they can ensure that public defense voices are heard and incorporated in their responses.**

Governors are key players in criminal justice reform.

GOVERNORS⁴

Governors are key players in criminal justice reform. “As the state’s chief executive, governors play a critical role in ensuring public safety. Governors set the public safety priorities for their administration and oversee the state agencies responsible for implementing those policies and programs.”^{xx} Their unique position allows them to establish task forces, bringing together stakeholders across different systems to solve unique challenges. Governors are also able to take executive action when urgent action is required. As the National Criminal Justice Organization says, “A governor’s commitment to remaking the state’s criminal justice system creates the mandate necessary for transformational change.”^{xxi}

STATE CRIMINAL JUSTICE PLATFORMS

State criminal justice platforms are set by governors and often focus on public safety, law enforcement, prosecution, prison reduction, victim services, and reentry. Often, these platforms rarely prioritize defense in either policy reforms themselves or how defenders view the needs of the criminal justice system. In recent years, though, governors have begun to reframe priorities, recognizing the value of the public defense experience. **This has manifested in some states’ including specific defense reform and increasing the budget for public defense (Virginia), appointing former public defenders to key cabinet and judiciary roles (Oregon), and addressing front-end reforms to address the rising costs and size of incarceration (Michigan). Other states can and should learn from their lead.**

Recognizing the insufficient funding of public defense and its import, Virginia Governor Ralph Northam emphasized in his 2020 annual State of the Commonwealth address that “our criminal justice reform package funds more public defenders, including the first public defender office in Prince William [County].”^{xxii}

⁴ For more specific recommendations for each system actor, please see Appendix B: Policy Recommendations from the Right to Counsel National Campaign.

Since her appointment in 2015, Oregon Governor Kate Brown has appointed attorneys with public defense backgrounds to key posts throughout the state, recognizing the value of a public defense background. Specifically, in 2017, Governor Brown appointed Wade Whiting as district attorney of Crook County and praised his experience as both a prosecutor and a defense attorney; also in 2017, Governor Brown appointed EveLyn Costello as district attorney of Klamath County and referenced Costello’s twenty-year career as a local defense attorney, stating that she would bring a “fresh perspective” to the office.^{xxiii} In 2019, Brown appointed Constantin Severe to be her public safety and military policy advisor (also known as her criminal justice policy advisor) after his six-year tenure as director of Portland’s Independent Police Review. Severe is a former criminal defense attorney who worked at New York City’s Metropolitan Public Defenders early in his career.^{xxiv} This year, in January 2020, Governor Brown praised a diversity of legal experience as she appointed four judges, stating that “these individuals bring experience from all corners of the legal profession: some have been prosecutors, others defense attorneys.”^{xxv} In February 2020, Governor Brown once again praised the efforts of public defense attorneys in appointing four circuit court judges, emphasizing that each attorney had “worked to serve vulnerable populations in their communities.”^{xxvi}

In April of 2019, Michigan Governor Gretchen Whitmer issued [Executive Order 2019-10](#) to establish the Michigan Joint Task Force on Jail and Pretrial Incarceration, which still exists to date, and tasked it with developing recommendations to expand alternatives to jail, reduce jail populations and cost, and improve the efficiency and effectiveness of Michigan’s justice systems. Recommendations released in January 2020 focused on three key areas: arrest and alternatives to arrest; pretrial release and detention (which highlights critical roles for defense); and sentencing, probation, and parole.^{xxvii} See *Task Forces section below for more information.*

In addition, many states, including Colorado, Illinois, and New Jersey, have prioritized pretrial reforms, such as cash bail and pretrial detention. For each of these reform efforts, including defense in the conversation is essential as they can help identify and divert appropriate individuals, reducing the jail population and associated costs. As Colorado Governor Jared Polis stated in his 2020 State of the State address, “we passed bipartisan criminal justice reform measures that will expand opportunities, save taxpayers money, and I know I look forward to continuing to work with you on vital pretrial reforms to build on that progress.”^{xxviii}

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TASK FORCES

To implement their vision, governors often assemble task forces; however, executive action is not the only way to create them. Criminal justice task forces have typically been established by the executive or legislature and include members of both legislative branches, the executive, criminal justice system actors, including prosecutors, judges, law enforcement, and sometimes public defense providers, community members, and activists. Task forces can be established to review the criminal justice system as a whole or to look at a specific point or issue in the criminal justice system, such as pretrial or corrections. Regardless, task forces should take a holistic evaluation—one that includes the defense perspective—to provide the best-informed policy recommendations for improving the efficacy, fairness, and cost of the criminal justice system.

Although this year a Kansas bill to add a public defender to the Criminal Justice Reform Commission failed, State Representative Stephen Owens (R), the bill's sponsor, stated that “the commission recognizes the unique perspective an underpaid and overworked public defender has in balancing the majority of the criminal cases that come before the court. They handle the majority of criminal cases and see indigency firsthand. They have a unique view into the driving forces behind criminogenic behavior as they see and work with the majority of defendants. Every member of the commission requested I introduce this bill to ensure their perspective was heard.”^{xxix} This statement highlights the unique and vital perspective of public defenders and the need to include it in all criminal justice reform conversations.

