



Strengthening the Office of the Public Defender

ANALYSIS AND RECOMMENDATIONS FOR MONTGOMERY COUNTY

ACKNOWLEDGMENTS

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SCOPE AND METHODOLOGY

The Board of Commissioners of Montgomery County, Pennsylvania, contracted with Temple University James E. Beasley School of Law to provide specific guidance and recommendations to implement best practices for the governance and operation of the county's Public Defender Office given the current legal framework in the Commonwealth of Pennsylvania. Work on this report was undertaken by the Systemic Justice Project at the Law School's Sheller Center for Social Justice. To produce this report, the Project examined the external legal regime and organizational structures influencing the Public Defender Office, as well as the office's internal structure and culture.

In order to reach the findings and recommendations outlined in this report, the Project employed a mixed-methods approach. This included conducting a legal analysis of relevant statutes and rules, and any limits they impose on potential reorganization; reviewing the literature (both academic and practitioner-oriented) on best practices for public defender officers; reviewing the office's annual budget, how the budget is determined, and whether it is adequate; engaging in a comparative analysis of organizational structures of other defender offices, both within Pennsylvania and across other states, including comparative analysis of other defender office restructurings; obtaining information from current employees of the office regarding their experiences working in the office, via a survey and structured interviews; and obtaining feedback on an earlier draft of this Report from a variety of stakeholders and experts, including via a public community meeting. More information on the process for soliciting employee and community feedback is included in Appendix 3.

INTRODUCTION

Public Defenders are core to the guarantee of equal justice. They are one of the few voices in government that directly advocate for those most in need and most disadvantaged; they strive to ensure that the law will be adhered to and criminal justice reforms will reflect the needs of, and be responsive to, the broader community; and they fulfill the Constitution's mandate of the right to counsel.

Public defenders nationwide constantly strive to provide competent, quality, and zealous representation to all indigent clients. Montgomery County is no exception. In recent years, the Montgomery County Office of the Public Defender has made numerous improvements to better serve Montgomery County's indigent community. For example, with the support of the County Commission, it has doubled its funding across the ten most recent budget cycles; added vital positions to the staff, including a Chief of Mental Health³ and of Pre-Trial Services; diversified services for its clients by adding a Social Services Unit; and increased the variety and amount of training that it offers to staff.

The March 2020 dismissal of the Defender Office leadership brought to the fore questions of how to best continue this progress, improve indigent defense representation, limit the potential for political interference or its appearance, and ensure that the County is not at risk of legal challenges based on the adequacy of the provision of indigent representation or the manner in which the Office operates. This Report is intended to address and provide recommendations for each of these concerns.

EXECUTIVE SUMMARY

The purpose of this Report is to provide the Montgomery County Board of Commissioners with recommendations on how it can continue to develop and improve best practices for the governance and operation of its Office of the Public Defender given the existing legal framework in the Commonwealth of Pennsylvania. That framework currently mandates County control over, and funding of, public defender offices in every county with the exception of Philadelphia.

This Report focuses on the areas where the operation of the Office of the Public Defender intersects with the duties and practices of the Board of Commissioners, pursuant to the Commission's statutory and legal responsibilities. In producing this Report for the County, the Project's task was to assess the external and internal structures affecting the governance and operations of the Public Defender's Office. The Report therefore does not undertake evaluations of particular personnel, and its recommendations pertain only to organizational structure and processes.

Currently, the Commission's duties and responsibilities are linked to the work of the Office of the Public Defender in four distinct ways: (1) the Commission has a statutory responsibility to hire (and dismiss, where appropriate) the Chief Public Defender; (2) the Commission has been used as a vehicle through which internal and external criticisms regarding the Office are raised and addressed; (3) the Commission is responsible for reviewing and approving the Office's annual budget; and (4) the Commission, as the executive of Montgomery County, is potentially liable for any lawsuit that may be brought against the Office.

Each of these points of intersection provides an opportunity to contemplate adjustments to current practices that can produce better outcomes for the Office, the Commission, and the community. Because of the current legal landscape in the Commonwealth, the Commission's relationship with the Office will necessarily involve a push-and-pull: in order to achieve optimal governance of the Office, the Commission will need to grant the Office more independence, while at the same time instituting structures that will ensure appropriate oversight of Office operations.

Balancing the Office's independence with the County's oversight role is, therefore, a central challenge and the primary focus of this Report. The Report then proceeds by addressing

the Commission's role in funding the Office. Next, the Report discusses how the County can prophylactically mitigate risk arising from potential lawsuits against the Office. The Report offers specific recommendations in each of these areas, as summarized below. Finally, while an analysis of legislative reform is outside the scope of this Report, the Report nevertheless concludes by highlighting the potential benefits to the County that would accrue from a legislative transfer of responsibilities for public defender offices from counties to the Commonwealth.

ENSURING INDEPENDENCE

1. Montgomery County should create an independent Oversight Board to manage its indigent defense services. Because Pennsylvania places the burden of overseeing and funding indigent defense services on its counties, public defender offices are more susceptible to judicial and political influence than they would be in a statewide defender system. Montgomery County can protect its public defender office from undue outside influence by creating an Oversight Board to help select the Chief Public Defender and provide advice and counsel regarding the Office's operations, policy initiatives and funding needs.
2. Montgomery County should delegate to the Oversight Board the nomination of candidates for the position of the Chief Public Defender. While the Commission has the statutory responsibility to appoint the Chief Public Defender, it can and should delegate part of the recommendation and selection process for the Chief Defender to an Oversight Board. The Commission should also consult with the Oversight Board on any decisions regarding the Chief Defender's removal. One of the Board's first tasks should be to engage in a formal selection process for nominating candidates for the position of Chief Public Defender.
3. Montgomery County should appoint a "special counsel" to provide the Public Defender's Office with external legal counsel independent from the county solicitor's office when needed, and delegate to the Oversight Board the nomination of candidates for the position. Currently, an assistant solicitor in the County Solicitor's Office services all of the Public Defender's Office's outside counsel needs. While most of these needs do not present conflicts of interest between the County and the Public Defender's Office, it is conceivable that a

conflict of interest may arise in some situations. Accordingly, the Office should have at its disposal outside counsel that it can consult on an as-needed basis.

4. The Montgomery County Office of the Public Defender should have a dedicated Human Resources professional. Currently, the office has no internal Human Resources Department or dedicated HR professional, which means that attorneys wishing to discuss a work issue must utilize the county's Human Resources team or speak with the Board of Commissioners, neither of which is ideal. The Report also recommends that the Office create and distribute a human resources policy that establishes a clear reporting structure for HR complaints.
5. The Montgomery County Office of the Public Defender should reassess its current case assignment system. Staff attorneys in the Office are currently grouped in trial teams assigned to a particular judge for extended periods of time. This system may create the actuality or appearance of pressure to not displease or cross a judge in a particular case because of what may then result in subsequent cases. The Office should consider modifying the system to rotate lawyers more frequently, have teams based on subject matter specialization, or develop other assignment regimens that assure quality representation and the least amount of pressure to conform.

FUNDING CONSIDERATIONS

6. Montgomery County should continue to increase funding to the Office of the Public Defender to respond to the needs of indigent defense provision. Pennsylvania stands nearly alone in the nation in providing no state funding for indigent defense, placing the full burden of funding the Office of the Public Defender on Montgomery County. In recent years, Montgomery County has increased the budget of the Office. We recommend that the county continue this trend, which would allow the Office to provide even more robust training and hire more staff, at both the attorney and paraprofessional levels.
7. Montgomery County should continue toward full pay parity between defenders and prosecutors. Montgomery County has made great effort to address the issue of pay parity by participating in a salary study and instituting pay increases. Yet, the Office of the Public

Defender still lacks pay parity with the county's District Attorney's office for at least some of its attorneys. We recommend that the Commissioners continue to revisit the issue of increased pay parity on an annual basis. Greater financial incentives and upward pay mobility are necessary to acquire and retain requisite talent long-term.

LITIGATION AND RISK MITIGATION

- 8.** The Montgomery County Office of the Public Defender should create internal policy documents outlining expectations, promotion standards, and guidelines on case assignment and management. Although much of this information may be shared through informal channels in the Office, creating formal written office policies will contribute to increasing a culture of consistency, accountability, and transparency. Published standards are also important for risk management and quality control.
- 9.** The Montgomery County Office of the Public Defender should consider reducing the direct caseloads of supervising attorneys in order to give them more time to mentor and support the attorneys they supervise. Team Leaders in Montgomery County are currently responsible for as many (or more) cases than the attorneys who they supervise. We recommend lightening their caseloads, which would free bandwidth for them to dedicate more time to mentoring and supervising the attorneys in their charge. Additionally, this Report recommends instituting a regular meeting schedule for staff as well as a formal case management system.
- 10.** The Montgomery County Office of the Public Defender should standardize and increase training opportunities for both new and seasoned attorneys. Formalized training programs at the Office are not as robust or regularly offered as would be optimal. While the Office has laid out a structure for a training program for new attorneys, it is not clear that the program has been offered to all new hires. Moreover, there does not seem to be a formalized framework for continued trainings for mid-level attorneys and specialized practice areas. We recommend that the Office consistently implement training programs at all levels; regularly circulate a list of both in-house and external CLE opportunities; and create an office-wide shared drive for training materials.

- 11.** The Office of the Public Defender should formally adopt the ABA and NAPD Principles for public defense. We recommend that the Office formally adopt both the American Bar Association (“ABA”) and the National Association for Public Defense (“NAPD”) Principles for public defense systems. We also recommend that the Office integrate these principles into their public mission statement and their internal operational documents. These sets of principles will serve as guidance for the Office’s delivery of indigent defense services on both the individual and systemic levels.

BACKGROUND

The right to counsel is embedded in the Sixth Amendment, which mandates that in “all criminal prosecutions, the accused shall enjoy the right to have... the Assistance of Counsel for his defense.”⁴ The United States Supreme Court held in *Gideon v. Wainwright* that all defendants in criminal cases, regardless of their means, are entitled to legal representation at all critical stages of the proceedings against them.⁵ In *In re Gault*, the Supreme Court extended the Gideon right to counsel to juvenile delinquency trials.⁶

The Court’s ruling in *Gideon* is generally regarded as having “consolidated a right to counsel at trial in the Sixth Amendment,”⁷ whether the defendant is being tried in state or federal court,⁸ on a felony or misdemeanor,⁹ or whether counsel is retained or appointed.¹⁰ While criminal defendants may retain private defense counsel if they can afford to do so, *Gideon* mandates that all indigent persons facing criminal prosecution and possible imprisonment be provided an attorney under the rationale that, “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”¹¹

The right to counsel attaches “at or after the time that judicial proceedings have been initiated against [the criminal defendant], ‘whether by formal charge, preliminary hearing, indictment, information, or arraignment.’”¹² From this point on, assistance of counsel is required “at every step in the proceedings” against the defendant, whether informal or formal.¹³ This right includes “pretrial confrontations” such as arraignment.¹⁴ It exists throughout the adversarial process against the defendant and extends beyond the initial trial to sentencing and any direct appeal as of right.¹⁵

The right to counsel has been expanded and further defined since *Gideon*’s mandate. Attorneys providing indigent defense services must provide representation that is both “adequate” and “independent.”¹⁶ Thus, the right to counsel is not merely the formal right to have an attorney assigned to each indigent defendant’s case. Instead, the right to counsel is the right to receive the effective assistance of competent counsel.¹⁷ In this way, a denial of counsel is not merely interpreted to mean the physical absence of counsel — a constructive denial can occur when

counsel is present but, due to systemic issues or deficiencies, cannot provide meaningful or adequate representation.¹⁸

Beyond individual client representation, the right to counsel is also evaluated through a systemic lens. In 2016, the Pennsylvania Supreme Court confirmed this in *Kuren v. Lucerne County*, holding that a class of indigent defendants may sue a county for prospective, systemic violations of the Sixth Amendment right to counsel on the grounds that the county has not adequately funded its public defender office. What we can take from reading *Gideon* and its progeny, alongside *Kuren*, is that indigent defendants are entitled not just to an individual attorney who meets prevailing professional norms, but also an indigent defense system that meets those norms as well.

Constitutional doctrine, however, does not guide states or local governments on *how* to implement these requirements. Thus, states across the nation have taken a variety of approaches in determining how they provide defense counsel for indigent defendants.

National Public Defense Standards

All lawyers in the United States are bound by the United States Constitution, as well as the laws and ethical rules that govern the jurisdiction in which they practice. Public defenders are also advised by national standards and professionally accepted norms created by leading professional legal organizations, which provide additional guidance for states and local governments on how to model their public defense systems.¹⁹

The Model Rules of Professional Conduct (or “MRPC”) serve as the prototypical ethical rules for most jurisdictions in the United States.²⁰ Pennsylvania’s Rules of Professional Conduct (the “PaRPC”), which were derived from the MRPC, outline what public defenders throughout Pennsylvania need to do to uphold the constitutional requirements pertaining to indigent defense. Pennsylvania lawyers must abide by the PaRPC as a matter of professional ethics. Model Rules 1.1 (Competence²¹), 1.3 (Diligence²²), 1.4 (Communication²³), and 5.1 (Responsibilities of a Partner or Supervisory Lawyer²⁴) are frequently referred to by public defense practitioners and the organizations to which they belong.

In addition to ethical obligations, there are also aspirational national standards for public defender organizations. The American Bar Association’s *Ten Principles of a Public Defense Delivery System* (the “Ten Principles”) lays out necessary criteria for public defense systems to be

able to provide effective legal representation to their clients.²⁵ Most of the ABA’s Ten Principles address (either expressly or implicitly) how public defense systems should act in compliance with ethical rules and constitutionally mandated requirements. For the purposes of this report, the most relevant ABA principles are those that address: (i) Independence (Principle 1); (ii) Funding and Resource Parity (Principle 8); (iii) Office Culture and Training (Principles 6 and 9); and (iv) Compliance with Ethical and Constitutional Requirements (Principles 1, 3, 4, 5 and 10).

The National Association for Public Defense (the “NAPD”), founded in 2013, is a professional organization with a membership of over 21,000 public defense practitioner members²⁶ that operates as a resource and policy hub for public defenders across the country.²⁷ NAPD is the largest formal coalition of public defenders nationwide, and as such, they are uniquely positioned to inform policymakers about ongoing issues in the representation of indigent clients and the operation of public defense systems generally.

The NAPD has also released reports and policy statements for the improved operation of public defender systems. In May of 2020, NAPD published a policy statement on the independence of public defenders which stressed the urgency of removing judicial and political influences from indigent defense systems. In addition, the NAPD has provided public defender offices with guidance on the structure and organization of public defense services (Principles 1-4); the quality of public defense services (Principles 5-9); and the treatment of accused persons (Principles 10-15).²⁸

Finally, there are national standards for the representation of youth in delinquency and dependency cases. The Institute of Judicial Administration and American Bar Association have published a twenty-volume set of Juvenile Justice Standards.²⁹ Of particular relevance to this Report is the volume on *Standards Relating to Counsel for Private Parties*, which, among other things, says that for defender agencies to meet their responsibility to ensure competent counsel and adequate supporting services for juveniles, the offices should have “adequate supporting services”; should not “accept more assignments than its staff can adequately discharge”; and that attorneys “be compensated on a basis equivalent to that paid other government attorneys of similar qualification, experience and responsibility.”³⁰ The National Juvenile Defender Center’s *National Juvenile Defense Standards* adopted twelve “Guiding Principles,” including the principle that “systemic barriers and deficiencies impair defenders’ abilities to provide high-quality representation.”³¹ The NJDC’s Standards provide elaborate detail on how lawyers can fulfill their

professional duties of adequate representation,³² and further call on juvenile defenders to challenge systemic inadequacies.³³ The American Bar Association has also published standards for representing children and youth in dependency cases; those standards have been adopted, with adaptations, by the National Association of Counsel for Children.³⁴

While attorneys are required to follow ethical rules, national standards such as those published by the ABA and NAPD are aspirational. They are intended to help local and state governments contemplate improvements to their public defender systems. Such standards may be incorporated into a defender office's bylaws, mission statements, or similar documents.³⁵

The Legal Landscape in Pennsylvania

The Pennsylvania Public Defender Act, 16 P.S. § 9960 *et seq.* (the “Act” or “PDA”), is the only statute directly regulating public defense in the Commonwealth.³⁶ The Act assigns all responsibility for indigent defense to the counties, mandating that each county (with the exception of Philadelphia County³⁷) create a public defender office, and that the county's commissioners appoint the office's Chief Public Defender.³⁸ Termination powers are not explicitly mentioned.³⁹ The Act does not provide any statewide standards for the operations of public defender offices, and each individual county has responsibility for, and complete discretion over, the funding of its office.⁴⁰ Generally, funding for indigent defense is raised through local property taxes.⁴¹

The Chief Public Defender and assistant public defenders are required to be attorneys admitted to practice in the Commonwealth.⁴² With approval of the “appointive body” (i.e., a county commission), the Chief Public Defender may build a defender office by hiring full- or part-time assistant public defenders, clerks, investigators, support staff, and other staff members the office needs to carry out its duties.⁴³

The Act requires indigent representation in ten specific areas, including juvenile delinquency proceedings, critical pretrial identification procedures, all stages of criminal adjudication (from preliminary hearings through appellate and habeas challenges), along with any other situation in which legal representation is “constitutionally required”.⁴⁴

In addition, the Pennsylvania Rules of Criminal Procedure state that defense counsel for an indigent defendant must be appointed in all summary cases with a likelihood of imprisonment, in all court cases prior to the preliminary hearing, and in every case “when the interests of justice

require it.⁴⁵ An appointment must remain in place until the final judgment against a defendant, including any direct appeal as of right.⁴⁶

County commissions are responsible for providing suitable office space, furniture, equipment, and other needed supplies so that the office can properly conduct its business.⁴⁷ Further, the county imposing a defendant's sentence is responsible for reimbursing the public defender office of another county for "reasonable expenses incurred" during the representation of that defendant during parole revocation proceedings and appeals.⁴⁸

In addition to the Pennsylvania Rules of Professional Conduct discussed above, Montgomery County also maintains its own County Ethics Policy for all county employees.⁴⁹ The policy includes rules specific to attorneys, and adopts the above-mentioned Pennsylvania Rules of Professional Conduct.⁵⁰ However, the policy contains no specific provisions for criminal justice proceedings or public defense services.

A Closer Look at Montgomery County

Pennsylvania organizes its counties by class, as determined by size of the county's population.⁵¹ The classes range from Class 1 to Class 8, with Class 1 encompassing those counties with the highest populations, down to Class 8, which includes those having the lowest.⁵² Philadelphia County is the only Class 1 County in the state.⁵³

Montgomery County is designated as Class 2A, which includes counties with populations between 500,000 and 800,000.⁵⁴

<i>Montgomery County Demographics</i>	
<i>Current Population</i>	830,915
<i>Municipalities/Townships</i>	61
<i>Median Age</i>	41.2
<i>Median Household Income</i>	\$88,166
<i>Per Capita Income</i>	\$46,776
<i>% of People Living in Poverty</i>	5.9%
<i>Ethnicity Breakdown</i>	→ White (Non-Hispanic): 75% → Black or African American: 10%

Education	→ Asian: 8.1% → Hispanic or Latino: 5.4% → Two or More Races: 2.3% → Native Hawaiian/Pacific Islander: 0.1% → Native American: 0.2%
	→ 94.2%: high school graduate or higher (ages 25+) → 48.7%: Bachelor's Degree or higher (ages 25+)
Employment	514,853 persons

Delaware and Bucks counties, which are “collar counties” of Philadelphia,⁵⁵ are also Class 2A counties and are, along many dimensions, comparable to Montgomery county.⁵⁶ Chester county, the fourth collar county, is designated as Class 3. As the table below shows, each of these counties allocate significantly more of their budgets to the District Attorney than to indigent defense. Bucks, Chester, and Montgomery counties have some of the widest disparities between prosecution and defense budgets.⁵⁷

<i>Budget Allocations of Surrounding Counties</i> ⁵⁸				
<i>County</i>	<i>District Attorney</i>	<i>Public Defense</i>	<i>Ratio of DA to PD Funding</i> ⁵⁹	<i>Population</i>
Allegheny	\$20,358,719	\$10,527,967	2:1	1,216,045
Bucks	\$13,042,500	\$4,470,000	3:1	628,270
Chester	\$11,509,783	\$4,130,386	3:1	524,989
Dauphin	\$5,987,514	\$4,398,875	1.5:1	278,299
Delaware	\$6,363,000	\$4,615,000	1.5:1	566,747
Lehigh	\$6,751,094	\$2,901,169	2.5:1	369,318
Montgomery	\$17,756,942	\$5,816,907	3:1	830,915

Philadelphia	\$53,611,142	\$49,600,000	1:1	1,584,064
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The Role of Montgomery County Board of Commissioners

Montgomery County describes the role of the Board of Commissioners (also referred to hereinafter as the “Commission”) as the “legislative and executive arm of the Montgomery County government.”⁶⁰

The Commission is composed of three Commissioners who are each elected to four-year terms by Montgomery County residents.⁶¹ One of the three commissioners is selected to serve as chairperson.⁶² The Commission is responsible for appointing the county’s Chief Public Defender, as well as all department heads and other members of boards, authorities, and committees in the county.⁶³ The Commission also appoints the heads of all county offices and establishes the salaries of all employees, in collaboration with the county’s controller.⁶⁴ Lastly, the Commission has the critical responsibility of planning and executing the county’s budgets and financing each year.⁶⁵

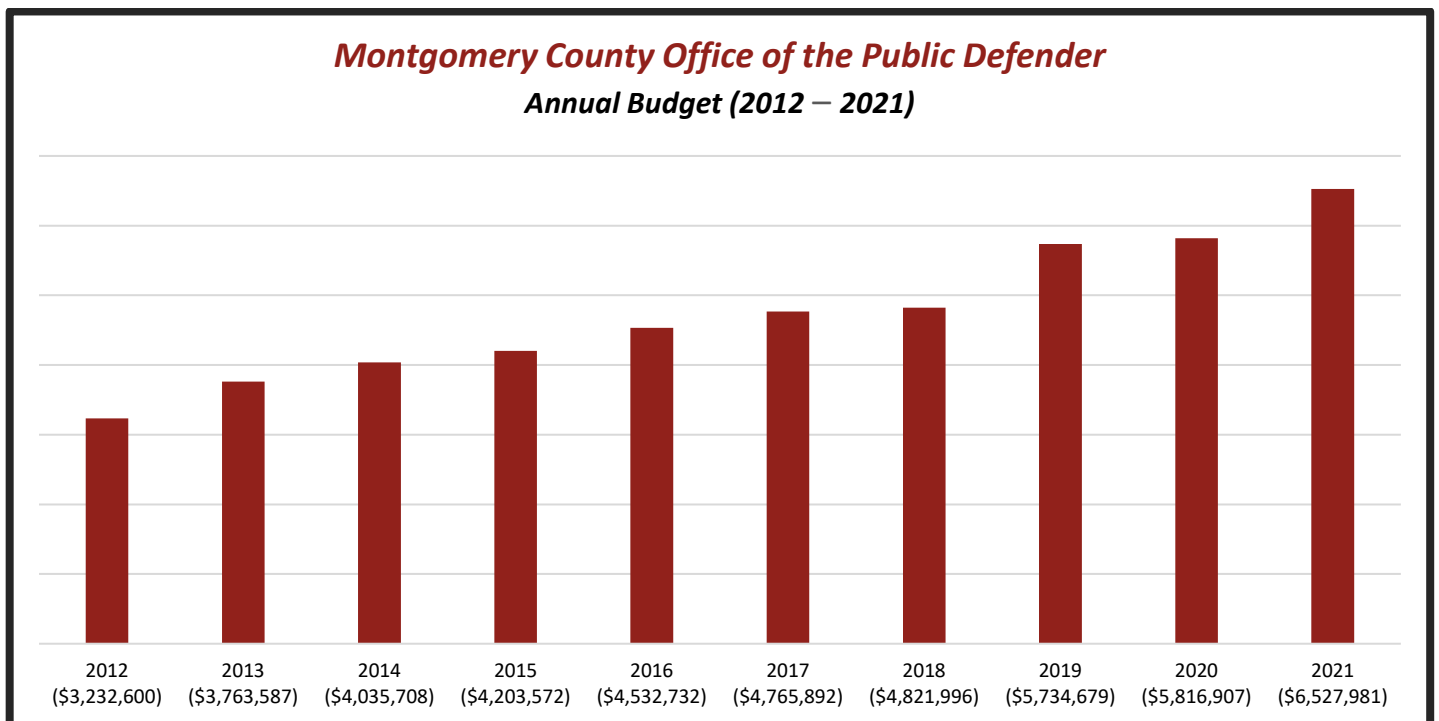
Montgomery County Budget

The following table provides a high level summary of Montgomery County’s projected budget for 2020, including allocations for the District Attorney and the expense breakdown for the Public Defender Office. This budget is largely derived from local real estate taxes, which make up 50% of county resources.⁶⁶ Another 36% of the budget comes from federal and state grants, and 14% is derived from departmental revenues and “other” sources.⁶⁷

<i>Montgomery County Budget</i>	
<i>Total Budget</i>	\$428,458,787
<i>District Attorney Budget (2020)</i>	\$17,756,942 (22.5% of judicial administration budget)
<i>Public Defender Budget (2020)</i>	\$5,816,907 (10% of county administration budget)
<i>Public Defender Budget (2019)</i>	\$5,729,033

<i>Public Defender Budget (2018)</i>	\$5,134,840
<i>Public Defender Expenses</i>	<ul style="list-style-type: none"> → \$3,807,087 in salary/wages total → \$3,671,160 full-time → \$94,468 other payroll → \$41,450 part-time → \$1,430,156 in benefits → \$275,000 in contracted SRV/ provider SRV → \$167,894 in maintenance → \$61,200 in general supplies → \$53,000 in travel and training → \$15,460 in utilities → \$7,100 in general expenses

The allocation for Office of the Public Defender has been steadily increasing over recent budget cycles, from \$5,134,840 in 2018 to \$5,729,033 in 2019.⁶⁸ The proposed 2021 budget for the Office is \$6,527,981.⁶⁹



The Montgomery County Office of the Public Defender

The Montgomery County Office of the Public Defender has approximately sixty-six full-time employees, including supervisors, staff attorneys, paralegals, administrative staff, and investigators.⁷⁰ The Office has an Adult Criminal Division – within which are Pretrial, Trial, and Homicide Units – and a Juvenile Advocacy Division, comprised of the Delinquency and Dependency Units.⁷¹ The Office also has a Social Services Unit.⁷² The Office, as a whole, is involved in community efforts such as the Criminal Record Expungement Clinic, Youth Sentencing and Re-entry Project, and Participatory Defense outreach.