In Michigan, state and county leaders serve on the Michigan Joint Task Force on Jail and Pretrial Incarceration as well as representatives from the Michigan Indigent Defense Commission and the State Appellate Defender Office, who were active participants in Commission meetings. The taskforce held roundtables with various system actors, including defense attorneys, before publishing recommendations for the legislature in January 2020. These recommendations include guaranteeing first appearance in court—with the right to counsel—within 48 hours of detainment; guaranteeing a detention hearing—with the right to counsel—within 48 hours of arraignment; and requiring the state to pay for conditions of release of indigent defendants, presumed indigent if eligible for appointed counsel.^{xxx} It is clear that the Commission saw the connection between defense and overall pretrial reform, and because of the active participation of public defenders, pretrial reform efforts successfully included defense reforms.

In establishing the Commission, Governor Whitmer took action to address a lack of data about jail bookings and pretrial detention because, while jails are county-funded, they are “shaped and influenced in part by state-level laws, policies, and budgetary decisions.”^{xxxi} In this way, governors can help address issues on both the state and local level.

CRIMINAL JUSTICE COORDINATING COUNCILS

While governors can influence local policy, the degree to which varies across states, and county commissioners and criminal justice coordinating councils (CJCCs) tend to dictate criminal justice priorities on the local level. CJCCs are bodies of local justice system leaders that convene regularly in an effort to coordinate collaborative responses to justice issues in their community; however, not all local jurisdictions have CJCCs. CJCC members typically include all criminal justice system actors, including a public defender, local government agents, a community representative, a behavioral health representative, and service providers.^{xxxii} Members often decide what criminal justice issues to address and, therefore, have significant decision-making power in criminal justice reform. Successful councils have independence from city or county control; the ability to perform data collection and analysis; the power and knowledge to encourage adoption of evidence-based practices; and the ability to shape budget and resource allocation decisions neutrally and credibly. Unlike traditional organizations, though, CJCCs “represent a separation of justice system management from justice delivery—leaving the actual implementation of change efforts to the individual relevant members of the council.”^{xxxiii}

In a recent informal poll of CJCCs conducted by the National Network of Criminal Justice Coordinating Councils,⁵ fifteen of the sixteen respondents stated there was at least one public defense member; this is

⁵ The National Network of Criminal Justice Coordinating Council is a formal network of staff and leadership of local CJCCs and provides a forum for peer-to-peer learning among members and information sharing to build capacity for CJCCs around the country. There are currently 30 official members.

(<https://www.jmijustice.org/network-coordination/national-network-criminal-justice-coordinating-councils/>).

a start but this does not truly provide balance to the numerous government representatives that are also members, including corrections, law enforcement, and prosecutors. **Respondents emphasized the importance of the public defense voice to inform other members of challenges facing their indigent clients and to bring balance to the council as there are many law enforcement and prosecutor representatives. Key issues raised and addressed by public defense representatives include pretrial, bail reform and arraignment, behavioral health, and reducing jail populations.** Many respondents also emphasized the critical leadership roles that public defense members take on in their CJCCs as essential to advocating for effective reforms and ensuring a balanced voice.^{xxxiv} Having a seat at the table is the first step, but active participation is what ensures collaboration and the implementation of sustainable policies that promote human dignity and safety and are cost effective.

NEXT STEPS: COMPREHENSIVE CRIMINAL JUSTICE REFORM EFFORTS

JUSTICE REINVESTMENT INITIATIVE

The Justice Reinvestment Initiative (JRI) is a data-driven approach to reducing crime, recidivism rates, and correctional populations and costs, and reinvesting savings into evidence-based programs to improve public safety.^{xxxv} With the assistance of subject matter experts and technical assistance providers, each state analyzes their correctional data to identify their own targeted goals and solutions to reduce recidivism and improve return on investment. To date, most reinvestments have occurred on the backend, focusing on reentry, supervision, and community investment. States have been “finding ways to improve the availability of services, such as housing, substance abuse treatment, employment training, and positive social and family support for offenders returning to communities. They are also looking to reinvest savings generated from reductions in corrections spending to make communities safer, stronger, and healthier.”^{xxxvi}

According to the Pew Charitable Trusts, “[JRI] policies generally fall into four categories: sentencing laws that instruct courts on how to sanction convicted defendants, release laws that determine the conditions for inmates’ departure from prison, supervision laws that guide how those on probation or parole are monitored, and oversight laws that track the progress of these changes.”^{xxxvii} Further, state policymakers are grappling with a myriad of issues including addressing violent crime, the opioid epidemic, behavioral and mental health, and the intersection with the criminal justice system, as well as the high costs of corrections.^{xxxviii} To tackle these problems, states have engaged in the JRI—which, since it began in 2007, has seen both imprisonment rates and crime rates decline, with states expecting to save billions of dollars.^{xxxix} As mentioned, it is rare for JRI reform efforts to address front-end reforms; to date, when they have, defense has not been the focal point.^{xl} When front-end reforms have been incorporated they have focused on pretrial, but according to the Urban Institute, through FY 2017, only 2 percent of JRI funds nationwide have gone to pretrial reform.^{xli}

However, involving public defenders on the front end can improve individual outcomes, further reduce corrections spending, and enhance efficiency, allowing the justice system to focus limited resources on those who really need them. **With early appointment of counsel, public defenders can help identify and divert people from traditional criminal sentences early on along the criminal justice trajectory,**

decrease pretrial detention, enhance efficient due process, and help resolve cases more quickly and intelligently.^{xiii} A 2003 study in Baltimore, Maryland found that individuals who are represented by counsel at first appearance are two and a half times more likely to be released pretrial than those who are unrepresented, thereby saving costs and reducing jail population.^{xiii} Similar benefits from involving early representation can be expected for diverting individuals with behavioral health disorders—a more prominent JRI goal in recent years—for whom incarceration provides an ineffective treatment environment, whether incarcerated before or after trial.

Empowered public defenders can help identify people with substance use and mental health needs almost as soon as they enter the justice system. Public defenders, who represent 60 to 90 percent of those arrested,^{xiv} are often the system actors in the best position to understand the needs of those individuals. Unfortunately, public defenders are often underfunded; are appointed after arraignment and detention decisions have been made; and are tasked with caseloads too heavy to properly investigate each case. On top of this, defenders are not often empowered within the adversarial court system to coordinate extrajudicial services. This could change, however. As indicated by the Baltimore study, early representation can help divert people from traditional criminal sentences on the front end and result in both better individual outcomes and reduced corrections spending. In fact, investing in public defense may even save states money overall. Currently, there are not any published results from a holistic fiscal evaluation, but we are hoping to have results from a cost-benefit analysis of counsel at first appearance in the summer of 2021.

As indicated, while many JRI states have not focused on public defense per se, some states, including Oregon, have focused on pretrial reform and on addressing the needs of individuals suffering from behavioral health concerns, both of which present a natural entry point for the inclusion of defense.

Oregon began its JRI in 2011, with its efforts overseen by the Oregon Criminal Justice Commission (CJC), the State Administering Agency. In the 2017-2019 Oregon JRI Grant Program, nine out of thirty-five Oregon counties allocated their JRI funds to pretrial reforms.⁶ This amounted to 8.6 percent of the total program funds, or \$3.3 million. In describing effective responses to justice-involved people with behavioral health issues, technical assistance providers stated, “when agencies communicate, collaborate, and coordinate, a person with behavioral health needs is more likely to move smoothly through the system and have their needs more comprehensively addressed.”^{xv} Here is the perfect entry point for public defense. *See section above on behavioral health for more information.*

Following the recommendations from the 2017-2019 JRI Grant Program, Oregon introduced a behavioral health justice reinvestment bill ([S 973](#)) that was enacted in July 2019. The legislation instated a state-run grant program (“IMPACTS”) to support a stronger community-based continuum of care for mental illness and substance use disorders—specifically the small group of people who cycle in and out of jails and emergency rooms due to behavioral health issues.^{xvi} Jail bookings and emergency room visits are expected to drop 20 percent over the next five years because of this legislation. With these efforts, Oregon became the first state to focus a JRI project exclusively on behavioral health and criminal justice.^{xvii} While defense was not a component of the legislation, there is definite room to incorporate public defense attorneys in its implementation with early appointment of counsel and helping to identify eligible individuals.

⁶ Clackamas, Clatsop, Columbia, Douglas, Jackson, Josephine, Klamath, Lane, and Yamhill counties. See a data visualization of the allocation of county JRI funds here: <https://www.oregon.gov/CJC/SAC/Pages/jri.aspx>.

Although Multnomah County, home to Portland, was not one of the counties that directed formula grant money to pretrial services in 2017–2019, the county did use some of its supplemental JRI grant funds specifically for public defense services. Multnomah County used these funds to create a defense coordinator, defense-based social worker, and case managers. The defense coordinator handled operations for the county’s new, JRI-created “informed sentencing” model, maintained contact with defense clients, and attended call dockets. This position sunsetted because the county “institutionalized” the process during their second JRI grant cycle. Now defense attorneys attend or listen in on assessment interviews themselves. The social worker and case manager positions continue: the social worker, part of the operations team, delivers assessment and referral services, attends Judicial Settlement Conferences, and provides recommendations when asked by judges (along with recommendations by the district attorney and probation officer). The Metropolitan Public Defender’s Office attends weekly meetings to discuss case processing, docket management, data collection, policy, and supervision.^{xlviii} This supplemental change highlights collaboration, the importance of including defense, and how coordination and communication can effectuate change.

“
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SAFETY + JUSTICE CHALLENGE

The Safety + Justice Challenge (SJC), funded by the John D. and Catherine T. MacArthur Foundation, was established in 2015 to focus on the use and misuse of local jails and their growing populations.^{xlix} To do so, local leaders apply for funding to “develop comprehensive plans for creating fairer, more effective justice systems that both reduce jail populations and reduce racial disparities in incarceration,”^{li} and some receive technical assistance from well-known subject matter experts encompassing all criminal justice stakeholders, including public defense. There are currently 51 cities and counties participating in SJC.

As documented in the SJC-funded report *Rethinking Jails, Reframing Public Defense*, “public defenders play a critical role in preventing unnecessary, unjust and expensive incarceration,”^{li} especially as it relates to pretrial reform and pretrial detention. Public defenders ensure correct risk assessment scores, advocate for diversion, and help the courts make informed decisions about bail. They enhance trust in the criminal justice system, advocate on behalf of their clients, provide a space for their clients’ voices to be heard, and legitimize the court process. Public defenders foster trust and provide additional information to the court about their clients that otherwise may go unnoticed and can help correct implicit biases. **By helping courts make more accurate and fair decisions about pretrial detention, public defenders help reduce wasteful spending in jails.**^{liii}