Legal staff at the Office are required to undergo various internal training programs. The Office states it has a one-week orientation given to new staff members, which provides an overview of the Office of the Public Defender as well as the Montgomery County criminal legal system.⁷³ Additionally, each new attorney is required to join the Office’s young lawyers group that meets twice per month to give attorneys an opportunity to discuss cases, effective trial strategies, and techniques.⁷⁴ The Office also hosts monthly brown bag lunches to facilitate brainstorming between new and experienced attorneys.⁷⁵ Further, attorneys are periodically required to submit a case for review to a committee composed of “seasoned attorneys.”⁷⁶

In addition to completing CLE credits required by the Commonwealth, the Office has offered a one-week skills training to teach various trial skills.⁷⁷ Lastly, the Public Defender Office provides an opportunity for some attorneys to attend the new attorney training with the Gideon’s Promise Partnership, a three-year training curriculum “designed to provide new public defenders the skills and knowledge necessary to become excellent advocates for those they represent.”⁷⁸

Line attorneys in the Office are assigned to “trial teams,” each of which is supervised by a “team leader.” Each trial team is assigned to a particular judge’s courtroom for a specified term (typically two years). Attorneys on the team take on representation of all indigent defendants assigned to their particular courtroom, regardless of the nature of the charges. The team leader delegates the cases among all team members, while also doing direct client representation as part of the team.

We were not provided any internal organizational documents that outline the method of case distribution and, from our interviews, it appeared that the methods that team leaders use to assign cases to line attorneys vary from team to team. The Office also does not appear to use an office-wide case management system.

While there are many senior attorneys in the Office (i.e., those who have been at the Office for 10 years or more) and many junior attorneys (i.e., those who have been at the Office for less than 5 years), there are disproportionately fewer mid-level attorneys (i.e., those who have been at the Office between 5 and 10 years) working in the Office.

To our knowledge, there are no written performance review standards distributed to attorneys. And while job descriptions for team leaders and supervisory attorneys are circulated when an open position becomes available, it is not clear that the office otherwise disseminates documents discussing promotion standards or timelines.

DISCUSSION OF CONSIDERATIONS

As stated in the Introduction to this Report, the primary ways in which the Commission’s duties intersect with the work of the Office of the Public Defender are that: (1) the Commission has a statutory responsibility to hire the Chief Public Defender; (2) the Commission is often used as a vehicle through which internal and external criticisms regarding the Office are brought forward; (3) the Commission is responsible for reviewing and approving the Office’s annual budget; and (4) the Commission, as the executive of Montgomery County, is potentially liable for any lawsuit that may be brought against the Office.

This Discussion will track those categories. In the following sections, we will examine each of the listed considerations to describe options, and provide examples, from which governments may choose to best structure their indigent defense systems.

ENSURING INDEPENDENCE

At the institutional level, independence refers to a public defender office’s ability to operate without undue pressure or influence from other institutions or institutional actors (namely, the judiciary, lawmakers, and executive actors such as the overseeing county commission).⁷⁹ Without institutional independence, outside influences can unduly impact the hiring, funding, and operations of indigent defense systems.⁸⁰ How a public defender’s office is structured – with respect to internal organization, oversight, and relations with external institutions – in large part determines its degree of institutional independence.

At the individual level, independence refers to a defense attorney’s ability “to be able to make decisions based on what is right for their clients to whom they are ethically responsible without fear of adverse personal or program consequences.”⁸¹ The Supreme Court recognized in *Polk County v. Dodson* that states have a “constitutional obligation to respect the professional independence” of the indigent defense attorneys and offices with whom they engage.⁸²

Both institutional and individual independence is crucial for the meaningful representation of clients and for assuring that the adversarial legal system works reliably and produces valid

results.⁸³ Independence is especially critical for public defense professionals and their offices because the “essence of their work” is to represent clients against the very government that employs and funds them.⁸⁴

In this Report, we focus on the two areas of potential external influence that present the greatest risk to the independence of the Montgomery County Office of the Public Defender: from the County Executive (which we will call “political influence”), and from the judiciary (“judicial influence”). In this section, we will discuss how the Office’s external oversight structure and some internal practices contribute to the risk of external influence, and suggest restructuring reforms that can mitigate that risk.

Political Influence

Pennsylvania’s statutory scheme for the administration and funding of indigent defense services places county executives into a dual role. As executives, they are charged with ensuring enforcement of the penal laws, and to that end oversee and fund the county’s district attorney’s office. Yet they also oversee and fund that office’s adversary, the public defender.⁸⁵ This dual role creates the risk of political influence (or its appearance) on county decisions regarding funding and oversight of the public defender’s office.

With respect to funding, the risk of undue influence is particularly prevalent in states like Pennsylvania that use a *county-funding model*, in which local elected officials have the sole authority to fund indigent defense services.⁸⁶ Local officials could therefore potentially use their authority over budgets to influence the operations of indigent defense services.⁸⁷ The ABA recommends that if funding powers reside with the executive or legislative branch, they should not be used in a manner that interferes with, or retaliates against, professional judgments made during the delivery of indigent defense services.⁸⁸

With respect to oversight, the risk of undue political influence is particularly acute when, as in Pennsylvania, chief defenders are appointed by a local elected official.⁸⁹ In such jurisdictions, political actors can choose to suspend or remove chief defenders from their appointments without cause or process.⁹⁰ Chief defenders who are appointed by and serve at the pleasure of elected officials can feel pressure to take political objectives into consideration in their decision-making, which may be in tension with their professional responsibilities.⁹¹ For example, chief defenders may be reluctant to support a relevant criminal legal reform policy that is perceived to be contrary

to the position of the executive, or to make an issue of the inadequacy of their budget for fear of political repercussions.⁹² As a result, a chief defender may feel compelled to bow to political pressures originating from their appointing authority, which might ultimately not be in alignment with their charge to elevate the needs of indigent defendant clients.⁹³

A Defender Office's periodic need for legal advice or representation from the County Solicitor's Office may also create a risk of political interference because the County Solicitor's Office serves other clients, such as the District Attorney's Office and the County Commissioners, whose interests may conflict with those of the Defender's Office. While such risk does not arise in ordinary matters (for example, contractual disputes with a vendor), issues may occasionally arise with respect to the Office's client-facing functions on which it seeks guidance. In these instances, the Defender's Office would ideally be able to turn to counsel outside the Solicitor's Office.

Finally, the absence of a dedicated human resources professional in a defender's office can exacerbate the potential for external influence. When there are no structures in place to facilitate internal communication around employment concerns at public defense offices, employees are left with the sole option of bringing those concerns to someone outside of the organization. This threatens client confidentiality, because a human resources complaint may require a public defender to discuss case details. In addition, external involvement in employment concerns can create tensions both for the public defender organization and the outside entity that is designated (or feels a responsibility) to address those concerns. This impedes both office independence and the cultivation of a transparent, positive workplace culture.

Judicial Influence

The judicial branch is tasked with being a "neutral arbiter" in judicial proceedings, interpreting the laws and regulations of the jurisdiction, and ensuring that all parties are afforded due process.⁹⁴ This position of neutrality requires the judicial branch to equally weigh the needs of those prosecuting indigent defendants with those of defenders representing indigent defendants.⁹⁵ Defender systems subject to undue judicial influence "often follow or adjust to the needs of each judge in each court, rather than focusing on providing constitutionally effective services for each and every defendant."⁹⁶

While undue judicial influence is a greater risk in jurisdictions that use judicially-assigned counsel or contract attorney systems for indigent defense,⁹⁷ or in systems in which judges appoint (or have influence over the appointment of) chief defenders,⁹⁸ it can also arise in other situations — for example, when judges are in contact with the chief public defender about the performance or behavior of individual attorneys; or when individual judges and individual counsel are “repeat players,” causing counsel to consider how their actions in a current case might influence their standing in future cases before the same judge.

Michigan serves as an example of a state that has enacted rules in an attempt to ensure that the inability to pay for counsel does not dictate whether a defendant receives representation that is free from judicial influence. Michigan Indigent Defense Commission (MIDC) promulgated standards to “ensure[] that public defense attorneys are subject to judicial supervision only in the same manner and to the same extent as retained counsel or the prosecution...”⁹⁹ Michigan State Court Administrator Tom Boyd explained that, “the requirement that public defense attorneys and the judiciary operate independent of one another will serve the court’s role in protecting the constitutional right to counsel and enhance the ability of appointed counsel to advocate with vigor and innovation, making for a more just and equitable system.”¹⁰⁰

The Landscape in Montgomery County

To learn more about the culture and practices of the Montgomery County Office of the Public Defender, and in particular how Office employees see the Office’s relationship with the County and the judiciary, we interviewed a number of attorneys from the office, including those at staff attorney, team leader, and director levels.¹⁰¹ We inquired about any issues relating to the independence of the Office of the Public Defender and whether they have experienced any outside influences that interfere with the office’s operations. In addition, we solicited input from Office employees more broadly via an online form. We also received input from some Office employees who attended the community town hall.

Employees of the Office appear divided about the Office’s relationship with the County. While some attorneys felt that the Office operates with a high level of independence notwithstanding its position under county supervision and saw no need for any changes, others expressed precisely the opposite sentiment – feeling that the office is, in some ways, “beholden” to the county government and judiciary, and wanting greater independence from both. For some

of those we interviewed, and for many who spoke at the community meeting, concern about the Office's independence was heightened by the 2020 dismissals of the Office's leadership and installation of new leadership, whom some Office employees view as serving the interests of the Commissioners rather than the Office. A repeated theme that emerged in our interviews was a sense by defenders that the county's interests were sometimes fundamentally at odds with those of the Office. As one attorney put it: "Fighting for the rights of marginalized people is politically unpopular."

The Montgomery County Office of the Public Defender currently has no dedicated internal Human Resources department, so the Office must use the county's Human Resources team.¹⁰² While most interviewees expressed no concern about this, others mentioned that employees of the Office sometimes bring their human resources concerns directly to the Commission or other employees in the executive branch.¹⁰³ Some employees felt strongly that a dedicated Human Resources department within the Office was urgently needed.

In Montgomery County, attorneys are divided into several "trial teams" that are assigned to a particular courtroom.¹⁰⁴ Some attorneys expressed a belief that it was a positive that public defenders are assigned to specific judges because they were able to "get to know how that judge thinks" to better "maneuver those cases" for their clients. However, other attorneys felt that judges have too much influence within the Public Defender Office. For instance, one attorney reported that judges have in the past reached out to Office leadership to complain about assistant defenders assigned to their courtroom and have them reassigned or even fired; another reported that there was significant judicial pushback to leadership when line attorneys aggressively challenged bail conditions; still another expressed that they "felt their legitimacy was being undermined," and were looked at as being "unreasonable" if they challenged judges' decisions too often. One attorney summed up the inherent tensions within the current courtroom-based team structure in this way: "Attorneys want credibility with the judge, and you don't want to seem difficult all the time."

Structures That Can Mitigate External Influence

While there are a variety of approaches for mitigating political pressures on defenders' offices, the Pennsylvania Public Defenders Act limits the options available in Pennsylvania. Accordingly, we focus here on what we believe to be the only viable option for mitigating the political pressures created by the Pennsylvania statutory structure in a way that comports with that

structure: the creation of an independent oversight board to supervise the provision of indigent defense services.

In addition, we discuss two internal structures that can mitigate external influence: the assignment of a dedicated human resources professional to the Office, and a reassessment of the case assignment system.

External Structures: Oversight Boards

Both the ABA and NAPD recommend the creation of oversight boards in order to provide public defender offices with independence from the political branches of government. The first ABA Principle states that public defender systems must be independent from outside influences in the selection, funding, and payment of defense counsel.¹⁰⁵ A public defender system should be independent from political influence,¹⁰⁶ and should only be subject to the same level of judicial supervision as retained or private counsel: “the mediator between two adversaries cannot be permitted to make policy for one of the adversaries.”¹⁰⁷ Independence of public defense systems is crucial for public defenders to be able to make decisions based only on loyalty to their clients, which is required by Rule 1.7 of the MRPC.¹⁰⁸ In order to conform with the principle of independence, the ABA recommends that a non-partisan board should be appointed to oversee public defense systems.¹⁰⁹

The NAPD also recommends that the policy-making function, choice of Chief Defender, and oversight of public defense systems should be vested in an independent Oversight Board or board of trustees.¹¹⁰ This recommendation derives from NAPD’s Second Principle, which requires that public defense systems remain independent of political control and influence,¹¹¹ as well as its Fourteenth Principle, which states that the expertise and experience of public defenders makes their voices indispensable in the formulation of criminal legal policies and reforms.¹¹² To lend their voices, public defenders must be assured they can speak freely.

New Mexico’s approach is a model here. In 2011, the Governor of New Mexico terminated the State’s Chief Defender after the Defender during a legislation session accused the government of underfunding. The following year, the Citizens of New Mexico voted in a referendum to move oversight of the Public Defender’s Office to a newly created Public Defender Commission.¹¹³ The next year, the “Public Defender Commission formed and appointed the first Chief Public Defender under a new independent format.”¹¹⁴

Types of Public Defense Oversight Boards

Oversight Boards may take several forms. Some states have centralized, statewide oversight mechanisms; other have limited, hybrid, or local oversight; and still others (like Pennsylvania) have no consistent oversight mechanisms at all. Regardless of the form, the most important function of an Oversight Board is authority with respect to the appointment and removal of the Chief Public Defender of their jurisdiction.¹¹⁵

Statewide Oversight

Statewide oversight refers to a form of oversight in which states maintain one or more Oversight Boards to “oversee indigent defense services for all case-types” throughout the state.¹¹⁶ Having oversight at the state level can ensure that indigent defense services throughout the entire state are consistent in quality, efficiency, effectiveness, and held to the same standards.¹¹⁷

Although it is structured to operate independently, a state Oversight Board must still be technically housed under a particular branch of the state government.¹¹⁸ For example, the Massachusetts Committee for Public Counsel Services, utilizing a statewide funding and oversight model, is housed in the state’s judicial branch.¹¹⁹ Other states using a statewide approach opt to house the statewide Oversight Board in the executive rather than the judicial branch. For example, Alaska’s Public Defender Agency oversees all public defense operations throughout the state and sits within the executive branch.¹²⁰ Housing the Oversight Board within the executive branch helps alleviate the concern of judicial influence, while housing the Oversight Board within the judicial branch is thought to keep the defense function separate from the control of its adversary.¹²¹

Limited or Local Oversight

“Limited oversight” refers to a form of oversight in which state or local governments maintain an Oversight Board which only has control over either particular types of cases or a particular region of the state.¹²² In other words, these are Oversight Boards that “oversee some, but not all, case-types; or oversee some, but not all, regions of the state.”¹²³ The theory behind this form of oversight is that this hybrid approach can encourage best practices for indigent defense services while still allowing for local autonomy.¹²⁴

An example of limited oversight can be seen in Texas, where the state’s public defenders are overseen by the Texas Indigent Defense Commission (TIDC).¹²⁵ “Texas’ 254 counties are responsible for providing the right to counsel, with limited support from the state. In short, the trial

level judges in each county who preside over criminal cases have almost complete authority over the systems of providing the right to counsel to indigent adult defendants.”¹²⁶ “The TIDC does not provide direct representation of indigent defendants. [It] also [does] not have the power to force counties or judges to comply with any law, rule, standard, or policy relating to the provision of indigent defense services; all it can do is withhold state grant funds.”¹²⁷

This example shows that limited Oversight Boards must be adequately funded in order to be effective. And they must have the power and the willingness to withhold funding from local governments that are non-compliant with performance standards or rules promulgated by the Oversight Board.¹²⁸ Without some power over the purse strings, limited Oversight Boards are unlikely to be able to sufficiently mitigate potential local political influence.¹²⁹

Notably, another primary drawback of this model is that, because limited oversight boards may be based on either case-type or geography, the independence and quality of defense services can have high variance from place to place throughout states adopting this model.¹³⁰

No Oversight

The final option that governments have selected is to have no independent oversight at all — under this model, state or local governments opt to not have an Oversight Board oversee any aspect of their indigent defense services.¹³¹ Within this category, some states, like Arizona, establish statewide associations that provide some level of training and support, but do not mandate local public defense providers to participate; nor do they impose any system of statewide oversight.¹³²

Without any mechanism to safeguard independence or ensure the efficiency, uniformity, and quality of indigent defense services, jurisdictions with no oversight are more susceptible to outside judicial and political influences than those that adopt even limited oversight.¹³³ In state or local governments that deliver indigent defense services without any form of oversight, there is also a significant risk of “unjustified variations” in the quality of those services from place to place.¹³⁴

As something of a half-measure, some states without independent Oversight Boards have adopted “advisory boards” to provide suggestions and feedback to local governments regarding issues of indigent defense. Alabama is an example of this structure, where “each circuit’s five-

person advisory board is composed of: the presiding circuit court judge; the president of the local circuit bar association; and three lawyers selected by the circuit bar association.”¹³⁵

In sum, a state or local government may create a non-partisan and independent Oversight Board to safeguard the independence of the public defender, and to promote the efficiency, uniformity, and quality of indigent defense services.¹³⁶ Optimally, the Oversight Board is organized so that it is reasonably independent from judicial and political influences.¹³⁷

Below is a table created by the Sixth Amendment Center to show how the states are divided by Oversight Board model:

State Oversight Models of Public Defense Functions¹³⁸

<i>Statewide Commission</i> 21 States 42%	<i>Independent Commissions</i>		<i>Non-Independent</i>
	Connecticut Kentucky Louisiana Maine Maryland Massachusetts Michigan	Minnesota Montana New Hampshire New Mexico North Dakota Utah Virginia	Arkansas Colorado Hawaii Missouri Oregon West Virginia Wisconsin
<i>Limited Commission</i> 13 States 26%	<i>Independent Commissions</i>		<i>Non-Independent</i>
	Idaho Indiana Nebraska New York North Carolina	Ohio South Carolina Tennessee Texas	Georgia Illinois Kansas Oklahoma
<i>No Commission</i> 16 States 32%	<i>Independent Commissions</i>		<i>Non-Independent</i>
	Alabama Alaska Arizona California Delaware	Florida Iowa Mississippi Nevada New Jersey	Pennsylvania Rhode Island South Dakota Vermont Washington Wyoming

Structuring an Independent Oversight Board

The NAPD recommends that an Oversight Board be structured in such a way that its existence will “authentically advance independence.”¹³⁹ It therefore recommends that an Oversight Board: be nonpartisan; primarily “function to support and protect the independence” of indigent defense services; be empowered to “establish general policy for the operation” of indigent defense

services; “be precluded from interfering” in the individual representation of clients; and have the authority to “appoint a chief defender” to serve a renewable term of years who is not “removable except for cause with process.”¹⁴⁰ The Constitution Project additionally suggests that an effective Oversight Board include “strong leadership, effective oversight, adequate staff, and the collection of accurate and reliable data.”¹⁴¹ All members on the Oversight Board, regardless of any other criteria for membership, should be devoted to improving indigent defense services.¹⁴²

To function as a fully independent body, the authority to determine the composition of an Oversight Board should ideally be shared among all three branches of government and a diverse set of outside legal stakeholders.¹⁴³ This structure can help create an Oversight Board that is “neither beholden to nor apt to do the bidding” of any single entity.¹⁴⁴

When states have adopted Oversight Boards that have failed to disperse power, the independence of the Oversight Board has been potentially compromised. In Oregon, for example, “the seven members of the Public Defense Services Commission (PDSC) are all appointed by the Chief Justice, who serves as a nonvoting, ex officio member.”¹⁴⁵ Within the commission, the chief justice also chooses who will serve as the chairperson and vice chairperson, as well as how long they will serve for.¹⁴⁶ While the Office of Public Defense Services handled the day-to-day management of the indigent defense system, the PDSC appointed their executive director.¹⁴⁷ The Sixth Amendment Center has concluded that this structure — of a single appointing body who has ultimate control over the head of the office and the head of the Oversight Board — contributes to a lack of commission independence.¹⁴⁸

Another crucial component of ensuring the independence of an Oversight Board is to create diversity within the Board’s composition.¹⁴⁹ Members of the governing boards should be non-partisan, and should have staggered terms made by multiple appointing authorities.¹⁵⁰ To achieve full independence, governing boards must not include active prosecutors or judges.¹⁵¹ Membership criteria can include, amongst other things, geographical location, political affiliation, and race or ethnicity of members, or positions may be reserved for non-attorney members, advocates for underrepresented groups, or representatives of special interest groups.¹⁵²

A good example of diversified Oversight Board composition can be seen in Texas’ Travis County, which has a seven-member oversight board comprised of “an academic, a private defense attorney, a former public defender, individuals directly impacted by the criminal legal system (e.g., family members of incarcerated or formerly incarcerated persons), community advocates, a retired

judge, and a commissioner's court representative who is selected from recommendations solicited from the community.”¹⁵³ This diversity provides the public defender office with actual and perceived independence from county politics.

Selecting the Chief Public Defender

An Oversight Board's primary charge should be ensuring the independence of the Chief Public Defender.¹⁵⁴ Chief Defenders should be hired on their merits, as is the longstanding national standard,¹⁵⁵ and neither the Chief Defender nor any other staff should be removed except upon a showing of good cause.¹⁵⁶ Chief Defenders should be appointed for a fixed term of years, which is renewable.¹⁵⁷ Selection of the Chief Defender and staff should not be based on any political considerations or any other outside factors unrelated to the ability of persons to discharge their employment obligations,¹⁵⁸ and selections by judges should be prohibited entirely.¹⁵⁹

Finally, the ABA adds that the selection of a Chief Defender should not be based on judicial or political considerations or any other factors unrelated to their ability to discharge their employment obligations.”¹⁶⁰

Other Functions

An independent Oversight Board can also serve the function of a conduit through which the judiciary and other outside stakeholders can raise any concerns about the operations of a public defender. This is not to imply that all external, non-client related communication with a public defender office should be funneled through an Oversight Board; a properly functioning public defender office requires that defenders keep open lines of communication with the executive branch and the judiciary. It is only to highlight that the Oversight Board can provide another avenue for communication about defender office practices that is independent and non-partisan.

An Oversight Board can also cover other functions, such as serving as a liaison between the Public Defender Office, the political branches, and other stakeholders; monitoring office-wide compliance with national standards; and, if the jurisdiction so desires, coordinating the provision of indigent defense services from attorneys who do not work for the Public Defender (such as conflict counsel).¹⁶¹ Finally, an Oversight Board can assist in the selection process for other positions pertaining to the Defender's Office – such as external counsel for the Office – whenever those positions require a degree of separation from the County.