STEPPING UP INITIATIVE

Responding to the growing number of individuals who are admitted to jail with serious mental illnesses, the Stepping Up Initiative was established as a “national initiative to help advance counties’ efforts to reduce the number of adults with mental illnesses and co-occurring substance use disorders in jails.”^{liiii} The

initiative engages subject matter experts across disciplines including jail personnel, community corrections professionals, behavioral health experts, judges, service and treatment providers, judges, community corrections professionals, people suffering from mental illnesses and their families, and more.^{liv} The initiative encourages counties to take a hard look at their data and policies to determine their level of commitment to reform, learn about the makeup of their jail population, examine their responses to individuals suffering from mental illnesses and their tracking capabilities, and evaluate their priorities. Working with technical assistance providers, counties develop and implement responses to their specific needs with the overall goals of reducing the number of people with mental illnesses booked into jail, increasing connections to treatment, reducing the length of incarceration, and reducing recidivism.^{lv}

Once incarcerated, individuals suffering from mental illnesses tend to stay longer in jail and are at a higher risk of returning once released than those without mental illnesses. The cost to taxpayers and individuals is astronomical, and without drastic changes in policy, these individuals will continue to cycle in and out of incarceration, straining system resources and finances and further experiencing trauma themselves and for their families.^{lvi}

According to the Stepping Up Initiative, “jails spend two to three times more money on adults with mental illnesses that require intervention than on those without those needs, yet often do not see improvements to public safety or these individuals’ health. Although counties have made tremendous efforts to address this problem, they are often thwarted by significant obstacles, including operating with minimal resources and needing better coordination between criminal justice, mental health, substance use treatment, and other agencies.”^{lvii} It follows that finding an alternative to incarceration for individuals suffering from mental illnesses is required to better address their needs, improve public safety, and effectively manage resources and associated costs.

CASE STUDY: BEXAR COUNTY, TEXAS

Collaboration between public defender offices and behavioral health services providers has already produced positive results. Following a 2014 evaluation of its pretrial and mental health diversion practices, Bexar County, Texas—a Stepping Up Initiative county—implemented a pilot program in which public defenders provided counsel to arrestees with mental illness during the magistration process. The evaluation found several problems with current practices including bottlenecks after arrest, low diversion numbers, and deficient mental health screening at magistration, and made recommendations accordingly. With Bexar County Sheriff Susan Pamerleau at its head, Bexar County Commissioners Court’s newly created Executive Committee guided implementation of some of these recommendations, including creating a Public Defender Office in Bexar County that would provide counsel at magistration—the process of informing a person who has been arrested of their rights and setting bail and bond conditions^{lviii}—for individuals suffering from mental illnesses to improve the screening at magistration.^{lix}

Prior to setting up the Public Defender Office, Sheriff Pamerleau emphasized the need to find solutions that incorporate all system actors: “the key to our success in addressing the challenges of the mentally ill in our criminal justice system has been collaboration with all the other stakeholders.” With her help and the help of many other stakeholders, the County developed a Drug Court, a DWI Court, a Veterans Treatment Court,

a Prostitution Court, and a Misdemeanor Mental Health Court.^{lx} Many system actors, including defense attorneys, could refer individuals to Mental Health Court, but the defense attorney had to give permission before the program was offered to the individual.^{lxi} A Mental Health Division was also created within the Bexar County Public Defender Office. In 2015, the defense attorney's role in cases involving people with mental health issues expanded with the creation of the Bexar County Public Defender Office (BCPDO) Magistration Division, thereby dedicating positions to provide counsel for individuals suffering from mental illnesses. This chance allowed these public defenders to spend more time—the necessary amount—on these cases.

In 2015, the Texas Indigent Defense Commission provided a four-year, county-matched \$600,000 grant to BCPDO to provide counsel at magistration to indigent people with mental illness arrested in relation to a class B misdemeanor or higher.^{lxii} The initial program consisted of three public defenders with a mental health specialization who advocated for pretrial release on the condition that released individuals participate in community treatment. They had the help of three clinicians.^{lxiii} This defense work consists of identifying and interviewing people with possible mental health issues, coordinating with clinicians on assessments, communicating this information to the DA, and presenting a mental health evaluation, diagnosis, and treatment plan to both the client and the magistrate to advocate for release. The goal is to help the arrested person understand the process and to argue for release on either a personal bond or a reduced bond, as promised under state law. Once a case moves past magistration, the Public Defender's Office Mental Health Divisions takes over.^{lxiv}

RESULTS OF COUNSEL AT MAGISTRATION

Bexar County's counsel at magistration program has corresponded with both higher release rates and greater rates of compliance with court- and physician-imposed conditions. In the words of BCPDO,

The data collected has shown the effectiveness of having counsel present at the magistration hearing for the clients eligible for this program. A significantly greater percentage of the eligible population was granted mental health PR [Personal Recognizance] bonds when counsel was present. Clients who were represented by the BCPDO at magistration were also observed to have a greater incidence of judicial and treatment compliance than those not represented by counsel at magistration.^{lxv}

In the year prior to the creation of the program, 124 people were released at magistration. In the first year of the program, 378 people were diverted from custody; that number jumped to 434 in the second year, with 71 percent released as opposed to 53 percent of those not represented; in 2019, around 630 people were diverted. One calculation from 2017 suggests that by that time, the program had already prevented 6,255 total days of confinement.^{lxvi} In addition to higher rates of diversion, more of those diverted were actively engaged in treatment post-release than were in treatment prior to the program. In the first year after implementation, participants in this program were able to see a psychiatrist within two weeks of their initial intake appointment, whereas if they had sought an appointment on their own, the average waiting period would be three to six months.^{lxvii} Further, TIDC reports that more participants had their cases closed satisfactorily: compared to 58 percent of non-BCPDO clients, 75 percent of BCPDO clients had cases closed satisfactorily in 2017.^{lxviii}