When structuring an Oversight Board under Pennsylvania law, consideration must also be given to compliance with the provisions of the Commonwealth’s Open Meeting Law (the “Sunshine Act”), 65 Pa.C.S. §§ 701 *et seq.* Whether and to what extent the Sunshine Act applies will be determined, largely, by the responsibilities the Board is assigned and to whom it reports. Crucially, the Sunshine Act applies primarily to any committee that, *inter alia*, “renders advice” to a government “body.”¹⁶² There is support in Pennsylvania law for treating an Oversight Board for the Public Defender’s Office as an “ad hoc” committee not subject to open meeting requirements.¹⁶³

In addition, many of the mission-critical issues an Oversight Board would focus on would likely be deemed “executive actions” which may be addressed without public attendance.¹⁶⁴ This would include discussions of:

- issues of appointment, employment and termination of employees (e.g. the Chief Defender);
- “information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed[;]” and
- “agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.”¹⁶⁵

Importantly, though, it would not necessarily be detrimental if the contemplated Oversight Board is deemed subject to the Sunshine Act and its open meeting requirements. Public observation of and input into criminal justice and indigent defense discussions can increase both accuracy and legitimacy, and confidentiality can be maintained where required by law.

Political Considerations

Implementing an Oversight Board may pose certain political challenges. Governments taking this approach have faced a “lack of political resolve” and the refusal of judicial and political actors to cede control.¹⁶⁶ The latter challenge is particularly prominent in states that opt to fund indigent defense services through county or hybrid funding models. If a state is unwilling to provide, at the very least, a majority of the funding needed for indigent defense services, any requirements imposed by an Oversight Board are “likely to be viewed as unfunded mandates.”¹⁶⁷ Tensions naturally arise when local governments are expected to bear the brunt of funding indigent

defense services, but are nonetheless asked to willingly cede control of how those services are provided.¹⁶⁸ Ceding control to an independent Oversight Board also means local governments cannot structure indigent defense services in a manner that prioritizes containing costs, thereby creating a “tug of war” between their fiscal interests and an Oversight Board’s indigent defense interests.¹⁶⁹

Internal Structures: Human Resources and Case Assignment Assessment

Assigning a Human Resources professional to a public defender office can increase both the real and perceived independence of a public defender office – it can provide the opportunity for the organization to maintain control over internal practices, at least at the initial stages; it can help the organization secure confidential information; it can resolve tensions and conflicts within the organization; and it can cultivate an internal culture of transparency. Transparency, in this context, refers to structures that allow for information to be shared freely within the organization without fear that the information will be disclosed outside of it. Transparency helps build trust between attorneys, staff, and management, creating a stronger organizational culture. It also helps define relationships and draw healthy boundaries between the public defender office and other branches of government.

Diversifying the ways in which public defenders are assigned to cases and courtrooms can also increase independence. There are many benefits to trial team systems, such as the one currently used by the Montgomery County Office of the Public Defender.¹⁷⁰ But while familiarity and repetition can often be an advantage in courtroom settings – for instance, by streamlining interactions that may otherwise be more time consuming – these same features can also be deleterious to attorney independence.¹⁷¹ Courtroom-based case assignment can threaten to calcify courtroom roles, practices, and customs, in a way that may unintentionally limit an attorney’s ability to zealously represent their client.

Alternative methods for assigning attorney casework are by subject specialization, which the Office has utilized in certain circumstances (e.g., drug court and Mental Health); seniority or professional development (in which cases are assigned by matching case complexity with attorney experience or needs for attorney’s professional development); or some combination of these approaches.

Conclusion

Independence is the primary principle needed for public defense systems to fulfill their ethically and constitutionally mandated duties.¹⁷² The United States Supreme Court, the ABA, and NAPD have all acknowledged that public defense systems cannot meet their legal and ethical obligations unless they are sufficiently independent from outside influences. In order to comply with the mandated standard of independence required of their public defense system, Montgomery County must implement some form of safeguards to protect the independence of its public defenders. These can include external safeguards, in the form of an independent oversight board, and internal safeguards, in the form of dedicated Human Resources and a reassessment of the case assignment system.

FUNDING CONSIDERATIONS

Funding is among the most important considerations for states seeking to fulfill their constitutional responsibility for indigent defense services, at least in part because it is a threshold consideration. Effective assistance of counsel requires “significant and reliable financial resources.”¹⁷³ Without a baseline of adequate funding, it is close to impossible to provide sufficient coverage of all indigent cases, not to mention effective assistance in those cases. Research confirms this notion, as the “sufficiency of funding” is regarded as one of the primary factors that determine the quality of indigent defense services.¹⁷⁴

The ABA’s *Ten Principles* identifies funding as a consideration in two places: the First Principle specifically references the funding of the public indigent defense function,¹⁷⁵ while the Eighth Principle envisions sufficient funding to ensure indigent defense services are an “equal partner in the justice system.”¹⁷⁶ The NAPD similarly identifies funding as a consideration in two ways: the organization’s Fourth Foundational Principle declares the duty to fund the criminal legal system to be a “fundamental governmental obligation,”¹⁷⁷ and the Eleventh Foundational Principle deems adequate funding and proper resources to be essential for indigent defense providers.¹⁷⁸

Inadequate funding is considered the “greatest factor adversely affecting quality of representation.”¹⁷⁹ Many of the problems experienced by indigent defense services can be traced back to inadequate funding. Without sufficient funding, indigent defense services cannot hire enough attorneys to represent indigent defendants.¹⁸⁰ Those attorneys who are hired may be undercompensated for their services, and overburdened by excessive caseloads.¹⁸¹ In turn, the efficacy of the representation of indigent defendants could be affected, putting pressure on those attorneys to engage in “hurried plea bargains and rushed trials” for their clients.¹⁸² These are just a few examples of how underfunding can result in a diminished provision of services for indigent defendants.¹⁸³

This section will briefly discuss types of funding models and indigent defense systems, and then offer considerations on funding the Montgomery County Public Defender’s Office.

Types of Funding Models and Indigent Defense Systems

The methods that have been utilized by states to fund their indigent defense services can be classified into three distinct funding models: the statewide funding model, the county funding

model, and the hybrid model. In the statewide funding model, states assume all responsibility for the operation of their public defense systems.¹⁸⁴ In the county funding model, counties or similarly structured local governments assume complete responsibility for the costs of operating their public defense systems.¹⁸⁵ In the hybrid funding model, states and counties share the costs of operating public defense systems.¹⁸⁶ Pennsylvania is one of just three states that rely entirely on local governments to fund indigent defense.¹⁸⁷

This county funding often originates from local property taxes¹⁸⁸ and local fines, both of which may “ebb and flow” at different times throughout the year and in diverse economic environments.¹⁸⁹ The availability of financial resources can differ greatly from county to county, making states that utilize the county funding model highly susceptible to inconsistencies in funding levels.¹⁹⁰ These inconsistencies in funding levels can potentially cause a disparity in the quality of representation for indigent defendants.¹⁹¹

Funding is typically the primary factor for determining what type of indigent defense system a state or local government chooses to adopt.¹⁹² Today, there are three types of indigent defense systems that states employ: the assigned counsel model, the contract attorney model, and the public defender model.¹⁹³ Pennsylvania, of course, uses the public defender model.

National studies generally report outcomes for indigent clients represented through a public defender system that are as favorable, or more favorable, than retaining private counsel.¹⁹⁴ With adequate funding and staffing, public defender systems can devote all their efforts to legal representation for indigent defendants, thereby developing “unusual expertise in handling various kinds of criminal cases.”¹⁹⁵ Public defender systems are generally thought “to be more cost-effective [than competing systems], to improve the reliability of indigent defense services, and to create an institutional resource that is valuable to the bench, the bar, county officials, and the community.”¹⁹⁶

Although public defender systems tend to require more funding up front, they may ultimately lower costs by sharing expenses and pooling resources.¹⁹⁷ The size and structure of public defender systems make them “better able to marshal” resources and ensure that indigent defendants receive “zealous representation.”¹⁹⁸

When a public defender is unable to represent an indigent defendant due to a conflict of interest, courts appoint or contract counsel to represent the defendant.¹⁹⁹ Conflicts of interest most commonly occur when a case involves codefendants who require separate representation or when

a victim or witness is a former or current client of the public defender representing the accused.²⁰⁰ Because of conflicts of interest, no single jurisdiction can operate indigent defense services solely through a public defender system.²⁰¹

Funding Parity between Defenders and Prosecutors

An important consideration for governments funding indigent defense services is parity between defenders and prosecutors. The concept of parity includes compensation for attorneys, the maintenance of staffing levels, and all related resources — including support, investigative, and expert services.²⁰²

America's adversarial system is fairest when resources of indigent defense providers and prosecutors are balanced.²⁰³ In 1972, Chief Justice Warren Burger stated that "society's goal should be 'that the system for providing the counsel and facilities for the defense should be as good as the system which society provides for the prosecution.'"²⁰⁴ These words reflect a "venerable idea" that the defense function is just as important to society as the prosecution function.²⁰⁵

However, parity between prosecutors and defenders with respect to pay and resources "is not the current reality in criminal justice funding."²⁰⁶ To the contrary, prosecutor's offices generally pay higher salaries and have greater access to resources than do public defender offices, which often leads to better retention of attorneys.²⁰⁷ In contrast, indigent defense providers can experience difficulties attracting and retaining attorneys.²⁰⁸ Those defenders who choose to pursue their calling despite the comparatively low pay oftentimes must work without the resources necessary to effectively represent their clients.²⁰⁹ In this way, funding asymmetry can lead to imbalances in the quality of legal representation as between prosecutors and public defenders.

Pay Parity

Pay parity between public defenders and prosecutors is an important step towards achieving a fair and just criminal system. And, while "[nationwide] surveys indicate that salary parity is the norm rather than the exception for the largest public defender offices,"²¹⁰ unfortunately there are still many jurisdictions that pay defenders less than prosecutors.

Public defenders receive annual salaries determined by their funding source.²¹¹ Prosecutors, meanwhile, frequently receive federal, state, and/or local funding in addition to

general funding.²¹² Salaries for both defenders and prosecutors fluctuate significantly based on certain factors, like geographical location or level of experience.²¹³ The result is that defenders nationwide are often paid far less than prosecutors.²¹⁴ By way of example, district attorneys' salaries in Westchester County, New York, were approximately \$6,000 to \$21,000 higher than public defenders' salaries when reviewed in 2006;²¹⁵ in Missouri, in 2009, public defender salaries ranged from \$34,000 to \$54,000, while prosecutors' salaries started at \$40,000 and could go as high as \$100,000 or more;²¹⁶ and until recently New Orleans paid defenders only about 35 percent of what prosecutors earned.²¹⁷

Most national standards explicitly call for pay parity between defenders and prosecutors.²¹⁸ The Eighth ABA Principle states that there should be parity between public defenders and prosecutors with respect to salary, workload, and other resources.²¹⁹ Other resources include employment benefits, technology, facilities, legal research, support staff/paralegals, investigators, and access to forensic services and experts.²²⁰

Indigent defense and prosecution require “broadly similar skills” – familiarity with court procedures and practice, expert grasp of pertinent statutes and precedents, and skills in advocacy and negotiation.²²¹ Because the skill sets are, if not identical, at least equal, there is little abstract justification for large variances in pay between prosecutors and defenders.

Pay disparity can occur in many ways. It can be set at the point of initial hire and then intensify throughout the course of employment. For example, an entry-level prosecutor may earn a higher salary than an entry-level defender in the same area, and this disparity may persist even as both the prosecutor and defender gain experience and seniority in their offices.²²² It can also develop over time. Entry-level prosecutors and defenders may be hired at the same pay level, but if prosecutors receive larger raises or cost-of-living increases over time, or if top pay for defenders is capped at a lower amount, then the disparity can reveal itself as attorneys in both offices gain seniority.²²³

This structural disparity can have a long-term impact on a public defender office's ability to retain attorneys. While some people may be amenable to accepting a lower salary to be a public defender, public defender offices can struggle to retain experienced attorneys who receive salaries that are dwarfed by their prosecutor adversaries.²²⁴ Public defender salaries can even be so inadequate as to prompt defense attorneys into seeking secondary employment to pay their outstanding debts and living expenses.²²⁵

States and local governments have taken many paths to achieve greater pay parity between defenders and prosecutors. Some have chosen to pay both defenders and prosecutors using the same pay scale, thereby achieving full parity.²²⁶ Other governments have chosen to use commensurate starting salaries for entry-level defenders and prosecutors.²²⁷ Even others, like that in New Orleans, have decided to fund the public defender office at a set percentage of the District Attorney's office "equal to the proportion of criminal cases the public defenders estimate they handle in the city."²²⁸

Resource Parity

Governments should also consider the need for parity of resources between defenders and prosecutors. For indigent defense providers to deliver effective representation, they must have access to adequate support resources, which include independent investigators, social workers, paralegals, administrative staff, and expert witnesses.²²⁹ Effective representation may be impacted by non-personnel resources too, like access to technologies and physical facilities.²³⁰ It is an unfortunate but real possibility that the outcome of a criminal case may hinge on something as simple as a defender's ability to have access to necessary resources.²³¹

Support and non-personnel resources can benefit indigent defense providers in a variety of ways. The job of an independent investigator is to interview witnesses and collect physical evidence.²³² Because indigent defense attorneys may not have the time or ability to track down witnesses, travel to distant locations, or survey crime scenes, investigative staff can be critical in assisting defense attorneys gather the pertinent facts of any assigned case.²³³ One 2007 survey found that "40 percent of all county-based offices and 87 percent of small offices (those receiving less than 1,000 cases per year) employed no investigators whatsoever."²³⁴ In fact the survey showed that, "only 7 percent of county-based offices nationwide met the accepted professional guidelines for investigator-to-attorney ratio — a statistic that understates the scope of the problem given the widespread understaffing of attorneys."²³⁵

Defenders offices can also lack sufficient funds to hire social workers and paraprofessionals. Social workers can help indigent defense attorneys develop sentences and resolutions that reflect a client's treatment needs, like a rehabilitation plan.²³⁶ Sufficient paralegal and administrative staffing may prevent defense attorneys from being asked to devote their time

to clerical tasks instead of legal work, something that can impede the quality of their representation.²³⁷

There can also be a technology gap between prosecutor's offices and the public defender. Access to technology can assist defenders with important back-end functions like communication, legal research, and case management.²³⁸ But technology has also become increasingly central in presenting cases at trial and appeal.

National standards recommend resource parity between defenders and prosecutors, which would include equal access to investigators, social workers, paralegals, administrative staff, expert witnesses, technologies, facilities, and forensic services.²³⁹ Prosecutors typically have access to a wealth of government resources, including police investigations, forensic labs, and employees capable of testifying as expert witnesses.²⁴⁰ These government resources can be, and frequently are, directed toward conducting follow-up investigations that can help strengthen a prosecutor's case.²⁴¹ Defenders, meanwhile, may not have access to these types of resources with the same ease as prosecutors, and may even be required to demonstrate a need for them to a court.²⁴²

One important caveat with respect to parity is that defenders and prosecutors may not necessarily work on the same types of cases, nor may they necessarily perform comparable work on each case.²⁴³ Prosecutors may, for example, be expected to handle cases where defendants choose to represent themselves, or where they are represented by private attorneys not subject to the structures and potential limitations of indigent defense providers.²⁴⁴ Outside of handling cases, prosecutors may devote their time to deciding whether to decline to pursue charges or divert a particular matter from the criminal legal system before it has an opportunity to come before a defense attorney.²⁴⁵ Prosecutors may need to have resources available for providing support to crime victims, something that has no real analogue in indigent defense providers.²⁴⁶ In addition, in Montgomery County the Detectives Bureau – an arm of law enforcement that assists in the investigation and prosecution of cases – is part of the District Attorney's Office.²⁴⁷ At the same time, public defenders' client-facing role often imposes additional burdens on them – in terms of both resources and time – not imposed on district attorneys.

States and local governments can create meaningful parity by requiring that indigent defense providers receive funding equivalent to a certain percentage of that budgeted for prosecutor's offices.²⁴⁸ Alternatively, local governments can simply budget for the hiring of more support staff and fund additional resources for defenders.²⁴⁹

Other Funding Considerations

There are other important funding considerations relevant to *Gideon*'s constitutional mandate to provide indigent defense services. In *Douglas v. California*, the Supreme Court recognized that criminal defendants have a constitutional right to effective appellate counsel on their first appeals as of right.²⁵⁰ Funding of indigent defense services must thus necessarily cover both trial and appellate level services.

Some states employ different systems to address their obligations for trial level representation and appellate level representation.²⁵¹ Any number of permutations are possible. States that use a statewide funding model may use general state fund appropriations for both indigent trial-level services and indigent appellate-level services statewide.²⁵² State or local governments that use a public defender system for trial-level services may use a contract system for appellate representation.²⁵³ States that use a hybrid funding model may also utilize both state and local government contributions for indigent appellate-level services.²⁵⁴ Another option, regardless of the funding model utilized for indigent trial-level services, is for a state to exclusively allocate state funding for indigent appellate-level services.²⁵⁵ As an example, in New Jersey the state oversees and funds felony and delinquency cases, while the counties oversee and fund misdemeanor cases.²⁵⁶

The Landscape in Montgomery County

Montgomery County currently employs a public defender model for the representation of indigent defendants. Conflict counsel are available when the Defender is unable to handle a particular case, as in the instance of codefendant prosecutions.

The Office of the Public Defender is fully funded by Montgomery County through an annual appropriation from the County Commission. As discussed in this Report's "Background" section, the amount of funding granted to the office has steadily increased over the last decade and is on track to continue to increase in the upcoming budget cycle. The continued commitment to funding the Office has allowed the Office to hire additional attorneys and support staff (including investigators and social workers); acquire new technology; and restructure certain practices within the offices, such as creating a Chief of Pretrial Services and Chief of Mental Health position.

Both the Office and the Commission have taken also steps to investigate the question of pay parity. In 2018, the Office completed a salary study to determine whether public defender salaries in the county were competitive with district attorney salaries in the county.²⁵⁷ The study also compared Montgomery County public defender salaries with salaries in other counties. This work resulted in pay increases for employees.²⁵⁸ However, there is still an apparent disparity between the funding levels allocated to the District Attorney's Office and the Public Defender Office. (Whether the disparity is justified based on differences in workload, as noted above, requires further study.)

In our interviews with current employees, we received almost universal feedback that additional funding would provide the support necessary for their role in the justice system. Some employees stated that additional funding is needed for training, some stated that the employees deserve to be paid more, and others stated that more funding should be put toward use of experts.²⁵⁹ Some employees expressed concern that public defender salaries are not on par with district attorney salaries beyond the entry-level attorney positions, and felt that there was a lack of financial incentive for defense attorneys to stay with the Office long-term.²⁶⁰ Some supervisory attorneys complained they earn considerably less than their District Attorney's Office counterparts.²⁶¹

Attorneys from the Juvenile Division were particularly concerned about how funding inadequacies have impacted representation. The two units in that division are currently handling over 700 cases, allocated among seven attorneys (including the chiefs of each of the two units). Juvenile representation presents unique funding needs. Added resources (expense and time) are required to visit the many clients placed outside the county; and the timespan of juvenile representations – many of which, unlike criminal cases, extend years beyond the adjudication stage – imposes an increased per-case time burden. Juvenile Division attorneys reported that they struggle to meet national standards of adequate juvenile representation (for instance, they are unable to see clients placed outside the county), and case burdens have impacted them personally and professionally as well (for instance, some attorneys were unable to take full vacation time this past holiday season because of workload concerns, and others reported struggling to find time to fulfill CLE requirements).

No attorneys expressed concerns about being funded for auxiliary services such as expert witnesses or access to specialized technology. (Attorneys in the juvenile division have a need, however, for additional permanent social work staff.) The process for receiving funds for auxiliary

services is internal to the Office; any attorney making such a request does so to the Chief Defender, who has the authority to approve the requests without consultation with the judiciary or the executive.

Conclusion

Montgomery County has taken great steps to fund the Office of the Public Defender at a level that allows the Office to provide quality indigent defense representation throughout the county. The County is aware of, and has been responsive to, issues of parity regarding both pay and resources. Nevertheless, apparent disparities in funding as between the defender's office and the district attorney's office warrant continued attention. In addition, the particular demands of juvenile representation demand increased attention to Juvenile Division funding.

LITIGATION AND RISK MITIGATION

In the last decade, public defender systems throughout the nation have faced civil lawsuits alleging that their practices violate the constitutional rights of their clients under the Sixth and Fourteenth Amendments. The general aim of these lawsuits is to reform practices within public defender systems that client advocates claim fall below the minimum standards for adequate representation; the specific aim is often to force state and local governments to allocate additional funding to those systems.

Litigation Overview

In recent years, lawsuits have been brought in both federal and state courts raising systemic challenges to public defender offices. The essence of the claims has been that the offices failed to provide constitutionally adequate representation.²⁶²

In *Bender v. Washington* (2019), a dozen named plaintiffs who had been represented in criminal proceedings by the Wisconsin State Public Defender's Office alleged the State had violated their rights by, among other things, not providing adequate training and compensation to defense attorneys.²⁶³ Plaintiffs requested a declaratory judgment that their rights had been violated, monetary damages, and several forms of injunctive relief.

Because of the procedural posture of the case, the court did not make factual findings regarding the practices of the public defender office; however, it did present a litany of alleged failings, including structural problems in the system which sometimes left defendants unrepresented during parts of their proceeding. The court highlighted allegations that some PDs were "not provided adequate training and mentorship," and that low compensation to appointed counsel limited "counsel's ability to engage in discovery, fact investigation, expert discovery, and trial preparation."

State and local governments often respond to federal suits alleging constitutional violations arising from the failure to provide adequate indigent representation by imploring the courts to invoke the *Younger* abstention doctrine. In *Younger v. Harris*, the Supreme Court held that federal courts should not enjoin state criminal proceedings, except in cases involving irreparable injury.²⁶⁴ The idea of abstention is grounded in the principles of federalism and based on the notion that

federal courts should not normally interfere with state courts, and that offering injunctive relief in these cases would necessarily interfere with ongoing and future criminal prosecutions.²⁶⁵

Predictably, the court in *Bender* based its dismissal of the case on *Younger* abstention grounds. But in justifying its decision, the court in *Bender* emphasized that “judicial intervention into the... public defender system would be particularly imprudent given the state’s current and active efforts to reform the system.”²⁶⁶ It then proceeded to detail the ways in which the State of Wisconsin had already begun actively engaging in reforming and improving its public defender system. These already initiated efforts at reform were unmistakably a consideration in the court’s determination that dismissal would be appropriate.

In *Yarls v. Bunton* (2017), plaintiffs claimed the Orleans Public Defender Office (which covers New Orleans, Louisiana) violated their rights through the practice of placing defendants on a wait-list for representation when the office was overburdened with cases.²⁶⁷ The plaintiffs in *Yarls* requested both declaratory and injunctive relief, under which the court would “monitor and enforce compliance” with reporting obligations regarding wait-listed defendants.

Yarls was eventually deemed “moot” because the court found that the state had taken significant steps to remedy the alleged deficiencies.²⁶⁸ In other words, Louisiana solved both the problem of admittedly violating defendants’ rights, and the problem of responding to ongoing litigation, by simply taking steps to improve their provision of indigent services.

The theories of relief embodied in *Bender* and *Yarls* are relatively recent and novel; courts are therefore still wrestling with properly applying abstention doctrine to these cases. But even assuming that abstention doctrine was correctly applied in *Bender* and *Yarls*, plaintiffs in future cases could avoid abstention-based dismissals simply by framing their claims as seeking only a declaratory judgment and monetary relief (as opposed to injunctive relief).²⁶⁹

While *Bender* and *Yarls* involved claims under the federal constitution, plaintiffs can and have brought claims under state constitutions as well. In *Kuren v. Lucerne County* (2016), plaintiffs who had been indigent criminal defendants brought a class action lawsuit against Pennsylvania’s Lucerne County, alleging that the county’s inadequate funding of its public defender office deprived defendants of right to counsel.²⁷⁰ Relying on information produced by the Chief Public Defender, plaintiffs alleged that the public defender office had the following deficiencies: caseloads for attorneys exceeded national standards, and there were not enough attorneys; the office lacked sufficient support staff (including social workers, paralegals, assistants, clerical

workers); untrained trial attorneys were being made to litigate appeals; the facilities were unsuitable for their purposes; and the office has “inadequate information technology.”²⁷¹ Plaintiffs alleged a violation of Article I, Section 9 of the Pennsylvania Constitution; and sought a writ of mandamus and injunctive relief.²⁷²

While denying plaintiffs the writ of mandamus, the *Kuren* court held that a cause of action exists for “defendants to allege prospective, systemic violations of the right to counsel due to underfunding, and to seek and obtain an injunction forcing a county to provide adequate funding to a public defender's office.”²⁷³ Notably, the U.S. Department of Justice, which filed an amicus brief in *Kuren*, also took the position (at that time) that “a civil claim for constructive denial of counsel is cognizable under the Sixth Amendment,” and that such a claim is “both legitimate and rooted in U.S. Supreme Court case law.”²⁷⁴

State and local governments can take several lessons from recent cases alleging systemic deprivations of the right to adequate assistance of indigent defense counsel: *first*, plaintiffs in Pennsylvania likely have a cognizable cause of action in state court for both current and prospective violations of the right to counsel; *second*, plaintiffs may have a cause of action for declaratory and monetary relief in federal court for current violations; *third*, public defender systems can effectively forestall such claims if they identify deficiencies early and endeavor to correct them; and *fourth*, courts take a public defender office’s improvement efforts into consideration — even if those efforts do not completely remedy the deficiency — when considering how to adjudicate these claims.

Risk Mitigation

State and local governments should contemplate what systems, policies, and practices they can put into effect in their public defender offices to reduce the risk of becoming subject to litigation. In the face of potential litigation, county governments can point to systems that they have put in place to ensure that indigent defendants are receiving competent representation, both individually and systemically.

Examining the cases above reveals several areas where public defender offices may be vulnerable to scrutiny. In this Report, we will focus on the following areas: caseload management; attorney training; attorney supervision; structure of attorney representation; and compliance with national public defense standards. While these issues all implicate adequacy of funding, as

discussed earlier in this section, they can also be examined through the lens of internal office structures and policies.

Caseload Management

To ensure optimal attorney performance, the caseloads of defense attorneys should be effectively managed and kept to reasonable levels. An attorney's caseload is defined as all cases that they are expected to handle in a year,²⁷⁵ and should factor in both the number of cases and their complexity.²⁷⁶ Indigent defense attorneys also have duties that extend beyond their caseloads.²⁷⁷ An attorney's workload additionally factors in duties like performing administrative tasks, attending training, or fulfilling supervisory responsibilities.²⁷⁸ As the American prison population has "grown more than tenfold" since *Gideon*, both the caseloads and workloads of indigent defense attorneys have also dramatically increased.²⁷⁹

An attorney's caseload and workload must be controlled to ensure that they can deliver quality representation for their clients.²⁸⁰ Caseloads may be classified as excessive when they reach the level where they may be expected to materially interfere with the attorney's ability to provide assistance to existing clients.²⁸¹ When attorneys have excessive caseloads, they may be forced to prioritize certain clients over others and may be prevented from performing essential tasks like conducting interviews, requesting support services, or adequately preparing for hearings and trials.²⁸² The ABA states that an attorney's caseload should never be allowed to become so large as to interfere with their ability to render quality representation.²⁸³ The NAPD counsels that defense attorneys have reasonable workloads that enable them to provide competent and effective assistance of counsel.²⁸⁴ Standards set by the ABA and National Association of Counsel for Children also require that workloads be reasonable enough so that attorneys can fulfill their many professional responsibilities in representing children.²⁸⁵

Caseload maximums can be used to ensure that public defenders can provide optimal representation to all clients.²⁸⁶ Caseload maximums can guarantee that defense attorneys have the ability to properly develop relationships with their clients, which can allow clients to participate more fully in their cases.²⁸⁷ Maximums can also afford defense attorneys more time to conduct comprehensive investigations of their cases, thereby improving their ability to prepare for trial and resolve cases in an ideal manner.²⁸⁸ This system also removes some of the pressure that attorneys may feel to resolve cases expediently.²⁸⁹

In 1973, the U.S. Department of Justice’s National Advisory Commission on Criminal Justice Standards and Goals (NAC) established caseload maximum standards, recommending that even under the best conditions, single defense attorney caseloads should not exceed 150 felonies per year, 400 misdemeanors per year, or 200 juvenile cases per year.²⁹⁰ Nearly forty years after their establishment, many believe the NAC standards to be too high and outdated, principally because they were never empirically based²⁹¹ and were established during a time when criminal cases “were a lot less complex.”²⁹² An indigent defense attorney would, on average, need to dedicate a year and a half’s worth of hours to complete a single year worth of cases under the NAC standards.²⁹³

Some governing bodies have chosen to adopt the NAC standards or other similarly objective standards to define caseload maximums.²⁹⁴ Others have opted to develop a weighted caseload formula, based on the number of cases disposed each year, the average amount of time required to handle cases over the life of the case, and the amount of time each attorney has available for case-related work in a single year.²⁹⁵ Still other, like Michigan, have decided to take a hybrid approach — imposing objective standards as an interim measure, while conducting a weighed caseload study.²⁹⁶

Still, many public defender offices effectively have no caseload control at all. For example, “a 2009 report found that defenders in New Orleans Parish were handling the equivalent of 19,000 misdemeanor cases per attorney annually. That means an average of about seven minutes per case.”²⁹⁷ In cities like “Chicago, Miami, and Atlanta, defenders had more than 2,000 misdemeanor cases a year,” which still far exceeded the recommended maximum.²⁹⁸

A best practice is for a defender office to monitor and document attorney caseload and periodically have it reviewed to ensure that it permits competent representation and complies with national standards.

Sufficiency of Training

Initial training and ongoing education are crucial to ensuring that defense attorneys are capable of providing quality representation for their clients.²⁹⁹ Law school “marks the beginning” of an attorney’s professional education, with little practical training or specialization offered.³⁰⁰ Public defenders are thus expected to receive criminal defense-specific training while “on-the-job” and through continuing legal education.³⁰¹ Both types of training are important to the effective

delivery of indigent defense services, as the practice of criminal law is a “complex field necessitating continuous and comprehensive training.”³⁰² A robust training program can provide both initial exposure to criminal law and procedure as well regular updates to keep defense attorneys current on both the law and new developments in criminal practice.³⁰³

The Sixth and Ninth ABA Principles discuss the training of lawyers in public defense systems, which is integral to the culture of any public defender office. The Sixth ABA Principle requires public defenders to be adequately trained for the complexity of the cases they are handling.³⁰⁴ The Ninth ABA Principle states that public defenders should be provided with (and required to attend) mandatory continuing legal training.³⁰⁵ Public defense practitioners (including both attorney and non-attorney staff) should have “systematic and comprehensive training” in their area of practice that is “at least equal” to what is received by prosecutors.³⁰⁶

States and local governments may dedicate a portion of their indigent defense funding toward providing effective training, professional development, and continuing education to defense attorneys and other staff.³⁰⁷ Training may be delivered statewide or at a local level; it can also be internal to the organization or provided externally. Defense attorneys may also choose to create an educational and resource sharing forum to fill any gaps in available training.³⁰⁸ Providing mandatory entry-level and continuing training fosters an “atmosphere of learning and innovation,” helps disperse the flow of information throughout a public defender office, and gives senior attorneys an opportunity to share their wisdom and experience with more junior attorneys.³⁰⁹ Training should also attend to the particular demands of specialized practices. For instance, attorneys in the juvenile division must be familiar with the latest literature on social science and behavioral science, as well as the latest evidence-based research on effective interventions for children and families.³¹⁰

Attorney Supervision

To ensure that attorneys are providing competent representation, all attorneys in a public defender office should be supervised and periodically provided a performance evaluation. Supervision and accountability are “essential to the successful functioning” of any job, but may be especially critical to public defenders, as such supervision can inform defense attorneys about whether their job performance meets professional expectations and standards.³¹¹

Under MPC Rule 5.1, lawyers in managerial or supervisory positions must make “reasonable efforts” to ensure their organization has measures in effect that would reasonably assure that all lawyers in the organization conform to the ethical rules of their jurisdiction.³¹² A supervising attorney can be held responsible for another lawyer’s ethical violation if the supervisor knows of the conduct “at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.”³¹³ Under Rule 5.1, public defense organizations must have some safeguards or systems in place to ensure their attorneys are meeting their ethical obligations under the law.

Public defender offices may choose to implement a supervision system that allows for the systematic review of the quality and efficiency of their indigent defense providers.³¹⁴ These reviews should be based on practice standards — provided to all attorneys — that prescribe the basic duties of attorneys at various stages of individual cases.³¹⁵

Supervision can also include the continuous monitoring of caseloads.³¹⁶ It is only through such monitoring that a supervisor can even begin to determine whether an attorney’s workload is appropriate or excessive, allowing them to take any steps necessary to assist that attorney.³¹⁷ These steps may include transferring non-representational duties to another attorneys, transferring cases to other attorneys, or providing additional resources and support.³¹⁸

Public defender offices should also have a case management system, or some other method that allows the office to track information about client progress, case dispositions, and time spent during representation.³¹⁹ Having such a system will facilitate supervisors’ and management’s ability to provide regular evaluations of all defense attorneys and support staff.³²⁰

Supervisory capacity can be compromised when supervising attorneys have heavy individual caseloads. For example, a defender in a Florida office “noted that, officially, there were two senior attorneys assigned to supervise the approximately 30 misdemeanor attorneys in the office. However, the supervising attorneys had active felony caseloads. If a misdemeanor lawyer wanted assistance, he or she had to seek out a senior attorney and ask for assistance.”³²¹ Similarly, in an office in Montana, a chief public defender “carrie[d] the largest case load in her office, which preclude[d] her from providing any meaningful supervision to subordinates.”³²² Having a caseload of this size prevented this supervisor from “conducting in-court observations, reviewing case files, discussing theories of the case, directing training, and monitoring the overall work of the lawyers.”³²³ For this reason, the caseloads of supervising attorneys should be set in a way that

recognizes that these attorneys also benefit their offices by dedicating ample time to supervisory duties.

Many of the practices described in this section may be occurring informally in public defender offices, even when there are no formal policies or mechanisms guiding the practice. However, codifying these practices can create an office culture that has a “clear vision” and a “shared investment” in improving the office-wide systems with an eye toward ensuring a universally high quality of indigent representation.³²⁴

Structure of Client Representation

Public defender offices must decide how they will structure the provision of services to guarantee that (1) indigent defendants have the assistance of counsel at all constitutionally-mandated stages of a proceeding, and (2) public defenders are not being expected to perform tasks for which they do not have adequate training or experience.

An initial issue an office must determine is whether a particular assigned attorney will represent a client at only a certain stage of proceedings, or whether the same attorneys will represent their clients from pre-trial through appeal.³²⁵ The first approach, called *horizontal representation*, can save time and money for an indigent defense provider, but may come at the cost of establishing deeper attorney-client relationships.³²⁶ A relatively extreme example of horizontal representation could once be seen in Riverside, California, where, “at a minimum, [a] client received representation from three different lawyers, and if a lawyer were to be added at the first arraignment, there would be four lawyers,” involved at the trial level.³²⁷ After an organizational audit, the county changed this practice to create more continuity in the relationships between lawyer and client.³²⁸

The second approach, called *vertical representation*, may allow defenders to develop more client-centered advocacy by building trust and open communication between attorneys and clients. A 2007 report by the Bureau of Justice Statistics found that “nearly three-quarters of reporting state public defender programs had a written policy encouraging vertical representation.”³²⁹ Because vertical representation can help prevent serious errors and ineffective representation,³³⁰ that is the structure recommended by the ABA.³³¹

The following table illustrates representation practices by state, as of 2007³³²:

Table 5.

Program operating guidelines and representation practices used by state public defender programs, by state, 2007

State	Operating guidelines included a policy related to—				Type of felony, non-capital case representation provided by the majority of offices in the state		
	Attorney appointment within 24 hours of client detention	Matching attorney experience with— Case complexity	Types of cases handled	Attorney representation of client through all stages of proceedings	Vertical	Combination of vertical and horizontal	One attorney through arraignment, one for the duration of the case
Total	5	14	13	14	11	6	4
Alaska	/	/	/	/	/	/	/
Arkansas		X	X	X	X		
Colorado		X	X	X	X		
Connecticut		X		X			X
Delaware		X	X	X		X	
Hawaii		X	X	X			X
Iowa				X		X	
Kentucky	X	X	X	X	X		
Maryland		X	X			X	
Massachusetts	X	X	X	X	X		
Minnesota						X	
Missouri	/	/	/	/		X	
Montana		X	X	X		X	
New Hampshire	X	X	X	X	X		
New Jersey	X	X	X	X	X		
New Mexico	/	/	/	/			X
North Dakota	X			X	X		
Rhode Island							X
Vermont		X	X		X		
Virginia		X	X	X	X		
Wisconsin		X	X	X	X		
Wyoming					X		

/Data not reported

In addition to the approach to representation chosen by an office, public defender organizations also have to decide how to prioritize cases and matters. Every high-volume public defender office should determine how it will instruct attorneys to prioritize matters in their open cases. Some providers may ask defense attorneys to “triage” decisions about which client matters they devote their attention to first, which client matters they give their attention at all, and everything in between.³³³

Resource-rationing guidelines for indigent defense services categorize these triage decisions into three forms.³³⁴ The first form, “messenger representation,” asks defense attorneys to convey plea offers and other legal facts to their indigent defendants without also offering any analysis or counseling beyond that communication.³³⁵ The second form, “pattern representation,” asks defense attorneys to quickly categorize cases “legally, factually, strategically, and predictively” by finding recurring patterns from their training and prior experiences.³³⁶ The third form, “focus representation,” encourages defense attorneys to think about “pushing the rules” and “creating deeper narratives” to improve how they advocate for individual clients.³³⁷ Regardless of the form of “triage” that an office recommends, it should provide clear guidance to attorneys around those expectations of client representation.

There are also different basic models for how public defenders can choose to represent clients. The first model – the traditional model – is “lawyer-driven and case-oriented,” with defense attorneys focused principally on removing or reducing the imminent threat of incarceration for their indigent clients.³³⁸ This traditional model reflects a widespread reliance on both messenger and pattern client representation.

The second model – the holistic model – is “client-focused, interdisciplinary, and community-based,” embracing a system where defense attorneys are given the space to listen to and attempt to address the individual needs of their clients.³³⁹ The holistic model embraces the use of focus representation, which helps defense attorneys recognize the client’s authority, ability, and right to decide the direction of their case after they have been advised of all available options for proceeding.³⁴⁰ This type of client-centered representation can also allow defense attorneys to address the impacts of any “underlying criminogenic factors” of a client’s case and ultimately enhance the lives of clients, reduce recidivism rates, and improve public safety.³⁴¹

There are an increasing number of public defender offices that have been able to implement a more holistic approach. One example can be seen in the Knox County Public Defender’s Community Law Office (CLO), located in Knoxville, Tennessee.³⁴² “The office initially operated from 1990 to 2003 under a traditional representation model until the district public defender recognized that the high incidence of recidivism called for a different approach.”³⁴³ The revised mission of the CLO is “to provide holistic, client-centered legal representation to clients, advocate for a fair and just process within the criminal justice system, increase self-sufficiency and integration of clients into the community, and positively affect the quality of life in Knox County.”³⁴⁴

A very well-known example of holistic representation can be found at the Bronx Defenders in New York.³⁴⁵ “Robin Steinberg, the founder of the Bronx Defenders, defined four pillars of holistic defense: (1) seamless access to legal and nonlegal services that meet client needs; (2) dynamic, interdisciplinary communication; (3) advocates with an interdisciplinary skill set; and (4) a robust understanding of, and connection to, the community served.”³⁴⁶ These principles became known to be “foundational principles of the holistic defense model”.³⁴⁷ Not only have holistic approaches proven to be beneficial for clients, but there is also evidence of this model being financially advantageous as well. “Informal evaluations of the Rhode Island Public Defender

Office's Defender Community Advocacy Program (DCAP) also concluded that the program saved taxpayers millions of dollars in prison costs."³⁴⁸

Regardless of the approach that a public defender office favors, it is important for office management to make expectations clear to all attorneys and paraprofessionals on staff. A consistent and transparent office culture cannot be created until one is clearly articulated.

Compliance with National Standards

Adopting and complying with national standards for public defense is another important component of risk management. As seen throughout this Report, national public defense standards provide guidance to help shape an "effective, efficient, high quality, ethical, conflict-free" indigent defense system.³⁴⁹ Research has shown that "compliance with nationally recognized standards for the delivery of indigent defense services" is one of two primary factors that determine the quality of indigent services, along with the "sufficiency of funding."³⁵⁰

The ABA's *Ten Principles* have been widely accepted throughout the country because they serve as an "excellent blueprint" for fashioning an effective indigent defense system.³⁵¹ The Supreme Court has considered these principles, along with other ABA standards, to be "guides to determining what is reasonable" for indigent defense providers.³⁵² These Principles are designed to not only guide defense attorneys, but to assist criminal justice policymakers in improving defense services, potentially by adopting their own standards for indigent defense.³⁵³

While the ABA's *Ten Principles* are obviously not binding,³⁵⁴ local governments may nonetheless choose to formally adopt them directly as guiding principles for their indigent defense providers or use them as a template for their own local standards.³⁵⁵ For example, New York's Indigent Defense Organization Oversight Committee adopted general requirements for all member defense providers.³⁵⁶ "The principle underlying the drafting of these 'General Requirements' is that defense organizations must provide quality representation to indigent criminal defendants."³⁵⁷ In order to determine the standards for quality representation, the committee looked to "the American Bar Association (ABA) and the National Legal Aid and Defender Association (NLADA), and similar specific guidelines adopted in other jurisdictions."³⁵⁸

States and local governments may choose to incentivize compliance with standards in a variety of ways.³⁵⁹ Standards may be directly linked to funding support, such that compliance results in reimbursement for some or all of the costs of providing indigent defense.³⁶⁰ For example,

“Indiana's indigent defense standards are written at the state level, by an independent commission [...]. Counties that choose to comply... are eligible to have a portion of their indigent defense costs reimbursed by the state.”³⁶¹

States can also choose to promulgate statewide public defense standards. In Idaho, the State Public Defense Commission (ISPDC) “is authorized to promulgate standards related to attorney performance, attorney workload, and attorney supervision, among others.”³⁶² All counties in Idaho are required to comply with standards, regardless of whether they receive state financial assistance.³⁶³

Standards can also be incorporated into contracts for indigent defense services, allowing for “more finely and frequently calibrated” control over attorney caseloads.³⁶⁴ An example of this can be seen in Oregon which incorporates standards into its state contracts with local service providers.³⁶⁵

Finally, state and local governments may use an Oversight Board to promulgate and enforce standards, if one exists in their particular jurisdiction.³⁶⁶

Implementation and Monitoring

Requesting that a public defender office adopt internal office policies cannot alone shape how public defense systems mitigate risk; instead, there must be some mechanism established to monitor compliance. There are at least four distinct ways that local governments have attempted to implement and monitor standards for public defense:³⁶⁷

- 1) **Voluntary Standards**: Standards that are purely voluntary depend on the good will of funding and oversight bodies, and are more likely to bring about incremental reforms instead of “broad-scale systemic change.”³⁶⁸
- 2) **Funding Conditioned Upon Standards Compliance**: Some jurisdictions make the degree of their funding support contingent upon compliance with national public defense standards.³⁶⁹
- 3) **Statutory Statewide Standards**: Statewide public defense systems (as opposed to county funded systems like Pennsylvania) are generally more likely to adopt national standards, and are “significantly more likely to adopt standards in the areas of independence, training and attorney performance.”³⁷⁰

- 4) Standards as Contract Requirements: Standards are directly incorporated into contracts for public defense services.³⁷¹

The statutory codification of standards produces the “highest degree of accountability and compliance with basic agency-management standards such as workload, performance, training, procedures and service quality.”³⁷² The implementation of national standards in public defense systems is also highly dependent on funding structure of the system, because “virtually all standards-driven public defense systems are subject to the uncertainties of legislative appropriations.”³⁷³

An Oversight Board may also be given the authority to promulgate, oversee, or enforce standards.³⁷⁴ Oversight Boards can be granted authority over any number of administrative issues related the public defender; for instance, drafting performance standards or mandating the availability of sufficient support services.³⁷⁵ An Oversight Board may additionally be empowered to monitor or control the caseloads of public defenders, or to collect data to monitor compliance with any imposed guidelines.³⁷⁶

For example, in 2014, Idaho created the Idaho State Public Defense Commission (ISPDC), which it “authorized to promulgate standards related to attorney performance, attorney workload, and attorney supervision, among others.”³⁷⁷ In Idaho, all counties are required to comply with these standards, regardless of whether they receive state financial assistance.³⁷⁸ The Sixth Amendment Center reports that if a county in Idaho

*“willfully and materially” fails to comply with ISPDC standards, and if the ISPDC and county are unable to resolve the issue through mediation, the ISPDC is authorized to step in and remedy the specific deficiencies, including taking over all services, and charge the county for the cost.*³⁷⁹

Texas law also gives its Oversight Board, the Texas Indigent Defense Commission, the power to “develop policies & standards for indigent defense services” and to “develop a plan for counties to report indigent defense information.”³⁸⁰

The Landscape in Montgomery County

In Montgomery County, attorneys are divided into several “trial teams” that are assigned to a particular courtroom.³⁸¹ Each has a leader who is responsible for overseeing the team and assigning each team member’s cases as well as maintaining their own caseloads.³⁸² This leaves the team leaders with discretion in assigning cases, and there is no formalized approach to assigning cases to staff attorneys.³⁸³ The teams are currently not formed according to different specializations or types of offenses, although some individual attorneys in the Office have developed a specialization and so often represent clients in those areas.³⁸⁴ Finally, the Chief Public Defenders also have their own caseloads.³⁸⁵

Staff attorneys do not receive formal performance reviews, nor do they receive any document outlining performance expectations. While team leaders often meet with their own teams to discuss current cases, there are no set periodic meetings among team leaders or among team leaders and chiefs.

The office has not been consistent in the use of a case management system, leaving staff attorneys with the responsibility to create systems to manage their own caseloads. Team leaders periodically review case files with attorneys under their supervision, but there is no automated way for supervising attorneys to “check in” on cases electronically.

The employees we interviewed voiced mixed feelings on the topic of adequate training. Some employees felt they had not received any formal onboarding training.³⁸⁶ Many noted that the offering of training had improved over the years, but others still felt that the ongoing training offered was not sufficient.³⁸⁷ It was also expressed that investigators receive very little relevant training to their positions.³⁸⁸ Finally, some employees indicated that increased funding is needed to form a more robust training program.³⁸⁹

The Office has very few formalized documents or policies for attorneys. This includes the absence of written policies regarding the prioritizing of cases or matters; the form of representation preferred by the Office; or the Office’s position on attorneys pursuing systemic reforms in addition to performing direct client representation.³⁹⁰

The Pennsylvania Public Defense Act does not codify any minimum standards that county public defender offices are required to meet.³⁹¹ Montgomery County has not yet formally adopted the ABA, NAPD, or other national standards pertaining to public defense.³⁹² Moreover,

Montgomery County does not have any feedback mechanisms in place to raise an alert to any systemic deficiencies interfering with the quality of defense representation provided.³⁹³

Conclusion

State and local governments risk being on the receiving end of lawsuits implicating the effectiveness of their indigent defense systems. Responding to these suits requires the government to allocate significant time and financial resources which could otherwise be directed toward other municipal services or functions.

The most effective way to mitigate the risk of a lawsuit is to put systems in place to make sure that public defender offices are implementing internal policies that are in line with national advisory standards. When such policies are instituted and standards are adopted, both clients and the community will observe a public defender system that is independent, professional, and well-managed, conveying to them that the jurisdiction values the public defense function and instilling increased confidence in the system. The local government will benefit both by having provided exceptional services to their constituents, and also by having mitigated the risk of legal liability.

RECOMMENDATIONS

We believe that the Montgomery County's Office of the Public Defender consistently strives to provide high-quality representation to its clients. Attorneys in the office have shown an admirable level of dedication to the profession and have made great efforts to ensure that the office provides exceptional services to their clients and the community. Furthermore, the Office's current leadership has risen to the challenge of taking on new roles during a pandemic that has made serving clients considerably more difficult.