Bexar County Pretrial Services, Mental Health Department, District Attorney’s Office, Criminal District Court Judges, and County Court Judges have all supported the program, along with both conservative and liberal advocates.^{lxix} TIDC’s FY 2017 Annual Report highlights Bexar County’s program, stating its effectiveness clearly: “expediting the appointment of counsel allows defendants suffering from mental illness or an intellectual disability to address the behaviors that have led them into the criminal justice system.”^{lxx}

Collaboration across the system that involves all the stakeholders allows for innovation and sustainable policy changes. From law enforcement to the courts to jail personnel all working together with defense, Bexar County was able to effectively address, provide more effective services, and divert individuals suffering from behavioral health needs on the front end, saving taxpayer dollars and helping those in need seek treatment and results. It should be noted that Bexar County is not the only county that has effectively created a public defense program dedicated to serving individuals suffering from behavioral health issues; Lubbock County, Texas is another example of a county that established a program in 2008 and developed teams of mental health caseworkers and attorneys trained in the defense of those with mental health issues, building a crucial link between justice-involved individuals and mental health providers. The program has achieved wide success, helping individuals and saving the county costs.⁷ These examples suggest that when well-resourced and empowered to work collaboratively with other service providers, public defenders can reduce detention populations, increase access to behavioral health services, and improve the lives of their clients—arguably reducing recidivism rates down the line.

MOVING FORWARD: DEFENSE AS A SOLUTION

Defenders are uniquely positioned not only to advocate effectively with the most information available for their clients but also to have insight into the challenges, injustices, and biases their clients face. The foundation of an attorney-client relationship is trust. Listening to their clients’ needs, public defenders witness firsthand mental health, personal and family needs, and racial biases, and are poised to bring this perspective to criminal justice reform conversations. As Jeff Adachi, the late San Francisco Public Defender, wrote in a 2015 article about defenders’ role in the movement for racial justice, “there is nobody in the system more qualified to confront bias and demand change than public defenders.... It is public defender clients who bear the brunt of racial discrimination. The fact is, we are already in the trenches.”^{lxxi}

COUNSEL AT FIRST APPEARANCE

Early access to counsel has been shown to increase release rates, reduce the pretrial detention population, and potentially contribute to a reduction in the prison population down the road.^{lxxii} According to a 2018 study, pretrial detention is correlated with higher rates of conviction, longer sentences, and increased recidivism.^{lxxiii} In addition, as demonstrated, early appointment of counsel can help properly identify individuals for diversion and those who need

By including defense early and focusing on front-end reforms, we can save taxpayers’ dollars and implement effective, efficient, and sustainable policies that improve individuals and communities, enhance public safety, and reduce recidivism.

⁷ For more information on Lubbock County, see: <https://www.kcbd.com/2019/04/15/lubbock-private-defenders-offices-successful-indigent-defense-influences-other-texas-counties/> and <https://www.lpdo.org/about-lpdo>.

treatment instead of incarceration. While not necessarily implementing comprehensive public defense reform, involving public defenders in ongoing criminal justice reform efforts can help effectively address other criminal justice priorities, such as behavioral health and reduction of mass incarceration. By including defense early and focusing on front-end reforms, we can save taxpayers' dollars and implement effective, efficient, and sustainable policies that improve individuals and communities, enhance public safety, and reduce recidivism.

CONCLUSION

Reframing how we address criminal justice reform and the role of defense, there is a clear and required place for public defenders to effectuate positive change in the criminal justice system. They are on the front lines, witness and hear the challenges their clients face, and know the realities of the criminal justice system. By collaborating with all criminal justice stakeholders, including public defenders, early on, we can collectively develop and implement sustainable policies that promote human dignity, reduce the human and financial cost of incarceration, and make our system fairer and more efficient. As stated in the RAND report,

Reframing how we address criminal justice reform and the role of defense, there is a clear and required place for public defenders to effectuate positive change in the criminal justice system.

Finally, there is widespread interest in reforming the criminal justice system to ensure that it serves its primary purposes of holding the guilty accountable and protecting public safety. Going forward, it will be important for criminal justice reform efforts to carefully weigh how much attention indigent defense should receive compared with competing priorities, such as policing, bail, and sentencing. Findings from this study show that indigent defense can have a large influence on what happens in other parts of the criminal justice system – and thus deserves a prominent place in criminal justice policy discussions.^{lxxiv}

The momentum for real change in the criminal justice system exists, and it is time that we build on that momentum and ensure that all voices can participate in the policymaking process. Without public defenders, the system would come to a screeching halt; without their voices in reform efforts, policies will not reach their full potential and face the possibility of failure—or, even worse, could induce more harm.

APPENDIX A

RIGHT TO COUNSEL NATIONAL CAMPAIGN THEORY OF CHANGE

The Justice Programs Office (JPO), a center in the School of Public Affairs at American University, developed a theory of change (TOC) for the Right to Counsel National Campaign (R2C) to map out the steps needed to achieve the campaign's overall goal of ensuring the Sixth Amendment right to counsel is meaningfully implemented throughout the country.

JPO based the TOC on four tenets, believing:

1. A fair and equitable criminal justice system requires representation by skilled defense counsel with adequate resources at every stage of the criminal process, which is the vision of R2C.
2. Everyone has the constitutional right to an attorney.
3. The Sixth Amendment right to counsel ensures equality and equity.
4. Public defense services are delivered within the framework of ABA's Ten Principles.