The Montgomery County Board of Commissioners has supported the Office's efforts to ensure the sustained functioning of a first-rate public defender system. The Commission has significantly increased funding to the Office over the past several budget cycles, demonstrating its commitment to indigent defense through its steady investment.³⁹⁴

This funding has made it possible for the Office to hire additional attorneys, paralegals, and support staff members in the juvenile dependency and delinquency units — reflecting an overall increase from fifty-one full- and part-time employees in 2011 to sixty-six all full-time employees at the end of 2020.³⁹⁵ In addition to hiring additional staff, the increased funding has also made it possible for the Office to make impressive strides in creating new positions and units for the benefit of its clients.

In the last several years, the Office has also been able to double its number of investigators, and hire two staff members who are dedicated to interviewing persons newly admitted to the Montgomery County Correctional Facility within two to three business days of admission.³⁹⁶ It also expanded the Social Services Unit, which now consists of social services advocates and a policy director.³⁹⁷ It has also created new dedicated attorney positions in specialized practice areas and problem-solving courts.

Both the Office and the Commission have also taken steps to investigate the question of pay parity. In 2018, the Office completed a salary study to determine whether public defender salaries in the county were competitive with district attorney salaries in the county.³⁹⁸ The study

also compared Montgomery County public defender salaries with salaries in other counties. This work resulted in pay increases for employees.³⁹⁹

There are, of course, always improvements that can be made to any organization. The recommendations herein reflect our view of adjustments that could be made to the Office – both internally and externally – to clarify the relationship of the Office with the judicial and executive branches of county government, to improve the work environment for attorneys, and to mitigate any exposure to risk arising from potential litigation.

ENSURING INDEPENDENCE

We Recommend the Creation of an Independent Oversight Board to Advise and Guide the County's Public Defender Office

Currently, Montgomery County has no structural mechanism in place to ensure the Office of the Public Defender is independent from external influence. The Public Defense Act places the responsibility of public defense on county governments and, as such, the Montgomery County Board of Commissioners is responsible for appointing the Chief Public Defender.⁴⁰⁰ While we have no reason to believe that the appointment of the Chief Defender is a “political appointment” as such, the appointing structure (and, by extension, the structure for removing the Chief Defender) creates the risk of political influence or its appearance.

Public defender offices operate most efficiently when they have an optimal level of independence – both actual and perceived – from judicial and political influence. Achieving such independence can take many forms, but in light of the statutory constraints in Pennsylvania, the best approach is for Montgomery County to create an independent, nonpartisan Oversight Board, which can serve as a firewall between the Office and county government. In addition to ensuring that the Office is insulated from the executive, the creation of an oversight board will also relieve the Board of Commissioners from its duty as (informal or formal) monitor of the Office, thereby insulating the Commission from criticism regarding the actions of the Public Defender.⁴⁰¹

Over time, the mandate of the Oversight Board could be expanded to include additional functions such as serving as a liaison among the Public Defender Office, the political branches, and other stakeholders; monitoring office-wide compliance with national standards; and

supporting the provision of indigent defense services from attorneys who do not work for the Public Defender.⁴⁰²

Creation of the Oversight Board

Neither the Public Defender Act nor any other Pennsylvania law precludes the use of independent governing boards in agency operations. Indeed, the Board proposed by this Report is like many this county has already established to give advice to the Commissioners and guide county agencies.⁴⁰³ Therefore, the Board of Commissioners is authorized to form an Oversight Board to oversee the provision of indigent defense services in the county.

In establishing the Oversight Board, the Commission would need to set forth a mission statement and bylaws establishing the contours of the Oversight Board's authority. The Commission would also set the size of the Oversight Board and the term limits of board members.

While the Commission must initially be involved in the formation of the Oversight Board, it should not be responsible for the selection of board members. The Commission should delegate the responsibility of nominating and selecting board members to multiple appointing authorities so that no organization or "single branch of government has a majority of appointments" on the Oversight Board.⁴⁰⁴ The Commission may choose to consult with the Montgomery County Bar Association to determine the best organizations to nominate Oversight Board members.

Board Composition

The Oversight Board should be nonpartisan to remove potential political influence.⁴⁰⁵ For similar reasons, it should not include any current members of county government or political officeholders. To prevent any real or perceived conflicts of interest, there should be no active prosecutors or judges included in the membership; nor should there be current employees of the Defender's Office, current probation or parole officers, or current law enforcement or corrections employees.⁴⁰⁶

The Oversight Board should include a diverse group of people who are devoted to the continuous improvement of indigent defense representation.⁴⁰⁷ The majority of Board members should be attorneys licensed to practice in Montgomery County. The Oversight Board should also include other relevant public defense stakeholders, including representatives from local community organizations; people who have had past interactions with the criminal legal system and/or their family members; deans or academic professionals from area law schools; as well as

former public defenders who have had firsthand experience in the unique challenges of public defense.⁴⁰⁸

To ensure a continuous variety of representation and encourage new voices, Oversight Board members should have staggered term limits.⁴⁰⁹

We Recommend that Montgomery County delegate to the Oversight Board the nomination of candidates for Chief Public Defender.

The Oversight Board should play the central role in appointing the Chief Public Defender. While Pennsylvania’s legal framework requires the Board of Commissioners to appoint the Chief Public Defender, we recommend that the Commission delegate part of the selection process to the newly-created Oversight Board.⁴¹⁰ The Oversight Board, following its own internal selection processes – consistent with its bylaws and mission statement – would provide the Board of Commissioners with (1) a ranked list of candidates for Chief Defender, with the expectation that the Commission would appoint the highest ranked candidate absent exceptional circumstances; or (2) a slate of unranked candidates from which the Commission would make a final appointment. Under the unusual circumstance that the Commission rejected all proposed candidates, the Oversight Board would be tasked with the responsibility of providing a new list of candidates to the Commission within a set time.

The Oversight Board should also be consulted in any decision regarding the proposed removal of the Chief Defender. In addition to any other requirements currently in place, the Commission should be required to submit a detailed statement outlining just cause for termination to the Oversight Board and, before taking any termination action, permit the Board to weigh in on the decision.⁴¹¹

We Recommend that Montgomery County delegate to the Oversight Board the nomination of candidates for an ad hoc “Special Counsel”.

In addition, the Commission could delegate to the Board the selection of an ad hoc outside counsel to be available on the occasions the Defender’s Office may wish to consult with outside counsel unaffiliated with the County Solicitor’s Office. Under 16 Pa. C.S. § 904, County Commissioners may appoint a “special counsel” to “perform such duties in connection with the

legal affairs of the county as may be assigned by the county commissioners or the county solicitor.” The County could delegate to the Board part of the process for appointing a special outside counsel, utilizing the same nomination mechanism as we recommend for the process of appointing a Chief Defender.

Potential Additional Functions

Montgomery County currently has no oversight system in place to assist the office in implementing national public defense standards.⁴¹² The Oversight Board could fill that gap, providing public defenders with the support necessary to adopt such standards and monitor compliance. The Commission may choose to give the Oversight Board some control over funding (or “bonus” funding) in order to incentivize compliance with national standards for public defense.

As well, the Oversight Board could serve as a resource hub and informational clearinghouse for all attorneys in the county who have an indigent defense practice. This could help ensure that all attorneys representing indigent clients meet the same practice standards and provide the same high-level of representation that defendants receive from the Public Defender.

Finally, the Oversight Board could play a role in the Office’s budgeting process, as discussed in our recommendations regarding funding, below.

Timing Considerations

From employee feedback received at and following the public community meeting, it appears there is significant distrust among some Office employees regarding the process for the appointment of the current leaders of the Office, and that this distrust is negatively affecting the Office’s work environment, morale and internal cohesion. We therefore recommend that, upon constituting the new Oversight Board, the Commission initiate a formal search for a Chief Public Defender, a position that technically remains unfilled (the role is currently performed by two deputy co-chiefs). Such a search would not preclude consideration of nominating either of the current deputy co-chiefs for the position of Chief. Selecting Office leadership via the Oversight Board process we have described above would strengthen the Office’s leadership – whether filled by one of the current leaders, or a new leader – with the legitimacy that comes from a formalized, Board-run selection process.

We Recommend that the Public Defender's Office Hire a Dedicated Human Resources Professional

A dedicated human resources professional is an important internal structural contribution to the independence of the office, in that it will relieve the County from involvement in internal office issues. A human resources professional can also play a key role in disseminating internal office policies; monitoring compliance with workload limits; coordinating performance reviews; and organizing onboarding and ongoing training efforts. In these ways, a dedicated human resources professional is critical to effectuating some of the risk mitigation strategies we recommend below. We also recommend that the human resources professional create and disseminate a human resources policy that creates a clear reporting structure for HR complaints.

We Recommend that the Public Defender's Office Reassess its Use of the Courtroom-Based Assignment System

Courtroom-based case assignment can threaten to calcify courtroom roles, practices, and customs, in a way that may unintentionally limit an attorney's ability to zealously represent their client. In particular, a defense attorney may hesitate to take positions or actions that risk angering a judge before whom the attorney appears in all of their other cases. We therefore recommend the Office undertake an assessment of its assignment system, and consider alternatives including but not limited to shorter courtroom assignment terms, or assignment by subject specialization, seniority, professional development needs, or some combination of these or other approaches.

FUNDING CONSIDERATIONS

We Recommend That Montgomery County Continue to Increase Funding to the Office to Respond to the Needs of Indigent Defense Provision

Over the last decade, Montgomery County has shown a consistent and increasing investment in providing quality indigent defense.⁴¹³ We recommend that Montgomery County continue to increase funding to the Office of the Public Defender to respond to the needs of indigent defense provision. With continued and consistent increases in funding levels, the Office will be able to hire attorneys at a skill level sufficient to meet client needs and national standards for effective representation (a particularly dire need currently in the Juvenile Division); expand the

subject area specialties in which the Office has expertise; and continue to increase the Office's physical resources, an example of which can be seen in the Office's recent acquisition of dedicated audio-visual technology, which is increasingly becoming more crucial to defense work.

Continued increased funding will also allow the Office to increase its training budget so that the office can provide more comprehensive onboarding, initial, and continued training – for attorneys, paraprofessionals, and other staff – and develop more internal shared resources.

Dedicating money to help position Montgomery County public defenders to provide trainings to others can also be an investment in the Office's future. Trainings attended by outside attorneys can be used by the Office as a revenue stream, which can help defray the cost of sending staff to outside trainings and CLEs.⁴¹⁴ Training Montgomery County defenders on how to give trainings will provide a forum for defenders to share their expertise, boosting office morale and giving an opportunity to defenders to be recognized for their expertise in their areas of specialization throughout the state, and potentially nationwide.

Finally, increased funding will allow the Office to expand its practice in holistic client representation, consistent with the national principles, attorney ethical obligations, and the stated preferences of many attorneys within the Office.

We Recommend That Montgomery County Set a Goal to Achieve Pay and Resource Parity Between Defenders and Prosecutors

Because indigent defense and prosecution require “broadly similar skills,” significant disparities in pay between defenders and prosecutors should be scrutinized.⁴¹⁵ The County clearly appreciates this; in recent years, it has made strides to address the issue of pay parity by partaking in a salary study and instituting pay increases for all attorneys. In particular, it has committed to starting salary pay parity.

We recommend that the Board continue to address the issue of pay parity, perhaps annually, with the goal of achieving pay parity for middle and senior rank attorneys at the Office of the Public Defender. Current attorneys should receive pay increases based on clear, and clearly-communicated, promotion standards. Greater financial incentives and upward pay mobility are essential to acquire and retain attorneys long-term.

Resource parity remains a potential issue. As of 2020, the Montgomery County District Attorney's Office had a budget more than 300% higher than the budget of the Montgomery County

Office of the Public Defender. While there is not an exact match between the work performed by public defenders and prosecutors, this funding incongruence highlights the need for further study. We recommend the County undertake an assessment of these funding differentials, and come up with clear metrics for evaluating funding parity (for instance, metrics that incorporate workload and expenditure differentials between the two offices).

Finally, we recommend the County and Defender's Office utilize the Oversight Board in the budgeting process. We recommend the Board undertake an annual review of the Public Defender's budget, evaluating the Office's workload and resource needs, and advising both the Public Defender's leadership and the County on appropriate budgeting for the Office, as well as the allocation of funds across the Office's various divisions and units, and for specific needs.

LITIGATION AND RISK MITIGATION

We Recommend that the Office Create Internal Policy Documents Outlining Expectations, Promotion Standards, and Guidelines on Case Assignment

"Vision is an absolute prerequisite to any change in culture."⁴¹⁶ As such, it would be helpful for the Office to clearly set forward the vision and mission of the Office in a policy document that is distributed to all current employees and new hires. Ideally, a mission statement would explicitly include the adoption of both the ABA and NAPD principles, define the Office's mission regarding individual client representation, and outline the Office's position regarding systemic reforms and challenges.

While there appear to be many systems in place that influence how the Office is run, there are few internal documents or memos that memorialize how these systems work. We recommend that the Office create more internal documents so that they can formalize and standardize the procedures and systems that are already in place. These documents should address, among other topics, the criteria for prioritizing cases and matters; the preferred approach to client representation, the requirements for taking on systemic matters (i.e., non-individual client representation), reporting protocols for both HR and professional practice concerns; expectations around client communication; and workload guidelines.

We further recommend that the Montgomery County Board of Commissioners provide funding for the development of an internal case management system at the Public Defenders'

office. It would be helpful to both staff attorneys and supervisors to have a centralized database where attorneys can upload and find information about their cases, clients and assignments.⁴¹⁷ Currently, it appears that attorneys are largely left on their own to figure out how to prioritize assignments and deadlines, and a centralized internal information system could help them organize their assigned cases to meet their professional responsibilities.⁴¹⁸

We Recommend that Team Leaders Have Their Direct Caseloads Reduced in Order to Give Them More Time to Mentor and Support the Attorneys They Supervise

Currently, the expectation within the Office is that attorneys who have supervisory responsibilities will also carry full caseloads. Supervisors cannot be expected to do a full-time job litigating cases⁴¹⁹ (which are likely to be more complex based on their level of experience), only to be asked to do another full-time job of supervising junior attorneys. We recommend that the caseloads of supervising attorneys (whether team leaders or chiefs) be reduced to provide them with adequate time to dedicate to supervisory and related administrative duties.

Giving supervisors time to regularly meet with their subordinates and other staff members; regularly review attorney cases through the case management system; coordinate approaches at the supervisory level; and complete performance reviews will be of benefit to the entire office, but especially to newer and more junior attorneys. Placing an increased emphasis on supervision and communication is fundamental, especially during a time when employees are decentralized because of a global pandemic.

We further recommend that the Office hold regularly-scheduled, periodic office-wide meetings for all attorneys and staff⁴²⁰ where management can update the Office about general matters as well as any strategic measures the Office may be engaged in going forward. This should also be a forum for staff members to bring up any questions or concerns that they may have that they want to communicate with management as a group.

Lastly, we recommend that supervising attorneys should be selected based on performance and on “who best supports the new cultural values of the office,”⁴²¹ as opposed to who has the most seniority in the office. In furtherance of this, the Office should create and distribute performance and promotion standards.

“Getting staff to buy into the new office culture requires a conscious effort to change the priorities of the office by rewarding and encouraging new and different kinds of lawyering.”⁴²²

That is why we are also recommending that management begin sending out monthly emails that highlight client success stories and staff accomplishments. All staff in the office should have an opportunity to submit “success stories” for themselves or for their peers, because “the public acknowledgment of client-centered triumphs goes a long way toward setting the tone of the office, and it makes everyone feel good.”⁴²³

We recommend that Office standardize and increase training opportunities for both new and seasoned attorneys

We recommend that the Office consistently implement a one-week orientation for new staff members; require each new attorney to join the Office’s young lawyers group, which should frequently meet to give attorneys an opportunity to discuss cases, effective trial strategies, and techniques; host monthly brown bag lunches to facilitate brainstorming between new and experienced attorneys; and periodically require new attorneys to submit a case for review to a committee composed of “seasoned attorneys.” In addition, we recommend that the Office regularly circulate a list of both in-house and external CLE opportunities that are targeted both toward general skills and also specialized areas of practice. Finally, we recommend that the Office create an office-wide shared drive for training materials. Public defenders have a large advantage over solo practitioners in that they can rely on the collective office’s wealth of shared knowledge and resources. Instead of attorneys having to conduct their own research, or figure out on their own who to talk to when faced with a problem, we are recommending that the office pool their resources in a more streamlined and organized way. A shared drive would serve as an “educational and resource sharing forum to fill in any gaps in the training” attorneys already have and would be an invaluable resource for the office as a whole.⁴²⁴

We Recommend that Montgomery County and the Office of the Public Defender Formally Adopt the ABA and NAPD Standards

Neither Montgomery County nor the Office of the Public Defender itself has formally adopted either the ABA or NAPD standards relating to public defense, the ABA or NJDC standards relating to juvenile defense, or the ABA or NACC standards related to representation of dependent children.⁴²⁵ Compliance with nationally recognized standards is a proven way to provide quality

and ethical indigent defense representation.⁴²⁶ However, mechanisms must be in place to ensure that any adopted standards are being followed.

There are a variety of ways to introduce national standards into a public defense system. Standards can be adopted voluntarily and overseen by oversight bodies, such as a statewide or local Oversight Board.⁴²⁷ Standards may also be statutorily prescribed, an option that would require statewide legislative change.⁴²⁸ In addition, many governments condition funding on compliance with standards.⁴²⁹ While statutorily prescribed standards are proven to be the best way to enforce compliance with such standards,⁴³⁰ voluntary adoption of standards is the most realistically option for Montgomery County given Pennsylvania's legal landscape.

We therefore recommend that the County and the Office formally adopt the ABA and NAPD Principles, the NJDC Guiding Principles, and NACC's Recommendations to serve as the official guidance for all operations of the Office of the Public Defender. Because there is an absence of standards from the Commonwealth, these professionally accepted standards can provide clear guidance for a locality to implement an effective and independent public defense system.⁴³¹

However, mere adoption of standards is not enough—there must be a mechanism in place to enforce them. As discussed previously, we recommend that the newly created Oversight Board be responsible for monitoring compliance with these standards.

We present these recommendations not as criticism, but in the belief that they can be realistically implemented in a county-funded model. We believe that implementing these recommendations will not only benefit indigent defendants, but also improve the daily work lives of county government officials and the attorneys and staff at the Office of the Public Defender. Montgomery County has taken commendable steps so far to establish a quality public defense system and improve upon it. We provide these recommendations to further safeguard independence of the defense function; achieve adequate funding and resources needed to provide defense representation; and assist the Office in complying with nationally recognized defense standards and practices. With these recommendations, Montgomery County has the opportunity to establish a leading local indigent defense model.

CONCLUSION

Public defenders are critical to the guarantee of equal justice for all. They ensure that the poor and needy, the disenfranchised, the impaired and ill, all have access to the courts. A public defender office and its members are also critical voices and resources for system improvement. Our review of the Montgomery County Public Defender has shown that over the years the County Commissioners have provided important financial and administrative support for that Office, and that the Office has embraced professionalism, community outreach, aspects of holistic defense, and an awareness of the need for system reform.

This report was drafted in that context, but also with awareness of the need to find new structures and internal systems to assure Defender independence, support the County administration, and move beyond the friction that arose following the dismissal of the Office leadership in March 2020. The reforms proposed – most particularly the creation of an Oversight Board, the development of internal operating procedures, continued funding increases, use of a case management system and a computerized resource database, rethinking attorney assignments, and assigning a Human Resources professional to the Office – will permit the Defender to continue to improve its representation of indigent defendants, serve the County well, and reduce the risk of any legal challenges to the manner in which indigent defense representation is provided in Montgomery County.

We are also cognizant of the fact that this is a burden that should be that of the Commonwealth and not the county. Montgomery County oversees and funds all of the trial- and appellate-level indigent defense services in the county, with no assistance from the state government.⁴³² The Pennsylvania legislature has decided to displace all indigent defense responsibility, including funding and oversight, with the counties.⁴³³ For lack of better words, Montgomery County is “stuck” with the system that has been statutorily created.

Gideon’s mandate places public defense responsibility on the *state*.⁴³⁴ That public defense is a state responsibility, and therefore the state should be involved in both funding and oversight of the services provided, is well-recognized throughout the professional community.⁴³⁵ Therefore,

our final recommendation is that Montgomery County join the chorus of voices throughout the state advocating for Pennsylvania’s adoption of an official statewide model.

Housing indigent defense at the state level helps to ensure that there are no disparities in representation provided from county to county.⁴³⁶ The state would provide centralized administration to ensure “services are consistent in quality, efficiency, effectiveness, and that the same standards are applied in all subdivisions throughout the state.”⁴³⁷ Additionally, the state would take direct responsibility for complying with *Gideon* rather than relying on the counties to do so.

Moving to a statewide model would help insulate indigent defense operations from local political influence.⁴³⁸ This model would help alleviate the great financial burden of funding indigent defense operations. Further, shifting the responsibility from the county to the state would reduce the workloads of the Board of Commissioners and protect them from any criticism and legal action regarding public defense activities. While this is not possible under Pennsylvania’s current legal framework, advocating for legislative change is in the best interest of Montgomery County’s indigent accused population, county government, and broader community.

Ideally, such legislation should also provide for creation of an independent statewide Oversight Board with the authority to promulgate, monitor compliance with, and enforce quality and ethical standards. The legislation should also codify the minimum standards that all offices must follow.

Until such a change occurs, the recommendations offered in this Report are feasible, minimally costly, and will permit Montgomery County to meet its constitutional duty to provide quality and ethical defense representation to the indigent members of its community.

APPENDICES

- APPENDIX 1 -

ABA Ten Principles Of A Public Defense Delivery System *Black Letter*

- 1 The public defense function, including the selection, funding, and payment of defense counsel, is independent.
- 2 Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
- 3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
- 4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
- 5 Defense counsel's workload is controlled to permit the rendering of quality representation.
- 6 Defense counsel's ability, training, and experience match the complexity of the case.
- 7 The same attorney continuously represents the client until completion of the case.
- 8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
- 9 Defense counsel is provided with and required to attend continuing legal education.
- 10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

- APPENDIX 2 -

NAPD Principles Related to the structure and Organization for Providing Public Defense Services

Principle 1: Competent and Effective Public Defense Lawyers Must Be Provided for the Fair Administration of Justice

The fair administration of juvenile and criminal justice requires competent and effective “public defense lawyers” (hereafter sometimes referred to as “lawyers”) for all juveniles charged with delinquency and adults in criminal cases unable to afford a reasonable attorney’s fee. Similarly, competent and effective lawyers should be provided in all other proceedings in which lawyers are commonly provided, such as dependency, children in need of supervision, sexually violent predator, and civil commitment cases. For juveniles charged with delinquency, the right to counsel should be non-waivable, and in criminal cases no waiver of counsel should be permitted unless the accused is first provided the opportunity to speak to a lawyer. Waivers of lawyers by adult criminal defendants should occur rarely and only if a judge has addressed the defendant personally on the record, and the waiver of counsel is made knowingly, intelligently, voluntarily, and is in writing. All adults in criminal cases and juveniles charged with delinquency taken into custody should be brought before a judicial officer no later than 48 hours after custody begins and, prior to such appearance, all persons charged should be interviewed promptly by a lawyer or person working on behalf of the lawyer, who is prepared to address the person’s release from custody at first appearance.

Principle 2: Public Defense Must Be Independent of Judicial and Political Control

The fair administration of justice requires that representation by lawyers be free from real or perceived inappropriate influence. Representation should be without political influence and subject to judicial supervision only in the same manner and to the same extent as are prosecutors and attorneys in private practice. The selection and payment of lawyers should be independent of the judiciary. The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged by administrators of defender, assigned-counsel or contract-for-service programs. Except in jurisdictions in which public defenders are locally elected, the policy-making function, choice of the chief public defender, and oversight of defense programs should be vested in a commission or board of trustees selected by diverse authorities, including but not limited to, officials from executive and legislative branches of government, heads of bar associations and law school deans. All persons chosen for a board or commission should be committed to high quality public defense and members should include one or more persons who previously were represented by a public defense lawyer. Commissions or boards should not include active public defense practitioners, judicial office holders, and active law enforcement officials of any kind such as prosecutors, police, sheriffs, or their staffs. All systems for defense representation should include both full-time public defenders and private public defense lawyers serving as assigned counsel or pursuant to contracts.

Principle 3: The Public Defense Function Must be Administered and Overseen Statewide

Except in jurisdictions in which public defenders are locally elected, each state should have a public defense provider (hereafter “provider”) with responsibility for all components of public defense services which is overseen by a board or commission as described in Principle 2. The provider should have responsibility for establishing qualifications of counsel, determining eligibility standards for appointment of counsel, setting workload and caseload standards, providing for training and other administrative support, and representing the public defense function to policy makers and stakeholders. The need for the provider to exist at a state level is to ensure that services are consistent in quality, efficiency, effectiveness, and that the same standards are applied in all subdivisions throughout the state. Where local delivery of public defense services is prevalent without oversight and centralized administration there is significant risk of unjustified variations in the quality of services in the state’s various jurisdictions. Oversight and consistent administration throughout each state provides a necessary mechanism to evaluate and improve service delivery.

Principle 4: The Expense of the Criminal Justice System Is a Government Obligation That Must Not Be Imposed on Defendants

The duty to fund the criminal justice system is a fundamental government obligation. Accordingly, the criminal justice system must end its pervasive use of predatory costs, fines, and user fees that are disproportionately borne by those who can least afford it. Persons encountering the criminal justice system invariably face fines, fees, and costs at every step of the process, including at the pretrial stage. There are fees for applying for public defense counsel; fees for supervision while on pretrial release; fees for filing pleadings; fees for requesting a jury; and fees for vehicle interlocks or impounded vehicle costs, all before ever having been found guilty of an offense. This fee based, user pay system leads to destructive outcomes since the overwhelming majority of persons charged in the criminal justice system are impoverished. The inability to pay leads to arrests, loss of employment, liberty, housing, and driving privileges. Ultimately, the various revenue generating mechanisms of the criminal justice system, many of which have proliferated in recent years, undermine public confidence in the purpose and fairness of the courts and the rule of law.

PRINCIPLES RELATED TO THE QUALITY OF PUBLIC DEFENSE SERVICES

Principle 5: Workloads of Defense Attorneys Must Always Be Reasonable

Lawyers who defend adults in criminal cases and juveniles in delinquency proceedings must have reasonable workloads, which enable them to provide conflict-free representation of their clients consistent with their duty to furnish competent and effective assistance of counsel pursuant to rules of professional conduct and prevailing professional norms. To provide such representation requires initial and ongoing training, adequate support services, including access to investigators, social workers, paralegals, and expert witnesses, as well as ongoing supervision of the representation provided. When lawyers and/or providers determine that workloads are preventing or are about to prevent the delivery of defense services consistent with ethical and constitutional duties to clients, the lawyers and/or provider should be authorized to refer cases to another public defense provider participating in the jurisdiction's plan for representation. Alternatively, lawyers and/or the provider must take appropriate steps pursuant to their state's rules of professional conduct either to refuse additional cases and/or seek to withdraw from existing cases. Reasonable workloads for lawyers should be determined through time studies utilizing Delphi methodology. Permanent timekeeping by defense lawyers should be used to facilitate periodic workload studies, for management purposes, and to demonstrate the transparency and responsibility of providers.

Principle 6: Training and Continuing Education are Essential for Providing Competent and Effective Defense Representation

To be competent and effective, lawyers and other public defense professionals must be well trained and providers must make available quality training and education as required. Regardless of their size, structure, or delivery system, the training and education provided by providers should extend to all lawyers, as well as investigators, mitigation specialists, social workers, administrators, and all others who support the defense function. Training and education should be provided on a regular basis at no cost to attendees and all providers should have a dedicated budget allocated for ongoing training and education.

Principle 7: Appropriate Supervision of All Public Defense Lawyers and Other Public Defense Professionals Is Essential

Public defense providers must provide regular and timely supervision as needed of all lawyers and other professionals. The objective of supervision is to assure that all defense services provided by lawyers are competent within the meaning of rules of professional conduct and effective pursuant to prevailing professional standards. Accordingly, supervision should determine if sufficient time, thought, and resources are being devoted to a wide variety of defense tasks, such as interviewing and counseling of clients, securing pretrial release of incarcerated clients, completion of fact investigations prior to formulating recommendations about plea agreements, formal and informal discovery is conducted, and preparation for pretrial hearings, trials, and sentencing proceedings. Supervision

should also include continuous monitoring of lawyer workloads to assure that all essential tasks of defense representation are being completed.

Principle 8: Public Defense Representation Should Be Client Centered and Holistic

Client-centered representation should be practiced by public defense lawyers and other defense professionals in satisfying the constitutional right to counsel. Client-centered representation means that the lawyers and other defense professionals recognize and respect the client's authority, ability, and right to decide the direction that the client's case should take after being fully advised of all available options. Holistic representation (sometimes called "comprehensive representation") complements client-centered representation because it is the most effective approach in seeking the full range of best outcomes desired by and on behalf of clients. By addressing underlying criminogenic factors through broad based representation more favorable outcomes are achieved, thereby enhancing the lives of clients, reducing recidivism, and improving public safety. Public defense lawyers and other defense professionals should collaborate with civil practitioners, civil legal services organizations, social service program providers and other non-lawyer professionals who serve, or assist in serving, clients with civil legal and non-legal problems impacting housing, health care, education, and food security. Lawyers and providers of defense services should retain such additional professionals as permanent staff or as necessary on a case-by-case basis.

Principle 9: The Duty of Public Defense Lawyers Is to Provide Clients Quality Legal Representation Consistent with Rules of Professional Conduct and Prevailing Professional Norms

Public Defense lawyers must always provide their clients competent and diligent representation, as well as representation that is reasonably effective assistance pursuant to prevailing professional norms. This includes empowering clients to exercise their constitutional and statutory rights, including the right to jury trial, and to litigate fully all appropriate motions to facilitate the best outcomes for their clients. Effective representation includes ensuring that all cases are fully investigated and prepared for trial, and that clients are fully informed of their right to a jury trial. Public defense lawyers should not advise clients to plead guilty until all defenses have been carefully investigated, reviewed, considered and explained to clients. Although the jury trial decision is always to be made by clients, public defense lawyers should provide clients with the necessary information to make informed decisions about whether to have a trial or accept a plea agreement.

PRINCIPLES RELATED TO CRIMINAL AND JUVENILE JUSTICE SYSTEMS AND THE TREATMENT OF ACCUSED PERSONS

Principle 10: Public Defense Providers Must Seek to Change the Pervasive Cultural Prejudice that Stigmatizes and Marginalizes Poor People

The overwhelming majority of persons charged with criminal offenses and juvenile delinquency are poor, which often contributes to greater poverty for the accused and their families due to fines and/or incarceration. This reality leads to pervasive cultural prejudice against the poor in our justice systems, which is particularly acute towards persons of color. In response, public defense service providers must seek to de-stigmatize poverty with every client they represent. Appropriate steps may include challenging the imposition of fines and fees, engaging in comprehensive intake interviews, pre-trial advocacy, mitigation and sentencing advocacy, and, if appropriate, presenting the client's unique struggle in poverty in relationship to the offense(s) with which the defendant or juvenile is charged. Public defense programs must also seek systemic reforms to counter the stigma that the poor endure and limit their marginalization after contact with criminal and juvenile justice systems. Appropriate steps may include seeking non-discriminatory policing and enforcement policies, bail reform, fines and fees litigation, pre-trial programs, diversion and treatment courts, alternative sentencing opportunities, increased access to needed social service programs, and advocacy to eliminate collateral consequences that attach to arrests and convictions.

Principle 11: Competent and Effective Defense Representation Is Necessary to Eliminate Mass Incarceration

Well-funded and properly resourced public defense providers are essential in order to eliminate mass incarceration. Adherence to Principle 1, which calls for lawyers to interview defendants prior to their first court

appearance and for waivers of counsel to be rare, will help eliminate “slow-counsel” and “no-counsel courts,” reduce incarceration by providing advocacy in support of pretrial release for accused persons, and challenge the use of jails and prisons as predatory collection vehicles for costs, fees, and fines. Decisions to incarcerate defendants should be individualized and grounded upon evidence-based risk assessments. Properly resourced providers and lawyers can advocate successfully for the placement of convicted defendants in alternative programs that are less costly and more effective than incarceration and also urge that certain non-serious misdemeanors be reclassified and subject only to fines, thereby contributing to a reduction in mass incarceration.

Principle 12: Public Defense Providers Must Address Disparate Treatment of Racial and Ethnic Minorities in the Justice Systems

Racial and ethnic bias persists in our criminal justice systems and leads to disparate outcomes at every stage of the process, impacting persons who are stopped, arrested, released pretrial, sentenced to probation, paroled, and who receive the death penalty or life without parole. Racial and ethnic bias also is present throughout juvenile justice systems, impacting persons transferred to adult court, placed in diversion programs, and committed to custody. These outcome differences undermine fairness in our criminal and juvenile justice systems and prevent the achievement of equal justice under law. Justice systems must openly embrace gathering data on racial and ethnic bias and take bold and continuous steps to address the problem. Public defense providers and lawyers, as well as other defense professionals, must examine their own practices and outcomes to ensure that effects of race and ethnicity, including implicit bias, are eliminated. To eradicate racial disparities, providers require the capacity and funding to challenge systemically racial and ethnic bias in criminal and juvenile justice systems.

Principle 13: The Use of Punitive Measures Against Persons Who Have Mental Disorders or Other Types of Cognitive Impairments Must End

The criminalization and punishment of persons with mental disorders, cognitive disabilities or trauma is never justified. The appropriate space for the protection of people with mental disorders is a facility intended and equipped for mental health treatment. Public defense providers should oppose the use of incarceration where treatment is a more appropriate placement. Lawyers must make special efforts to prevent mental torture imposed on persons in the name of protection or shelter, such as the use of solitary confinement to “protect” a vulnerable person.

Principle 14: Public Defense Lawyers and Public Defense Professionals are Essential Participants in Achieving Justice Reforms

Public defense lawyers and other defense professionals are experts in providing defense services. As advocates for criminal defendants, public defense lawyers and defense professionals spend significant time in court, in detention centers and jails, and in the client community. They have the most credible information about the needs, opportunities and challenges facing defendants and juveniles and must be treated as equal and respected partners together with all justice agencies and programs. Their observations and recommendations must be included in any effort to improve criminal and juvenile justice systems. Reform initiatives that do not include the perspective of public defense lawyers and other defense professionals necessarily compromises efforts to achieve meaningful and enduring justice reforms.

Principle 15: Unity and Collaboration of Public Defenders and Public Defense Professionals Are Essential in Achieving Defense Reforms

The strong voice of public defense providers and defense professionals nationwide are essential in achieving transformational defense reforms. To achieve necessary and long overdue reforms, public defense providers and defense professionals must be unified and organized. Conversely, isolation among defense providers and professionals hampers national, statewide, and local reform efforts, thereby undermining the goal to achieve the constitutional protections of due process and equal access to justice in every U.S. jurisdiction.

- APPENDIX 3 -

Employee Information-Gathering and Public Meeting

The Project sought to obtain information from Office Employees about the work environment in the Office and the Office's relationship with the County. To do so, the Project utilized both a survey and structured interviews. This mixed-methods approach was designed to achieve both breadth of coverage (via the survey) and allow the opportunity for greater depth among a sample of attorneys representing varying seniority levels (via the interviews).

The Project initially requested that the office's leadership disseminate the survey office-wide, as well as notify all attorneys that the Project was seeking to interview a sampling of attorneys from a variety of seniority levels, and that attorneys should nominate peers (or themselves) to participate in the structured interviews. After the Project became aware that the survey had not been distributed and that not all attorneys were informed of the interviewing process, the Project received permission from the County to contact office employees directly, upon which the Project emailed all office employees a request to provide open-ended feedback on their experiences in the office via an anonymous form or via email, and/or to request an opportunity to be interviewed if they so wished.

In total, the Project has received 22 form or email responses from Office employees and has interviewed 13 attorneys. Copies of the survey form and interview script follow, along with a transcript of the public community meeting to solicit feedback on a draft of this Report.

STAFF ATTORNEY INTERVIEW QUESTIONS

INTERVIEW OF: xx

TITLE: xx

INTERVIEWED BY: xx

DATE/TIME: xx

INITIAL QUESTIONS

- 1) How long have you worked for this office?
→ xx
- 2) Do you live in Montgomery County?
→ xx
- 3) Are you assigned to any specialized unit(s)?
→ xx

OFFICE CULTURE:

- 4) What's your favorite thing about working in this office?
→ xx
 - 5) What's your least favorite thing about working in this office?
→ xx
 - 6) When in the course of representation do you meet your client?
 - a) Do you feel like you have enough time to provide the most effective representation to each of your clients?
→ xx
 - 7) How do you feel about your current caseload? Is it manageable?
 - a) How do you feel about the level of training that you've received at MontCo PD?
→ xx
-

FUNDING:

- 8) If your office had more funding, what do you think should be done with it?
→ xx
- 9) Some of the neighboring counties have recently unionized their PDs offices. How do you feel about that?
→ xx

RELATIONSHIP WITH MANAGEMENT:

- 10) Do you feel there is managerial support for you as you represent individual clients?
→ xx
- 11) Do you feel there is any institutional restriction on how you represent individual clients?
→ xx
- 12) Where is the allocation of power between supervisors and line attorneys in terms of making decisions about individual client representation?
→ xx
- 13) When there is something that goes beyond representing individual clients – systematic challenges, amicus positions – where do those ideas originate?
→ xx
- a) From the top?
→ xx
- b) From suggestions by line attorneys?
→ xx
- c) How do those investigations/projects get approved?
→ xx
- 14) Do you feel that there is currently a system in place that permits such work to be proposed?
→ xx
- 15) Who do you talk to when you have a problem you don't know how to solve at work?
→ xx

RELATIONSHIP WITH COMMUNITY:

16) Does the PD's office do anything to follow up with clients about their satisfaction about their representation?

→ xx

OUTSIDE INFLUENCES:

17) How would you describe your office's relationship with the Montgomery DA's office?

→ xx

18) How would you describe your office's relationship with the bench in Montgomery county?

→ xx

19) What role, if any, do you think the county commission should have in terms of making decisions at your office?

→ xx

20) Is there anyone outside your office that has influence over your day-to-day decision making?

→ xx

INDEPENDENCE:

21) Big picture - what system/processes do you feel need to be in place to permit full representation of your clients, individually and systematically?

→ xx

22) The first ABA principle for an ideal public defender office is independence from outside influences. What does that look like or bring to mind for you?

→ xx

→ **LAST QUESTION** = Is there anything you'd like to mention or discuss that we didn't cover in this interview?

→ xx

Montgomery County Town Hall

Introduction

Prof. Jaya Ramji-Nogales: Hello everyone and welcome to this town hall to discuss the “Strengthening the Public Defender's Office” draft report. A huge thank you to everyone for being here, we welcome your input and feedback on the draft report. This is a draft report, and your input and feedback that we are getting right now are an important part of the process before we finalize the report. I just want to talk through the format before introducing everyone because we purposely structured this session as a listening session and that informed our choices around the format. We chose the webinar format because we wanted as much transparency as possible. This way when you post a question, using the Q and A function that you can see at the bottom of your screen, everyone can see the questions that everyone is hosting; we wanted those questions to be open. We also wanted folks to have an option to post questions anonymously and the Q and A enables you to do that. You should be able to post a question anonymously, please let me know if I have messed something up and you can't do that, but our Assistant Director Shyam Nair, our IT person, who has helped us with all this tells me that I've got it right so hopefully I do. And I also want to be clear that the meeting is being recorded. It is recording right now, and it will be transcribed and appended to the final report. We will also incorporate any feedback we receive that is new information that we are getting into the final report itself, so I just wanted to make everyone aware of that before we proceed.

Let me start by introducing the actors here for those of you who do not know me. I am the Associate Dean for Academic Affairs at Temple University Beasley School of Law, where I oversee our experiential learning programs and engage with our social justice programming, which is why I'm involved in this project. But I am very much not the subject matter expert and, but we do have two subject matter experts here. I'll start with Professor Shanda Sibley who runs our Systemic Justice Clinic which really did take the laboring for this report. Professor Sibley and her students put in a tremendous amount of work to put this report together. She is a former public defender and brings a lot of knowledge to the table. We are very proud of the work that her students did. Also with us is, Professor Lauren Ouziel, who is also a criminal law professor. Along with Professor Sibley she helped to edit and format and come up with the approach to the report, so we are indebted to her for her work on the report as well. As I said before, I am going to be

running the session as a listening session. Professor Sibley and Professor Ouziel wanted to be able to listen and take notes and hear everything that you are saying, so I'm going to be running this session. I may need to lean on them to answer questions that I do not know the answers to, but I will be the moderator and I will be taking your questions and reading them aloud.

At the start, I want to include a disclaimer, that Temple Law School and the Sheller Center for Social Justice do not endorse political candidates. We are a nonprofit educational institution. I also want to explain clearly that we are not a proxy for, nor are we speaking on behalf of Montgomery County. We are an independent consultant working with the county focused on best practices. I am going to assume for this meeting that everyone has seen the draft report, which has been circulated. We wanted to maximize the listening time so we did not want to spend time presenting the report. I'm going to talk a little bit about our methodology, but I'm not going to present the content of the report itself. I have just dropped into the chat a link to the draft report, if you haven't seen it. You can click on that link and go to the report and take a look.

Let me just give an explanation of the method and the process and then I'll open it up. We are excited to hear from all of you. The Sheller Center was tasked within the wake of the firing of Dean Beer and Keisha Hudson with helping to develop best practices for the governance and operation of the Montgomery County Public Defender's Office, under the current legal framework in Pennsylvania, working with the laws as they exist now. We were charged with looking at external laws and organizational structures that impact the Public Defender's Office, as well as the offices' internal organizational structure and culture. And we were tasked with providing findings from that investigation and concrete proposals for reform. But I want to be clear that, although we authored the report, we are of course not responsible for its implementation. We are Temple Law School, not Montgomery County, and we can provide recommendations, we cannot implement.

Let me start with the methodology, I want to give you just the layout of what we were tasked with doing. First, we were to lay out the relevant legal standards and literature on best practices for Public Defender Offices. We were to undertake interviews of current and former employees. We were to undertake a review of the budgets. We were to undertake a comparative analysis of other public defender offices and restructuring efforts and we were to undertake consultation with experts on public defense and access. Stakeholder input was very important to us and remains important to us. We thought very deliberately about how to gain a representative sample of employees' thoughts on the office's functioning. Our considered approach was to ask junior, mid-

level, and senior attorneys to select representatives to be interviewed so that we would be sure to hear from attorneys at every seniority level who could effectively serve as representatives of their peers. That was one part of the input and the second was to circulate to the entire office an invitation for anyone who had not spoken with us to reach out to do so if they wish. Since as an external entity, we have no direct line of communication with office employees, we discussed our approach with office leadership, who agreed to implement our requested approach and communicate the process and our interview invitations to all the attorneys in the office. This town hall is an opportunity for us to hear your thoughts about your experiences in the office and to obtain your input on the draft report. You may do so either via emails to us – we will drop our email addresses in the chat – or via a Google form. If you choose to use the Google form or to send us an email, please be assured that your identity will be kept confidential, as we did in the report. If we include your comment in the final report, it will be anonymized. And we do have one final follow-up step which will be to circulate this feedback form to the entire Public Defender's Office. Just one last note: We have already received some comments, thank you for those, on the feedback form and by email to focus on making the office fully independent of the county. We are grateful to you for that recommendation. What we sought to do in this report was to provide recommendations and that is what we were tasked with doing was to provide recommendations for achieving independence to the greatest extent possible under the existing legal framework. If our recommendations are implemented, we would welcome the chance to assess in several years as to whether the implemented changes have achieved their desired results, and if not, to consider whether the county should seek a legislative fix. That is it for me, we really want to spend the rest of this hour hearing from you. I see we already have some questions, so thank you for that. Please send us your comments and questions through the Q and A function which offers the option to send anonymously.

*if not indicated the speaker is Professor Jaya Ramji-Nogales

Question: A current attorney in the office has input they would like to provide but has not been comfortable sending it. Will the email be kept completely confidential from the county and current PD office leadership?

Answer: Let me be clear on this, and this is what we have done with the report, your identity will be kept confidential. We may include your comments, if they are new and if they are important to the report, anonymized in the report, but you will not be identifiable. We wanted to take care and to make sure to anonymize comments for exactly the reason you suggest. We want to encourage feedback and input. We want to hear from everyone and so thank you for asking that question and enabling us to answer that question.

Question: Was leadership supposed to communicate an invitation for an interview?

Answer: Our communication with leadership was that the attorneys themselves were to select representatives to be interviewed. They would decide at each of those seniority groups, junior mid-level and senior attorneys, which attorneys would be representing that group and be interviewed by us. Thank you for that question, we look forward to more questions. I will drop the link to the feedback form in the chat. Also feel free to make comments. You don't just have to ask questions from us right now. We also welcome your comments in the chat so that we can all hear from you, and they might generate more comments so please feel free to jump in. That is the link to the feedback form that you can use to submit information on an anonymized basis.

Question: Whose decision is it to take up these recommendations, the Chiefs or the Commissioners? Who will see if any of these suggestions are implemented?

Answer: I am going to ask Professor Sibley and Professor Ouziel to jump in here. My understanding is it is the Commissioners' decision, as that is who our contract is with, but I don't know if they have other insights into that question.

Answer (Prof. Ouziel): Our contract is with the county to provide recommendations to the county to take action. One of the major recommendations is the implementation of an Oversight Board, which would be an entity between the county and the office so that would have to be implemented by the county. It could not be implemented by office leadership; the idea would be that it would be an independent Oversight Board. Part of the recommendations in the report is how to go about choosing the membership of that board. There are specific recommendations with respect to that as well that involves having the county utilize mechanisms to select. Some of the recommendations are internal to the office so, for instance, the recommendation with respect to having a Human Resources professional. That is something that would have to be implemented internally in the office. In addition, there is a recommendation about revisiting how the office assigns attorneys to different tasks, specifically with assigning them to a given courtroom for a set period of time. We did not make a specific recommendation to necessarily dispense with that, but simply to review that and consider it and consider some of the effects it may have on attorney independence. So that would be something that if followed would be followed within the office internally. So, I would say it is a mix.

Question: Have the Commissioners provided any feedback yet regarding the report? Have they shown interest in understanding the issues raised in the report?

Answer: I will let Professors Sibley and Ouziel jump in if they have anything else to say. Our understanding was that the county was pleased with the thoroughness of the report. I am proud of our students and grateful to my colleagues for putting so much great work into the report, but I otherwise have not had specific communications with them, I don't know if either of you have anything to add to that.

Question: Will the final report reflect the fact that the current chiefs hand-selected the people interviewed and that the opportunity to comment was not broadcast to the entire attorney body?

Answer: Yes, process concerns will be addressed in the final report. We will lay out the process that we had agreed to, and this is why feedback from all of you is important. We will lay out the feedback we got about any disparities between the process that we had set up and the process that was actually implemented.

Question: What are you hoping to gain from this town hall? What would be most helpful for you?

Answer: Really, we want to hear from everyone. People in the office, people who are interested, people who are invested about the report, about the accuracy of the report, about any additions you

think should be made to the report and that is why we are here. Do you two have anything else to add to that?

Also thank you for all the input and questions you have been providing so far, it is really helpful.

Comment: The formatting on this report is wonderful. It is incredibly easy to read and understand.

Response: Thank you for that kind comment. Professor Sibley and her students spent some time on the formatting. I had the same reaction, as did our Dean, and neither of us is a criminal law expert. It is very clear and very easy to read, so we are grateful to them for their hard work on it.

Question: Was an office-wide email supposed to go to the office asking for people to get feedback in addition to those people selected to be interviewed? It sounded like you said that before.

Answer: Yes, an office-wide email was supposed to go to the office asking for people to give feedback. We have spoken to the county and they are now going to send out an office-wide email with our feedback form. We really want to hear from everyone in the office, so we do want to make sure that happens. We hope that those of you who are here tonight will share with your colleagues both the draft report and the feedback form because we want to hear from everyone your views. All your input is valuable, and we want to learn from it. We want the report to be as accurate and reflective of your perspectives as possible.

Question: Has there been any discussion about introducing legislation to move funding from the county level to the state? If the purse strings continued to be held by the Commissioners, they continue to hold the power.

Answer (Prof. Shanda Sibley): There was discussion in drafting the report about the question of what it would mean to introduce legislation that moves that funding from the county level to the State level. As many of you may know, the Philadelphia Defender's office is structured slightly different than the Public Defender's offices of the other counties, and so they are able to do things that perhaps other counties would not be able to do without there being some legislative change. We did investigate that issue and that is something that we thought deeply about in the report, but as Jaya mentioned in the opening, one of the things that we are very cognizant of is trying to make recommendations about changes that could be made without legislative change at this time. With that in mind we are aware of the possibility and are willing to revisit that issue at a future date if that is something that the county has an interest in and attorneys in the office are interested in and residents of Montgomery county are interested in pursuing.