At the same time, the TOC recognizes the following facts:

1. A lack of awareness exists about what the right to counsel means and that it isn't being upheld.
2. Public defense is often left out of the criminal justice reform conversation.
3. Public defenders often operate with little and too few resources to provide effective counsel.
4. There is a lack of consistency across the delivery of public defense nationwide.

The R2C theory of change consists of four phases: information gathering, advocacy and outreach, implementation, and the final phase, where public defense reforms encompass both structural and cultural change.

BENCHMARKS

Each phase of the TOC has benchmarks the R2C is measuring its progress against and by which consortium members can track their own progress.

Phase One: Information Gathering

Gather information and share with R2C committees

- Hold R2C National Consortium Committee Meetings with full committee members and steering committee members.
- Hold conference calls to share information with committee members and hold calls to disseminate information to other system actors.
- Gather data, documents, and reports regarding criminal justice and public defense reform efforts.
- Identify consortium members.
- Conduct internal in-depth interviews with full committee members to help

Share information beyond consortium members

- Present at conferences and other relevant meetings.
- Conduct webinars.
- Get new signatories.

Phase Two: Advocacy and Outreach

- Hold annual R2C meetings.
- Recruit new consortium members.
- Build partnerships outside of the consortium.
- Develop right to counsel champions.
- Develop and implement a social media strategy.
- Document reform movements, such as general criminal justice reforms and public defense-specific reforms.
- Hold public focus groups and conduct opinion polling.
- Convene system actor focus groups.
- Continue to present at conferences and webinars.
- Develop and release public and system actor communication toolkits.
 - R2C champion introduces new legislation.
 - R2C champion introduces new state guidelines.

Phase Three: Implementation**Structural changes**

- Legislation is passed.
- New policies are implemented.
- ABA (or state) guidelines are adopted in all local, state, and federal jurisdictions.

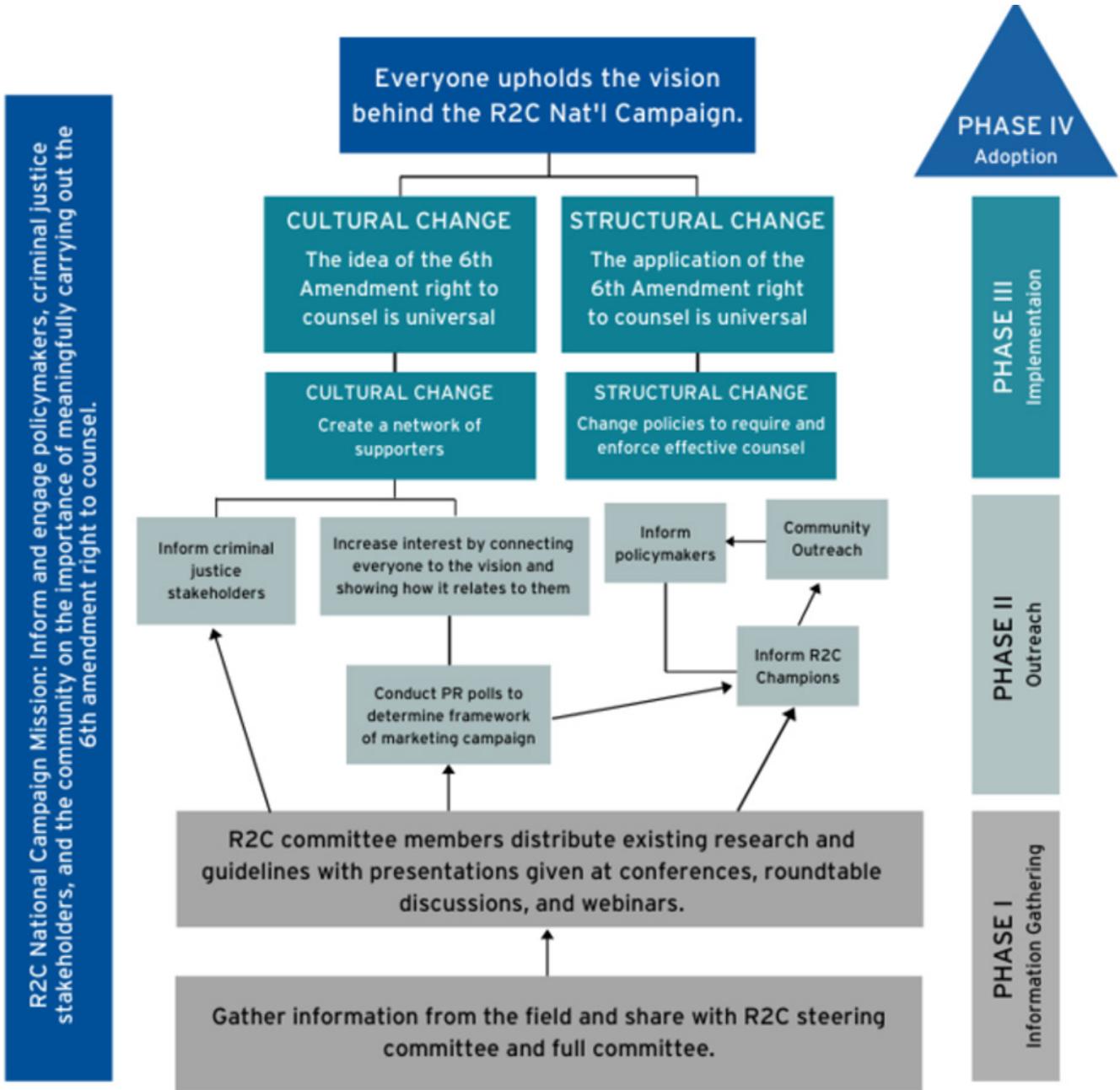
Cultural changes

- Americans know that the right to counsel stems from the U.S. Constitution.
- There is a shared commitment to uphold this constitutional right.
- Public defense service providers are no longer identified as “lazy,” “not real lawyers,” “not committed,” etc.
- Media recognizes the role of public defense service providers and portrays them positively.

Phase Four: Adoption

- Everyone has access to an effective attorney with the time, knowledge, experience, and resources available to provide a quality defense.
- Consequences are enforced if the Sixth Amendment right to counsel is not upheld.
- Consequences are enforced if ABA (or state) guidelines are not followed.

THEORY OF CHANGE



APPENDIX B

RIGHT TO COUNSEL NATIONAL CAMPAIGN POLICY REFORM RECOMMENDATIONS FROM R2C'S SECOND ANNUAL MEETING

(Fall 2016)

Note: This is not an exhaustive list of recommendations to promote the full implementation of the constitutional right to counsel, but rather a list of recommendations that we, The Right to Counsel National Consortium, feel can be enacted immediately. We hope to also create a complimentary document discussing in more detail how to implement these polices once they are passed. While these recommendations focus on individuals in the adult system, all policies listed apply to and recognize the special needs of juveniles.

Federal Government

How the federal government can guide states using tools that already exist.

The United States government should provide ongoing support and oversight to ensure that states fully realize the federal constitutional right to counsel for criminally accused persons who cannot afford to hire counsel.

Executive Branch

- The president is charged with appointing the leadership team for his/her administration, which includes the U.S. Department of Justice and the U.S. courts. Additionally, the president oversees the White House Domestic Policy Council, which prioritizes domestic policy issues. **As such, the president should:**
 1. Ensure that U.S. Department of Justice leadership appointees respect public defense and see public defense service providers as vital, equal partners and essential partners to provide the fair and impartial administration of justice as stated in the Department of Justice's mission statement;
 2. Identify the right to counsel and public defense reform as issues to be supported by relevant White House staff;
 3. Appoint federal judges who previously served as public defenders—as former President Ronald Reagan did by appointing Judge Charles Randolph Butler Jr., Judge Edward C. Prado, and Judge G. Kendall Sharp, among others; and
 4. Appoint U.S. Attorneys who were former public defenders.

- The U.S. Department of Justice protects the liberty of all U.S. citizens, enforces federal laws, and sets federal policy. **As such, DOJ should:**
 1. Appoint a permanent director for the Office for Access to Justice (ATJ) in the U.S. Department of Justice and expand its staff;
 2. Enforce the Sixth Amendment right to counsel in state and local courts (once authorized by Congress);
 3. Issues guidance on how courts can determine a defendant's financial eligibility for

- the appointment of counsel that focuses on affordability and not indigency;
 - 4. Seek to decouple funding of court systems and public defense from fines and fees through a Dear Colleague letter;
 - 5. Insert the right to counsel and public defense in appropriate criminal justice related speeches and conversations; and
 - 6. Continue to file amicus curiae briefs and statements of interest safeguarding the constitutional right to counsel as appropriate.
- The Department of Justice’s Office of Justice Programs (OJP) provides leadership and financial assistance through grants to federal, state, and local justice system actors to enhance public safety, protect individual liberty, and reduce crime. **As such, OJP should:**
 - 1. Ensure that public defense is represented at all OJP meetings that involve planning for criminal justice needs;
 - 2. Continue to elevate and support public defense work through the Justice for All Reauthorization Act by funding creative demonstration projects, such as counsel at first appearance, and funding opportunities for other criminal justice stakeholders to attend trainings and meetings about the importance of a strong public defense system, including the ethical and cost-saving implications associated with one, that can be translated into state strategic plans;
 - 3. Request funding for public defense reform in the annual budget request to the Office of Management and Budget, highlighting that providing financial support at the front end, can eliminate future government waste; and
 - 4. Fund a study on “no counsel” courts convictions through BJS or NIJ. Such a study would investigate the extent to which defendants are convicted in the United States without access to counsel in violation of the Sixth Amendment and the different mechanisms that allow this deprivation to take place. Data collected might include the number, frequency, and nature of criminal convictions of persons without defense representation and the fiscal impact of such convictions versus the cost of providing legal services to these defendants.

Legislative Branch

- U.S. Congress enacts federal legislation that influences state and local policies and appropriates federal funding to support state and local efforts, including those related to justice issues. **As such, Congress should:**
 - 1. Grant DOJ the authority to enforce the Sixth Amendment right to counsel by creating a federal cause of action for failures of states to meet their obligations under the Sixth Amendment (made applicable through the Fourteenth Amendment), such as
 - Amendment to current criminal justice bills,
 - A new bill, and
 - A guidance;
 - 2. Reform 42 U.S.C §3751, designating public defense as its own purpose area for BJA’s Justice Assistance Grants (JAG), after which prosecution and courts should

- be separated into their own purpose areas;
3. Prioritize improving state and local defense delivery systems in all criminal justice policymaking efforts, such as Justice Reinvestment and the Second Chance Act;
 4. Pass a bill to establish a Defender General through H.R. 969, the Clarence Gideon Full Access to Justice Act, to protect individual liberty;
 5. Analyze criminal justice legislation, including spending bills, for impact on public defense; and
 6. Fully fund the John R. Justice Prosecutor and Defender Incentive Act, which provides loan repayment assistance to dedicated public defenders and prosecutors. Similar programs exist for other professions, including civil servants working with a federal, state, or local agency and nonprofit employees through the Public Service Loan Forgiveness program, teacher loan forgiveness and cancellation for Federal Perkins loans, and Federal Perkins loan discharge for teachers.