Answer (Prof. Ouziel): Our task, what we were brought on to do, was to give recommendations within the existing legislative framework. In the conclusion of the draft report, we do discuss advising the county to look beyond the existing legislative framework and think about it taking on more of an advocacy role with respect to trying to shift to a state funding model. As many of you may know, Pennsylvania is one of the only states in the country that doesn't have that, and so that's really just a separate issue entirely from what can be done within the existing framework to what actions can be taken to change the existing framework. That's really a separate question that involves questions about legislative advocacy and stakeholder involvement and all sorts of other issues that would be really the subject of a separate study.

Question: The employees were supposed to decide amongst themselves who would speak on behalf of junior mid-level and senior attorneys?

Answer: Yes, that was the subject selection design that we came up with.

Question: Were you aware that none of the attorneys except the one selected by current leadership were aware that input was being sought?

Answer: We were not aware of that until we started seeking feedback recently. We were not aware of that when we conducted the interview process. Over the past couple weeks after the release of

the draft report that has been brought to our attention. That is obviously disconcerting and will be reflected in the final report. We would like to hear from you now though. You know this is what we are here for today to hear your thoughts by email and again through the feedback form. Please let us know and we would like to hear from the folks who were not made aware that this process was happening.

Question: It's not just process, the report so far fails to address the substantive issues, because the process is so flawed, how will this be addressed?

Answer: We would love to hear from you about which substantive issues you think the report fails to address that is exactly why we are here today. This is how it is being addressed through the town hall and through the form. Please email any of us, Professors Sibley, Ouziel or me, if there's more you would like to say because we want to hear from you. We want to hear from all of you. It is important to the design that we hear from everyone in the office with their concerns and especially we want to hear if you think there are substantive issues that were not addressed in the report, so thank you for raising that question.

Comment: The report is there, but the Commissioners did what they did firing leadership and the report just provides cover. They handpicked the current chief to do what they want, it is frustrating.

Response: As I said at the beginning, I am sorry that it is frustrating. Obviously as, as we said at the beginning, we are independent consultants so, we cannot tell the county what to do, we cannot tell the Public Defender's office what to do, we cannot make them do what they do not want to do. Our aim was not to provide a report that just provides cover but to provide a report responsive to the request we received for consulting, which was to try to provide best practices going forward. I don't know if Professor Ouziel or Professor Sibley want to respond to that further. But you know again we'd love to hear about it. If the concern is the report just provides cover, we would love to hear from you about what else you think the report should talk about, what are your substantive concerns, about what the report should be discussing that it's not discussing, we would really value your input there. Do you guys have anything to add?

Answer (Prof. Ouziel): No, I would just say that it would be useful to understand what you would like to see discussed in the report that you think is missing.

Question: Why was there only consideration of changing courtroom assignments practice?

Answer (Prof. Ouziel): I am not clear on the question. We considered a lot of what we learned to be the different office practices. The recommendations were tailored around where we thought changes might be helpful, but we certainly considered everything we learned about how the office was being operated and run. But our focus again, what we were brought on to do, was on helping the office achieve independence both institutionally from the county but also strengthening the independence of individual attorneys in the office having them feel with respect to both the county and the bench and so that was where we focused in our review of the office practices on the use of courtroom assignments because that is something that we felt is worth at least revisiting and considering terms of the potential effects it has on attorney independence. But it wasn't the only thing we considered.

Question: What is the timeline for the publication of the final report? Has the county set any deadline for that?

Answer: The draft report was due in late January, which is what we provided and then this is the opportunity, the next round, for feedback and input on that draft report. I do not know that we have a specific deadline. Our goal is to gather information from this town hall and information that comes up in the follow-up and incorporate it into the final report. Professor Ouziel or Professor Sibley may know more than that, but I do not know that there is a specific deadline.

Question: Is there any impetus to impose a case limit for individual attorneys? One of the major issues relating to attorney effectiveness is directly tied to the number of clients one public defender has.

Answer (Prof. Sibley): Yes, the report does make a recommendation regarding caseloads. It does not make a recommendation regarding a specific case limit but does speak about implementing a more robust case management system, and having supervisors monitor caseloads and workloads for attorneys. And putting that consideration front and center both when it comes to line attorneys and also when it comes to supervising attorneys in the office, so that is one of the things that we investigated.

Answer (Prof. Ouziel): I would only add to that as well, the issue of funding and pay parity, because of course, funding should adequately address the needs of the office, including staffing needs. That goes directly to that issue of if attorneys are overloaded there need to be more attorneys perhaps hired, and that requires additional funding.

Question: In the US Supreme Court stated the defense lawyer best serves the public by acting in the undivided interest of his client and not by acting on behalf of or in concert with the state in *Polk County v. Dodson*. Based on the rationale of the firings of the former chiefs which was essentially because they were advocating in a way that made the county uncomfortable, how do we get to a place where we are in accordance with the US Supreme Court, how do we ensure that our work is not hampered by the county?

Prof. Ouziel: Shanda, you want to take it or, should I?

Prof. Sibley: You can feel free or I can go it's up to you.

Answer (Prof. Ouziel): I think that's exactly right and was at the forefront of our mind, and again, unfortunately, the legislative constraints in Pennsylvania are what they are. We came up with our recommendation that was based on the constraints we're operating under and the hope is that, having an external Oversight Board, as has been implemented in other jurisdictions, with some success, is the goal to getting us to that place. The hope is that the external Oversight Board, if it's selected using the process and the mechanisms that we were recommending, will serve as essentially a firewall between the office and the political branches.

Question: Are you aware that our office (the Montgomery County PD'S office) was not notified about this town hall by either leadership or the county?

Answer: No, I was not. I don't think we were aware of that and so thank you for bringing that to our attention. I'm sorry about that. We sent them the information about it and we posted it on our website. We sent it to the county so I'm sorry that it was not sent out to your office. I guess, I just assumed, it would be. Thank you for letting us know that.

Question: It is troubling that the office-wide email was not sent prior to your preliminary report being published. Obviously, a lot of work has been already gone in the report, and conclusions and recommendations have been made to that report, are you willing to revisit your conclusions and change your recommendations, if appropriate, based on your findings?

Answer: Yes, we share your concern. It is troubling we had asked that the office-wide email be circulated in December, well before the preliminary report being published. Yes, we want to hear your feedback and we want to get your recommendations, so that we can include them in the report. I will let Professors Sibley and Ouziel jump in here as well.

Answer (Prof. Sibley): I do want to emphasize that, although a lot of work has already gone into the report, there is no limit to the amount of work that can still be done on the report. And so, I would not want the fact there's a preliminary report in existence to make you feel as if you won't be heard, or your input that you give us now won't be received and incorporated into the report,

because that's why we're here. And so, I hope that you understand that when we say that we are earnestly saying that because we want to improve the report and we want to provide the best report that we possibly can.

Question: Asking why is not a recommendation to change. Seems language there is a bit different (I think this is from the same person who asked why only consideration of changing courtroom assignments practice). Do you guys want to take that one?

Answer (Prof. Sibley): To clarify, I believe that the question is asking why we only recommended considering it and why we did not recommend ending the practice of the courtroom assignments or the team assignments. I think that this is a complicated question that the report talks about. There is not necessarily, for the lack of a better way to phrase it, a 100% downside to the team assignment structure. There are benefits to having a team assignment structure but there are also detriments. What we really want to do is to ask the county and to ask the office to consider whether those detriments which we've identified in the report outweigh the benefits.

Comment: Some of the improvements noted were the creation of a chief of mental health and chief of pre-trials. Yet since the firings the chief of mental health is also wearing the hat of co-chief and that's not improvement. The chief of pre-trials has been excluded from key meetings regarding the new pretrial program in Montco. It is politics as usual and the fact that not all attorneys were asked for their input is characteristic of the politics.

Response: I would say thank you for that input. That is helpful. Someone asked before what would be helpful and that is exactly why we are here to get that kind of input, so thank you for sharing that.

Question: Does the report address that there is a clear tension between the current chiefs, and the staff, so much so that the attorneys in the office don't trust who the Chiefs chose to interview for the report, as evidenced by all of these comments. I'll hand that over to the authors.

Answer (Prof. Sibley): Currently, the preliminary report does not address that, and I think in part it is because a lot of this information has come to light since we circulated the preliminary report. Unfortunately, as mentioned, the practices that we had discussed being implemented around the interview process actually appear were not implemented. And so, because all of this has come to light, it is part of what we are going to consider in terms of moving the primary report towards the final report.

Question: When you speak of the Office, you have to include other employees beyond attorneys that support the legal process. At what point will you be considering their opinions?

Answer: I might step out of line here and say I do hope the feedback form will be circulated to them. This is a public feedback form for anyone who is a stakeholder and we would love to hear from other folks in the office. I think their opinions would be really valuable. I don't know if either of you has anything to add to that but thank you for raising that point.

Question: Many Montco public defenders would tell you that current leadership is tethered to the Commissioners who put them in charge. Does Temple not realize that the current leadership was put in place by Commissioners who fired the people that push progressive change and that there has never been a posting for these positions?

Answer: First of all, that's helpful input, as all of this is and I will send this specific question on about whether we realize that the current leadership was put in place by the Commissioners, who fired the people that push progressive change and that there's never been a posting for these positions.

Answer (Prof. Ouziel): I was not aware that there has never been a posting. I think you know our goal in the report was really not to focus on individual leadership, like the current leadership, and

who they are. The goal is to advise the county on implementing structures going forward that will ensure the offices is functioning independently. The major structure that we are recommending being implemented is an external Oversight Board that would be deeply involved in the selection of the office leadership and would effectively choose candidates from a pool that they would then propose to the county to select as leaders of the office. Our main focus really in the report is thinking about how to structure a system different from what you have now where the county is just choosing the leaders and to impose something different, but we weren't brought on to advise the county on what to do with current leadership. Just what the steps are that should be put in place going forward. Given that the current leaders weren't selected by an external Oversight Board, that would be something for the county to consider starting this process. If they choose to implement the recommendations we're making, to do now and to start that process of having the Oversight Board go through a process of selecting leadership for the office.

Question: The next question, I think your answer actually answered this one, but feel free to add more obviously. Does the report address the performance of the current leadership appointed by the Commissioners in the wake of Dean Beer and Keisha Hudson's dismissal or just make recommendations for the future?

Answer: I think you hit two with one stone.

Question: The next question is related. How would members of an Oversight Board be chosen? Would the current position of co-chiefs be open for application?

Answer: These are actually helpful because the report is really future-focused, but I think what we're hearing tonight is that it might be worthwhile to address how soon this should be implemented and what to do given the current situation, where you have leaders in the office who haven't been chosen, through the process that we're recommending, so that's helpful.

Question: One of the struggles of being a public defender is that some clients and sometimes the public have a negative view of us, based on their belief that we were working in concert with the judges and the DA. The firings did not help that perception. How do we counter that, besides being independent?

Prof. Ouziel: Shanda, do you want to take this?

Answer (Prof. Sibley): Sure, and this is not simply echo what Lauren has said, but I think that one of our focuses on recommending the independent Oversight Board was really to create some air, both actual and in perception, between the public defender's office and the judiciary, the DA's office, and the county, so that there is a firewall and there is some space there and so people do perceive the public defender's office as being more independent. I know that your question says besides being independent, but I think the independence actually does a lot of that work in terms of perceptions of the public defenders operating in the best interest and solely on behalf of their clients and not in concert with other entities. That being said, I was a public defender and it's really frustrating that clients think this because it's just not true. I think that putting these structures in place for more independence is something that a public defender can refer to in conversations with their clients when they raise those issues.

Question: As a Montgomery County resident I am even more concerned after the first 20 minutes here. It is evident that the current leadership is closely tied to this report's outcomes and I question the validity of the report's preliminary results without full transparency to input from all office staff. A complete rehaul seems necessary. One question I do have is whether the disparity between the pay of the DA's office and the PD's staff, as stated in the report is comparable to other regions and counties?

Answer: Thank you for your input. We are obviously also concerned that we have not had full input from the office. This is our effort to do that and the form is our effort to do that. We welcome other thoughts about how to do that. I believe the reports say the disparity is greater in Montgomery County than in most other counties in the counties that the report compared them to.

Question: In reviewing other models of public defender office models who advertise more holistic and independent models, were you able to get any sense of other offices' budget? I think this is a question about whether the holistic model is substantially more expensive.

Answer (Prof. Sibley): I will say that we did not directly compare the budgets of the Montgomery county PD'S office to offices that do more holistic work, in part because more holistic work is a spectrum. There are offices that do some follow-up reentry work, there are offices that do some referral work, and then there are offices that maybe you are thinking about that are Bronx Defender-type offices that tout themselves as holistic representation models. That is the whole spectrum, and the funding of those models is really dependent on how much holistic work they do. But we did in our funding consideration section really implore the county to think about how much funding would be necessary to move the office in the direction of that kind of representation, or more of that kind of representation, if that is what the office decides that it wants to engage in. So that is part of the consideration included in the report.

Question: I may be wrong, but I think I read that one of the main recommendations was an oversight board specifically for the office. I did not see a recommendation to make office its own entity. Is that a consideration for recommendation? Why or why not?

Answer: My understanding is what I addressed at the beginning. That was not a recommendation in this report, because this report is focused on what's possible under existing law. We would be happy to come back in a couple of years to see how these changes are working and assess whether it makes sense to look for a legislative fix, but our goal was to find a fix within the existing legal framework.

Comment: More of a comment than a question, but as a member of the office, I will again note that we were not told about the preliminary report we are not shown it by our office, and we were not told about this town hall. That is not your fault but speaks of the county's interest in true independence.

Response: Thank you for that comment and this is obviously why it is helpful to hear directly from all of you.

Question: Would you consider re-canvassing the office for interviews among both attorneys and non-attorneys or will this town hall and the online feedback form, be the only method for including a more robust set of viewpoints?

Answer: That is a great question. It's kind of just come to light and we're still trying to figure out how to grapple with the fact that the interviews were not conducted as planned and I'm just going to go on a limb here and say I think part of that will depend on the online feedback we get from you. And how much it appears from that feedback that we need to conduct more interviews. I don't know if either of you has anything to add but that will obviously slow down substantially the process of finalizing the report and so, there's a balance between getting the report finished and, obviously, importantly, having a report that is accurate and that you know with a process that we feel comfortable standing behind. I think that's going to be a balance, we have to figure it out once we've gotten the input in. Do either of you have any additional thoughts?

Answer (Prof. Ouziel): I think you said it well. This is new to us and comes as a surprise. And so, we are still trying to figure out what to do about it.

Answer Prof. Sibley: I would just like to add for those of you who are current attorneys on this meeting, please use the form or use the emails that we will be providing to tell us if that is your preference. If you feel strongly that interviewing is the path that we should take, we need to hear that, and that would be very helpful.

Question: The Commissioners would still have the final word on who is hired?

Answer: I think this is a question for you guys about the proposal.

Answer (Prof. Ouziel): Again, this is part of the statutory limitations that we are dealing with and the statute literally says that. They cannot delegate fully the responsibility for hiring to an outside entity but that's why we made the suggestion that they at least delegate part of the process. If you could have a process where the outside board culls applicants and presents the county with two or three that the board believes any of these people would be a great leader for the office and have the county select from that -- we felt that that was a way to work within the existing statutory structure, but still give some control and power really to an outside entity.

Answer (Prof. Sibley): I would add that this would also create some transparency in that process. It's not the Commissioners selecting, and this is not to imply that they currently do it in secret, but doing it in a silo. There would be an outside independent entity that would be in communication, and that would create transparency around who was up for the position/was being recommended for the position and then who the county therefore appoints.

Question: It is pretty concerning that you never focused on the current leadership. Do you realize how critical understanding what is actually happening, and not just abstract constructions is critical to your report, having any legitimacy?

Answer: Thanks for that question. The focus of the report was really on structural change, and I think that focusing on specific individuals might distract from the bigger structural questions. This is a place where we can certainly take feedback, but the idea was not to look at specific individuals but say what can be done in terms of best practices to improve the practices of the public defender's office. Did you guys want to add anything to that?

Comment: Does everyone realized that the past leadership was put in place by the Commissioners.

Question: A question from Dean Beer – Did the report look at an independent solicitor for the office?

Answer: I will hand that over to Professor Ouziel or Professor Sibley.

Answer (Prof. Ouziel): I guess I'm not quite sure what an independent solicitor is referring to.

Question: Would the position on an oversight board be selected by the Commissioners?

Answer: I guess that question is will the members of the Oversight Board be selected by the commissioners.

Answer (Prof. Ouziel): Do you want to take this, Shanda?

Answer (Prof. Sibley): Sure. So, we recommended a structure for the Oversight Board that creates categories of people who would sit on the board and the reason for that is so that the commissioners would not have the latitude to just handpick people and put them on to the board. There would be certain categories of people who represent certain stakeholders in the criminal legal system and the public defense world. That is what we recommended in the report.

Comment: This is more of a comment, this report was paid for by county tax dollars? If so, then it is deeply troubling that the two current chiefs impeded this process and sounds like have added more time and work.

Question: How much responsibility do you take for the interview process?

Answer: I think I described that at the beginning the interview process that we had agreed to. We are learning more every day about the interview process that actually happened. Our faculty took

some time to meet, the faculty you see here, to figure out the interview process and then Professor Sibley spent a lot of time with her students. We did spend a lot of time thinking about the subject selection process.

Question: When did office leadership become aware that there would be a town hall?

Answer: I think we set the date about a week and a half ago, I don't know if that's precise, but something like that, maybe a little bit longer.

Question: Can you release the interview script so staff who are not interviewed would have a sense of what input was solicited in the interviews?

Answer: I will send that one over to Professor Sibley. I guess the script that you use for interviewing the folks who were selected, I think the staff is interested in seeing what questions were asked.

Answer (Prof. Sibley): That is an interesting question and I think that we will have to talk more amongst ourselves about that, but I don't actually see why not right now. Just to let you know that we did in fact use the same script for all the interviews to assure that everyone was asked the same questions and that we covered the same ground with each interviewee. As of right now I cannot think of any reason why we should not share but again I think that we will have a conversation about that and then we will get back to you.

Question: An independent solicitor is an attorney representing the office and its interests not tied to the county as the county's attorney who has a conflict of interest.

(Response Prof. Ouziel): It is an interesting question, and I would ask Mr. Beer to get in touch to talk about this idea more because I am curious to hear what the notion would be. In other words, an attorney representing the office in what capacity with respect to the office's relationship between the leadership and the county. I do not know, it is an interesting idea and I think this would work better, as a conversation rather than over q&a in the webinar where we cannot sort of have the back-and-forth dialogue. I would encourage you to get in touch with us to talk about it.

Prof. Ramji-Nogales: I apologize for the noise coming from outside my house.

Comment: It appears that a town hall that is supposed to be looking at moving the atmosphere to independence is breaking down to blaming the current management for inheriting problems that were apparently festering before they were appointed.

Question: If the office were to become independent, can you speak to how current unionized staff would be impacted by benefits, pensions, job security? What protects current employees from an overhaul from the new Oversight Board or leadership.?

Answer (Prof. Ouziel): The office would not become independent, I mean it cannot under the statute. We cannot really contemplate that without legislative change, and so the only real fundamental structural change we are advising is the Oversight Board. The responsibilities that we are suggesting the Oversight Board would take is the selection and appointment of the leadership of the office and then having a role, obviously important, in any decisions regarding the termination of leadership. But not a role in issues with respect to unionized staff, pensions, job security that would not be part of their purview.

Question: Will the recording of this town hall, be made available to the public?

Answer: Zoom should be transcribing this as we speak, and the transcript of this will be appended to the final report. So yes, absolutely it will be posted on the Temple Law School website.

Question: As I understand it, the current public defender solicitor is also a solicitor for the county commissioners. This person Joshua Stein is a lawyer for the commissioners and the public defenders, which obviously resulted in a lot of conflicts. Can there be a recommendation to have a separate solicitor for each office?

Answer: In the interest of time, and because we have a few questions left in the queue I think I am going to treat that as input. It's something that we will take as a recommendation. Thank you for providing it to us.

Question: The Governor recently floated a State office of indigent defense. Would you support such a model in their best practices of how a State county structure could be modeled? If so, could you add that to the next iteration of this reports?

Answer: There is a lot of information in there about the models. I guess the question is whether there is more to be added about the state.

Answer (Prof. Ouziel): Right, I mean that would be the legislative fix that we are talking about which, again, our report does not address that simply because we were not brought on to do that. But you know, this is something that is a separate issue that we are happy to consider if the county would want us to consider whether there should be a legislative fix and, if so, what that would be.

Question: Many of our programs hurt the private bars' bottom line, money. What assurance would our office have that the entities in place to govern our office would not have agendas that could, by and large, harm indigent defense clients by ending said program?

Answer (Prof. Sibley): I think that part of the assurance that the office will have will be based on the composition of the independent Oversight Board and the people who are on the Oversight Board, which I assume that you mean by "the entities in place to govern our office." They would be people who are stakeholders who are interested in best practices and best outcomes for public defenders and public defender systems. They would be people whose agenda by definition would not be to harm indigent defense clients. That's how we've recommended that the Oversight Board be structured to prevent that concern from arising.

Comment: Alright, so this one is a comment responding to the previous comment current leadership inherited a strong office that pushed for an advocated and achieved success. In a number of areas since Dean and Kesha were fired there have been multiple projects that were stopped or stymied by current leadership. Those who Dean and Keisha appointed or promoted have been shut out of opportunities to make input and be at the table and a slew of incredible zealous attorneys have left. Current leadership is there to serve the pleasure of the Commissioner and not the interest of the clients and the people of Montgomery county. There is no better demonstration of this and the fact that the current leadership in no way communicated to the entire staff that this report was being done.

Response: I will take that as a comment and thank you for the comment.

Question: The Philadelphia Defender is independent, what is preventing that from happening in Montco?

Answer (Prof. Ouziel): Philadelphia has a carve-out in the statute.

Comment: It is essential that as a part of the independent office Carol and Dean be removed.

Comment: I would like to see plans to help support the current leadership in their quest to get counsel at first appearance.

Response: So, seeing as we are at 6:58, unless either of you has something that you would like to add, I would take that as a comment, rather than a question.

I just want to wrap up by saying thank you so much for being here. Thank you to Professors Ouziel and Sibley and, of course, the students who worked so hard on this report. We welcome further feedback using the Google forms that you see in the chat and we will be circulating a feedback form to the entire office. We will make sure that gets circulated and we do want to be sure that all perspectives are included in the final report.

We all learned a lot from you today and hope to continue learning more from your feedback. Thank you all so much for your time and your input and we look forward to hearing from more of you. We do have a specific email that we want to put in the chat that folks should use (montcoreport@temple.edu). You can use that or use the feedback form, and, in both cases, your information will be kept anonymous. I know this is recorded in our comments, a great question and I am just about to figure out how we can save the comments. I do want to make sure the comments were saved because they are really valuable, so I will have to just copy and paste it into a Word document and make sure they're saved I will do that, right now, so thank you. I want to thank everyone for being here and for all your input and again, we look forward to hearing more from all of you. Thanks very much for your time.

NOTES

¹ As the County has been aware at all times during this engagement, Professor Epstein is a named plaintiff in *Epstein et al. v. Arkoosh et al.*, No. 2020-04978.

² Former Montgomery County Deputy Public Defender Keisha Hudson, now teaching legal research and writing at Temple University Beasley School of Law, had no involvement in any aspect of the preparation of this Report.

³ This position is currently filled by one of the new co-deputy chiefs of the office, however.

⁴ U.S. Const. amend. VI.

⁵ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁶ *In re Gault*, 387 U.S. 1 (1967). In addition, representation for juveniles in delinquency proceedings is mandated by the Pennsylvania Juvenile Act, 42 Pa.C.S. §§ 6337 and 6337.1, and by the Pennsylvania Supreme Court's Rules of Juvenile Court Procedure. *See* Delinquency Matters, Rules 150-52 at <http://www.pacourts.us/assets/files/setting-1744/file-1560.pdf>. While neither the U.S. nor the Pennsylvania Supreme Court has addressed whether juveniles in dependency proceedings have a constitutional right to counsel, that right has been entrenched in Pennsylvania law since the passage of the Juvenile Act in 1972 (*see* Juvenile Act, § 6337 and § 6337.1(a)) and, more recently, in the Pennsylvania Supreme Court's Rules of Juvenile Court Procedure. *See* Dependency Matters, Rules 1150-54 at <http://www.pacourts.us/assets/files/setting-1744/file-1560.pdf>.