State Policymakers

State policymakers should fulfill their constitutional responsibility to ensure adequate funding and oversight for public defense services. States must acknowledge and assume responsibility for an effective and independent defense structure.

- **Governors should:**
 1. Ensure quality representation and that national or local workload standards are not exceeded by providing appropriate funding to state and local public defense systems;
 2. Support and pass public defense-related legislation, safeguarding the constitutional right to counsel;
 3. Implement the Justice for All Reauthorization Act by appointing a public defense representative to the state Justice Assistance Grant (JAG) Board if one is established. If not, governors should appoint a public defense representative to the JAG fund decision-making group; and
 4. Safeguard the independence of public defense entities.
- **State supreme courts and chief justices should:**
 1. Take a leadership role in the reform of state and local right to counsel services by adopting standards by court rules on independence of the defense function, attorney performance, training, supervision, client financial eligibility for services, and attorney workload;
 2. Use rulemaking authority to expand access to the right to counsel, recognizing that expanding access requires expanding availability of quality public defense representation;
 3. Develop bench cards that provide guidance on all circumstances in which counsel is required and on ensuring the constitutional right to counsel;
 4. Ensure that the culture of the court system and actions of the court are driven by justice and not by money; and
 5. Incorporate right to counsel and public defense issues in trainings and programs for the judiciary.

- **State legislators should:**
 1. Enact legislation that ensures the independence of the defense function;
 2. Establish an independent advisory committee or commission that develops and promulgates uniform standards at the state and county level, which should include workload and performance standards for attorneys, investigators, and social workers that ensure that each client's case will receive the time, attention, experience, and resources needed for competent and diligent representation at each stage of the court process;
 3. Authorize the advisory committee to oversee implementation and compliance of developed standards;
 4. Seek to decouple funding of court systems and public defense from fines and fees;
 5. Fully fund public defense systems to recruit and retain qualified lawyers and to allow public defenders to meet designated standards and perform their ethical duties; and
 6. Pass legislation to require counsel at first appearance and ensure funding levels to support active participation of defenders at first appearances.

All Stakeholders

Public defense leaders should actively engage with policymakers, court system leadership, the community, and their own staff and management to fulfill their responsibility to provide constitutionally mandated and ethically required services for clients.

- **Public defense system leadership should:**
 1. Ensure that all staff provide criminal defense representation that satisfies ABA and state and local bar ethical and professional requirements;
 2. Establish a mentorship program and support newer attorneys and ensure that there are mechanisms in place to prevent unmanageable workloads;
 3. Collect case data to support research, such as workload studies, cost-benefit analysis, performance tied to defendant outcomes, etc.;
 4. Actively participate in criminal justice reform conversations and insert oneself in such a manner that assumes full partnership in the criminal justice system;
 5. Prioritize changing the culture of public defense to elevate the profession and underscore the dedication to diligent representation;
 6. Educate all criminal justice stakeholders and the community about the role and value of an adequately funded, staffed, and trained public defense system; and
 7. Recognize that legal representation of children is a specialized area of the law and support quality juvenile delinquency representation through personnel and resource parity and specialized training.

National and local organizations, government agencies, academic institutions, and community leaders should support effective nationwide public defense systems and explore partnerships and collaborations.

- **All criminal justice stakeholders should:**
 1. Ensure public defense is represented in all criminal justice meetings, including all criminal justice reform, policy, and operational meetings that relate to the

- criminal justice system, recognizing that we cannot talk full criminal justice reform without including the right to counsel;
2. Include public defense representatives on state and local criminal justice commissions and coordinating counsels;
 3. Analyze new legislation or other criminal justice policy reform for its impact on indigent defense;
 4. Support opportunities for law students that highlight public defense in clinics and in the classroom;
 5. Focus on the need to reform the role of public defense in the criminal justice system and the culture associated with it;
 6. Build inclusive coalitions of criminal justice stakeholders, including:
 - i. Prosecutors,
 - ii. Defenders,
 - iii. Judges,
 - iv. Police,
 - v. Social workers,
 - vi. Members of faith community,
 - vii. Sheriffs,
 - viii. Corrections,
 - ix. Pretrial services,
 - x. Parole and probation,
 - xi. Crime Victims (of both violent and minor crimes),
 - xii. Community leaders,
 - xiii. Criminal justice involved individuals; and
 7. Shape a national strategy, whether through litigation or legislation, that advocates for modifying the ineffective assistance standard enunciated in *Strickland v. Washington*. This change would allow clients a meaningful opportunity to receive relief prospectively when represented by counsel who fall below ethical requirements of competence and diligence.
- **All criminal justice stakeholders should inform U.S. Congress about:**
 1. The need to provide training, resources, and funding for state public defense delivery systems;
 2. The need to collect data regarding state and local public defense, ensure that defenders have funding to collect this data, and to publish it in a transparent way, such as a repository of indigent defense data;
 3. Why public defense should be its own purpose area in BJA's JAG Program; and
 4. The need for a Defender General.

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