⁷ *See* CONST. ANOTATED, AMDT 6.7.2.3, *WHEN THE RIGHT TO COUNSEL APPLIES*, https://constitution.congress.gov/browse/essay/amdt6_7_2_3/ (last accessed Dec. 1, 2020).

⁸ *Id.* The right to counsel under the Sixth Amendment attaches in state proceedings because of Supreme Court decisions that applied due process analysis under the Fourteenth Amendment to state proceedings. *See*, CONST. ANNOTATED, Amdt 6.7.2.3, *When the Right to Counsel Applies*, https://constitution.congress.gov/browse/essay/amdt6_7_2_3/ (last accessed Dec. 1, 2020).

⁹ *See Argersinger v. Hamlin*, 407 U.S. 25 (1972).

¹⁰ Even preliminary hearings where no prosecutor is present can trigger the right to counsel under the Sixth Amendment. (*See, Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008) (right to appointed counsel attaches even if no public prosecutor is aware of that initial proceeding or involved in its conduct)).

¹¹ *Gideon*, 372 U.S. at 344.

¹² *Brewer v. Williams*, 430 U.S. 387, 398 (1977) (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972)).

¹³ *Powell v. State of Alabama*, 287 U.S. 45, 69 (1932).

¹⁴ *Coleman v. Alabama*, 399 U.S. 1, 7 (1970).

¹⁵ *Evitts v. Lucey*, 469 U.S. 387 (1985) (holding there is a right to counsel on first appeal).

¹⁶ *See* ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, A CONSTITUTIONAL DEFAULT: SERVICES TO INDIGENT CRIMINAL DEFENDANTS IN PENNSYLVANIA 115 (2011) (concluding that Pennsylvania does not fulfill its obligations in providing adequate or independent indigent defense).

¹⁷ *See Strickland v. Washington*, 466 U.S. 668 (1984).

¹⁸ *United States v. Cronin*, 466 U.S. 648 (1983); *see also Kuren v. Luzerne Cty.*, 146 A.3d 715 (Pa. 2016) (finding ineffective assistance of counsel due to systemic underfunding and high caseloads of public defender office).

¹⁹ *See*, NAT'L ASS'N FOR PUB. DEFS., *NAPD Policy Statement on Independence*, (May 27, 2020), https://www.publicdefenders.us/files/NAPD_Policy%20Statement%20on%20Independence.pdf; NAT'L ASS'N FOR PUB. DEFS., *Our Urgent Call to Action*, (May 27, 2020), https://www.publicdefenders.us/files/NAPD_Call%20to%20Action%20re%20Policy%20Statement%20on%20Independence.pdf ..

²⁰ AMERICAN BAR ASS'N, MODEL RULES OF PROFESSIONAL CONDUCT—ABOUT THE MODEL RULES, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/ (last accessed Dec. 4, 2020). Pennsylvania's Rules of Professional Conduct ("PaRPC"), which govern the state's ethical rules, were derived from the MRPC. the MRPC and the PaRPC rules pertinent to the issues facing Montgomery County public defenders use nearly identical language.

²¹ *See*, e.g., Pa.R.P.C. 1.1 (2020) & Model Rules of Prof'l Conduct R. 1.1. (2019): ("A lawyer shall provide competent representation to a client[,which] includes the legal knowledge, skill, thoroughness and preparation reasonably

necessary for the representation.”); Pa. R.P.C.1.3 (2020) & Model Rules of Prof’l Conduct R. 1.3 (2019) (“A lawyer shall act with reasonable diligence and promptness in representing a client.”).

²² See also, Pa.R.P.C. 1.3 (2020).

²³ See also *id.* at 1.4.

²⁴ See also *id.* at 5.1.

²⁵ Founded in 1878, the ABA is one of the largest voluntary professional membership organizations for attorneys in the country with over 356,000 members from every state.²⁵ The ABA has over 35 members groups,²⁵ including the ABA Ethics Committee and the Criminal Justice Section, which has nearly 60 different sub-committees²⁵ that each specialize in a particular area of criminal defense law. The ABA Ethics Committee is responsible for publishing formal ethics opinions on lawyer and judicial conduct, and will, upon request, assist courts in developing professional rules and interpreting ethical standards. ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM - Introduction*, (February 2002), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.pdf.

²⁶ NAPD also has members who are non-attorney staff at public defender’s offices (e.g. paralegals, social workers, investigators). See, NAT’L ASS’N FOR PUB. DEFS., *STATEMENT OF PURPOSE*, <https://www.publicdefenders.us/stateofpurpose> (last accessed Dec. 4, 2020).

²⁷ “NAPD members across all 50 states share their education materials, outreach plans, communications, technical assistance, amicus/litigation resources, policy positions, leadership skills, and research and analysis methods in order to leverage the tools for change for the people in the places that need them most.” NAT’L ASS’N FOR PUB. DEFS., *Statement of Purpose*, <https://www.publicdefenders.us/stateofpurpose> (last accessed Dec. 4, 2020).

²⁸ NAPD, *NATIONAL ASSOCIATION FOR PUBLIC DEFENSE FOUNDATIONAL PRINCIPLES - Introduction*, (March 2017), [https://www.publicdefenders.us/files/NAPD%20Foundational%20Principles_FINAL_March%2016%202017\(1\).pdf](https://www.publicdefenders.us/files/NAPD%20Foundational%20Principles_FINAL_March%2016%202017(1).pdf)

²⁹ See https://www.americanbar.org/groups/criminal_justice/standards/JuvenileJusticeStandards/.

³⁰ ABA Standards Relating to Counsel for Private Parties, 2.1, 2.2.

³¹ National Juvenile Defender Center, *National Juvenile Defense Standards* (2012), at 9.

³² *Id.* at 18-148.

³³ *Id.* at 148-161.

³⁴ https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/Standards/ABA_Standards_NACC_Revised.pdf.

³⁵ The Pennsylvania Bar Association, among other bar associations in the Commonwealth, has adopted the ABA Ten Principles. See <http://www.pabar.org/public/committees/lspublic/Resolutions/Resolution.pdf> (last accessed 3/23/21).

³⁶ See 16 Pa. Stat. and Cons. Stat. Ann. §§ 9960.1–9960.13 (West 2020).

³⁷ See *id.* at § 9960.3. Philadelphia County utilizes a nonprofit organization, the Defender Association of Philadelphia (DAP), which has been recognized as one of the best public defender offices in the nation. REPORT TO THE TASK FORCE AND ADVISORY COMMITTEE ON SERVICES TO INDIGENT CRIMINAL DEFENDANTS, A CONSTITUTIONAL DEFAULT: SERVICES TO INDIGENT CRIMINAL DEFENDANTS IN PENNSYLVANIA 62 (2011).

³⁸ 16 PA. STAT. AND CONS. STAT. ANN. § 9960.4 (West 2020).

³⁹ *Id.*

⁴⁰ REPORT OF THE TASK FORCE AND ADVISORY COMMITTEE ON SERVICES TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 37, at 6.

⁴¹ *Id.*

⁴² 16 Pa. Stat. and Cons. Stat. Ann. § 9960.5(c) (West 2020).

⁴³ *Id.* at § 9960.5(a).

⁴⁴ See *id.* at § 9960.6.

⁴⁵ Pa. R. Crim. P. 122(A)(1)–(2) (West 2020).

⁴⁶ Pa. R. Crim. P. 122(B)(2) (West 2020). The Rules note that, in an ideal state, defense counsel should be appointed to represent indigent defendants “immediately after they are brought before the issuing authority in all summary cases in which a jail sentence is possible, and immediately after preliminary arraignment in all court cases.” Pa. R. Crim. P. 122 cmt. (West 2020). The Pennsylvania Supreme Court’s Rules of Juvenile Court Procedure, *supra* n. 6, require attorneys in delinquency and dependency cases to represent their clients from the time a petition is filed through the duration of the case, which may involve years of in-court case reviews, as well as appeals.

⁴⁷ 16 Pa. Stat. and Cons. Stat. Ann. § 9960.9.

⁴⁸ *Id.* at § 9960.10a .

⁴⁹ See MONTGOMERY COUNTY., PA., EMPLOYEE CODE OF ETHICS, https://www.montcopa.org/DocumentCenter/View/2381/Ethics_Draft_FINAL?bidId= (last accessed 12/29/20).

⁵⁰ See *Id.* at 7–8.

⁵¹ See 16 Pa. Stat. and Cons. Stat. Ann. § 210.

⁵² *Id.*

⁵³ CTY. COMMISSIONERS ASS’N OF PA., *Counties by Class*, <https://www.pacounties.org/PAsCounties/Pages/Counties-by-Class.aspx> (last accessed Nov. 11, 2020). Class 1 is designates for counties with populations of 1.5 million and higher.

⁵⁴ UNITED STATES CENSUS BUREAU, QUICKFACTS: MONTGOMERY COUNTY, PENNSYLVANIA (July 1, 2019), <https://www.census.gov/quickfacts/montgomerycountypennsylvania>.

⁵⁵ “Collar counties” refers to the four suburban Philadelphia counties, which share contiguous borders with the city – Bucks, Montgomery, Delaware and Chester.

⁵⁶ CTY. COMMISSIONERS ASS’N OF PA., *supra* note 53.

⁵⁷ As noted in the discussion of resource parity, at *infra* pp. __–__, comparisons between District Attorneys Offices and Defenders offices’ budgets must take into account differences in resource needs and expenditures between the two entities.

⁵⁸ PUB. DEF. ASS’N PA.

⁵⁹ Rounded to the nearest 0.5 for ease of reference.

⁶⁰ MONTGOMERY CTY., PA., *County Commissioners*, <https://www.montcopa.org/95/County-Commissioners> (last accessed Nov. 11, 2020).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ MONTGOMERY CTY., PA., PROPOSED 2020 BUDGET (2019).

⁶⁷ *Id.*

⁶⁸ *Id.*; MONTGOMERY CTY., PA., PROPOSED 2019 BUDGET AND CAPITAL IMPROVEMENT PROGRAM 2019-2023 (2018).

⁶⁹ MONTGOMERY CTY, PA., MONTGOMERY COUNTY PENNSYLVANIA PROPOSED 2020 BUDGET (NOV. 21, 2019), <https://www.montcopa.org/DocumentCenter/View/26034/Proposed-2020-Budget> (last accessed Dec. 12, 2020)

⁷⁰ MONTGOMERY CTY. OFFICE OF PUB. DEF.; MONTGOMERY CTY., PA., *Public Defender: Staff Directory*, <https://www.montcopa.org/Directory.aspx?did=86> (last accessed Nov. 11, 2020).

⁷¹ See MONTGOMERY CTY., PA., *Public Defender*, <https://www.montcopa.org/201/Public-Defender> (last accessed Nov. 11, 2020).

⁷² See *Id.*

⁷³ MONTGOMERY CTY., PA., *Training*, <https://www.montcopa.org/2817/Training> (last accessed Nov. 11, 2020). However, one attorney informed us that this training does not always take place.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Mary Sue Backus & Paul Marcus, *The Right to Counsel in Criminal Cases, A National Crisis*, 57 HASTINGS L.J. 1031, 1069 (2006).

⁸⁰ See ABA STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 2.

⁸¹ NAT’L ASS’N OF PUB. DEFS. POLICY STATEMENT ON INDEPENDENCE *supra* note 19, at 2.

⁸² *Polk County v. Dodson*, 454 U.S. 312, 313 (1981).

⁸³ NAT’L ASS’N OF PUB. DEFS., POLICY STATEMENT ON INDEPENDENCE, *supra* note 19, at 1.

⁸⁴ *Id.* at 5 (May 2020).

⁸⁵ Irene Oritseweyinmi Joe, *Structuring the Public Defender*, 106 IOWA L. REV. 113 (2020).

⁸⁶ ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 55.

⁸⁷ *Id.*

- ⁸⁸ ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, GIDEON’S BROKEN PROMISE: AMERICA’S CONTINUING QUEST FOR EQUAL JUSTICE 20 (2004), <https://www.in.gov/publicdefender/files/ABAGideonBrokenPromise.pdf>.
- ⁸⁹ Ronald F. Wright, *Public Defender Elections and Popular Control Over Criminal Justice*, 75 MO. L. REV. 803, 812-13 (2010).
- ⁹⁰ NAT’L ASS’N OF PUB. DEFS., POLICY STATEMENT ON INDEPENDENCE, *supra* note 19, at 4.
- ⁹¹ Millan Das, *Impediments to Independence: How the Workplace Culture of Public Defender Offices Negatively Affects the Representation of Indigent Defendants*, 32 GEO. J. LEGAL ETHICS 469, 475 (2019).
- ⁹² NAT’L ASS’N OF PUB. DEFS., POLICY STATEMENT ON INDEPENDENCE, *supra* note 19, at 4.
- ⁹³ *Id.*
- ⁹⁴ Joe, *supra* note 85, at 19.
- ⁹⁵ *Id.* at 19-20.
- ⁹⁶ The Sixth Amendment Center, *Understanding judicial interference with the defense function – ABA Principle 1*, <https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/understanding-judicial-interference-with-the-defense-function-aba-principle-1/#:~:text=Although%20no%20two%20indigent%20defense>.
- ⁹⁷ See ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 55; CONST. PROJ., JUSTICE DENIED: AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 81 (2009).
- ⁹⁸ Das, *supra* note 91, at 475.
- ⁹⁹ LARA Director Signs New Indigent Defense Minimum Standard, Protects the Fundamental Constitutional Right to Counsel, <https://docs.google.com/document/d/1TqHTaDKIQ0ELBcRqFaJDUhtkoYPbKQXjDHpcibcD5l0/edit>.
- ¹⁰⁰ *Id.*
- ¹⁰¹ Interviews with Montgomery County Office of the Public Defender attorneys (conducted December 7 – 9, 2020 and March 10 and 18, 2021) (notes on file, Temple University Beasley School of Law).
- ¹⁰² *Id.*
- ¹⁰³ *Id.*
- ¹⁰⁴ *Id.*
- ¹⁰⁵ ABA Standing Committee on Legal Aid and Indigent Defendants, *supra* note 25, at 1.
- ¹⁰⁶ See, e.g., NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, CHAPTER 13, THE DEFENSE Standards 13.8, 13.9 (1973); NATIONAL STUDY COMMISSION ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES Guidelines 2.8, 2.18, 5.13 (1976); ABA STANDARDS FOR CRIMINAL JUSTICE, PROVIDING DEFENSE SERVICES Standards 5-1.3, 5-1.6, 5-4.1 (3rd ed. 1992); STANDARDS FOR THE ADMINISTRATION OF ASSIGNED COUNSEL SYSTEMS Standard 2.2 (NLADA 1989); NLADA, GUIDELINES FOR NEGOTIATING AND AWARDED CONTRACTS FOR CRIMINAL DEFENSE SERVICES Guidelines II-1, 2 (1984); NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, MODEL PUBLIC DEFENDER ACT § 10(d) (1970); INSTITUTE FOR JUDICIAL ADMINISTRATION / ABA, JUVENILE JUSTICE STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES Standard 2.1(D) (1979).
- ¹⁰⁷ Scott Wallace & David Carroll, THE IMPLEMENTATION AND IMPACT OF INDIGENT DEFENSE STANDARDS 12 (December 2003), (citing NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, *supra* note 106, Commentary to Standard 13.9).
- ¹⁰⁸ Model Rules of Prof’l Conduct R. 1.7 cmt. 1 (2019).
- ¹⁰⁹ ABA Standing Comm. On Legal Aid and Indigent Defendants, *supra* note 25, at 2.
- ¹¹⁰ NAT’L ASS’N OF PUB. DEFS., *supra* note 19, at Principle 2. Members of these independent commissions can include: “officials from executive and legislative branches of government, heads of bar associations and law school deans.” In addition, “[a]ll persons chosen for a board or commission should be committed to high quality public defense and members should include one or more persons who previously were represented by a public defense lawyer. Commissions or boards should not include active public defense practitioners, judicial office holders, and active law enforcement officials of any kind such as prosecutors, police, sheriffs, or their staffs.”
- ¹¹¹ *Id.*
- ¹¹² *Id.*
- ¹¹³ LAW OFFICES OF THE PUBLIC DEFENDER, NEW MEXICO, GREETINGS FROM THE LAND OF ENCHANTMENT <http://www.lopdnm.us/aboutus/>
- ¹¹⁴ *Id.*

¹¹⁵ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 164.

¹¹⁶ David Carroll, *Right to Counsel Services in the 50 States: An Indigent Defense Reference Guide for Policymakers*, SIXTH AMEND. CTR. (Mar. 2017), <https://www.in.gov/publicdefender/files/Right%20to%20Counsel%20Services%20in%20the%2050%20States.pdf>.

¹¹⁷ NAT'L ASS'N OF PUB. DEFS., *supra* note 19, at Principle 2.

¹¹⁸ Joe, *supra* note 85, at 17.

¹¹⁹ SIXTH AMENDMENT CTR., MASSACHUSETTS, HOW THE RIGHT TO COUNSEL IS ADMINISTERED AND STRUCTURED, <https://sixthamendment.org/know-your-state/massachusetts/> (last accessed Nov. 8, 2020). Similarly, Colorado's public defense system is housed in the judicial branch—both the Colorado Public Defender Commission, for primary services, and the Alternate Defense Commission for conflict representation. SIXTH AMENDMENT CTR., COLORADO, HOW THE RIGHT TO COUNSEL IS ADMINISTERED AND STRUCTURED, <https://sixthamendment.org/know-your-state/colorado/> (last accessed Nov. 8, 2020).

¹²⁰ SIXTH AMENDMENT CTR., ALASKA, HOW THE RIGHT TO COUNSEL IS ADMINISTERED AND STRUCTURED, <https://sixthamendment.org/know-your-state/alaska/> (last accessed Nov. 8, 2020). Similarly, Arkansas's Public Defender Commission sits in the executive branch and decides how to implement public defense services throughout the state. All major funding is provided by the state, with the counties contributing minor funds for office space and utilities. SIXTH AMENDMENT CTR., ARKANSAS, HOW THE RIGHT TO COUNSEL IS ADMINISTERED AND STRUCTURED, <https://sixthamendment.org/know-your-state/arkansas/> (last accessed Nov. 8, 2020).

¹²¹ Joe, *supra* note 85.

¹²² Carroll, *supra* note 116.

¹²³ *Id.*

¹²⁴ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 170.

¹²⁵ Carroll, *supra* note 116.

¹²⁶ SIXTH AMENDMENT CTR., TEXAS, THE RIGHT TO COUNSEL IN TEXAS, <https://sixthamendment.org/know-your-state/texas/>.

¹²⁷ *Id.*

¹²⁸ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 172.

¹²⁹ ROBERT C. BORUCHOWITZ, THE RIGHT TO COUNSEL IN WAYNE COUNTY, MICHIGAN: EVALUATION OF THE STATE DEFENDER OFFICE OF THE METROPOLITAN JUSTICE CENTER OF SOUTHEAST MICHIGAN 4 (2018) (the Michigan Indigent Defense Commission, a fifteen-member executive agency, promulgates standards for effective representation and awards funding grants to counties for compliance with its standards.)

¹³⁰ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 173.

¹³¹ Carroll, *supra* note 116.

¹³² SIXTH AMENDMENT CTR., ARIZONA, HOW THE RIGHT TO COUNSEL IS ADMINISTERED AND STRUCTURED, <https://sixthamendment.org/know-your-state/arizona/> (last accessed Nov. 8, 2020).

¹³³ See CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 169.

¹³⁴ NAT'L ASS'N OF PUB. DEFS., *supra* note 19, at Principle 2.

¹³⁵ Carroll, *supra* note 116.

¹³⁶ NAT'L ASS'N OF PUB. DEFS., POLICY STATEMENT ON INDEPENDENCE, *supra* note 19, at 2.

¹³⁷ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 148.

¹³⁸ Carroll, *supra* note 116.

¹³⁹ NAT'L ASS'N OF PUB. DEFS., POLICY STATEMENT ON INDEPENDENCE, *supra* note 19 at 10.

¹⁴⁰ *Id.* at 14.

¹⁴¹ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 174.

¹⁴² *Id.* at 160.

¹⁴³ *Id.* at 158.

¹⁴⁴ *Id.* at 159.

¹⁴⁵ SIXTH AMENDMENT CTR., OREGON, THE RIGHT TO COUNSEL IN OREGON, <https://sixthamendment.org/know-your-state/oregon/>

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ UNDERSTANDING POLITICAL INTERFERENCE WITH THE DEFENSE FUNCTION – ABA PRINCIPLE 1, SIXTH AMEND. CTR., <https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/the-preeminent-need-for-independence-of-the-defense-function-aba-principle-1/#> (last accessed Jan. 25, 2020).

¹⁴⁹ Carroll, *supra* note 116116, at 129. The ABA Principles cite to the National Study Commission on Defense Services’ (NSC) Guidelines for Legal Defense Systems in the United States (1976). The Guidelines were created in consultation with the United States Department of Justice (DOJ) under a DOJ Law Enforcement Assistance Administration (LEAA) grant. NSC Guideline 2.10 (The Defender Commission) states in part: “A special Defender Commission should be established for every defender system, whether public or private. The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented. Commission members should be selected under the following criteria: The primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director. (a) The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics. (b) No single branch of government should have a majority of votes on the Commission.”

¹⁵⁰ NAT’L ASS’N FOR PUB. DEFS., POLICY STATEMENT OF INDEPENDENCE, *supra* note 19, at 13.

¹⁵¹ *Id.* at 10 (citing ABA STANDARDS FOR CRIMINAL JUSTICE, *supra* note 106, at Standard 5-1.3, which states: “Members of governing boards should not include prosecutors and judges. This restriction is necessary in order to remove any implication that defenders are subject to the control of those who appear as their adversaries or before whom they must appear in the representation of defendants, except for the general disciplinary supervision which judges maintain over all members of the bar.”)

¹⁵² CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 159.

¹⁵³ UNIV. PA. QUATTRONE CTR., RECOMMENDATIONS FOR MONTGOMERY COUNTY TO ACHIEVE GREATER INDEPENDENCE IN INDIGENT DEFENSE PROVISION (2020).

¹⁵⁴ NAT’L ASS’N FOR PUB. DEFS., POLICY STATEMENT OF INDEPENDENCE, *supra* note 19, at 8 (citing NATIONAL STUDY COMMISSION ON DEFENSE SERVICES, *supra* note 106, at Guideline 2.10).

¹⁵⁵ See NATIONAL STUDY COMMISSION ON DEFENSE SERVICES, *supra* note 106, at Guideline 2.10 (The Defender Commission) states that “a special Defender Commission should be established for every defender system, whether public or private,” and that the primary consideration of appointing authorities should be “ensuring the independence of the Defender Director.” NSC Guideline 2.11 states that the “primary function of the Defender Commission should be to select the State Defender Director.”

¹⁵⁶ NAT’L ASS’N FOR PUB. DEFS., POLICY STATEMENT OF INDEPENDENCE, *supra* note 19, at 9.

¹⁵⁷ *Id.* (citing ABA STANDARDS FOR CRIMINAL JUSTICE, *supra* note 106, at Standards 5-4.1, Chief Defender and Staff.)

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ ABA STANDARDS FOR CRIMINAL JUSTICE, *supra* note 106, at 54.

¹⁶¹ See NAT’L ASS’N PUB. DEFS., POLICY STATEMENT OF INDEPENDENCE, *supra* note 19.

¹⁶² 65 Pa. Stat. and Cons. Stat. Ann. § 703 (West).

¹⁶³ FOP Lodge No. 5 v. Phila., 500 A.2d 900, 905 (1985)(holding that a commission appointed to investigate the MOVE incident was not subject to the Sunshine Act because the commission was a limited-purpose advisory board without authority to make binding recommendations).

¹⁶⁴ 65 Pa.C.S. §§ 707-708.

¹⁶⁵ *Id.* at § 708(a).

¹⁶⁶ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 154.

¹⁶⁷ *Id.* at 156.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ A significant benefit of which is simply logistical. However, because of the physical proximity of the Office to the courtrooms, we believe that moving away from the trial team system will not raise significant logistical drawbacks.

¹⁷¹ See, e.g., Jonathan A. Rapping, *Directing the Winds of Change: Using Organizational Culture to Reform Indigent Defense*, 9 Loy. J. Pub. Int. L 177, 187–88 (2008)(“Tethered to a courtroom, “the public defender’s workload and time devoted to [that] work is driven primarily by the judge in their [courtroom] ... they come in when the judge does and leave when court is finished for the day... Thus, the public defender in essence becomes part of the

judge's courtroom team. In this way, the Board minimized the likelihood that a lawyer would practice in a manner inconsistent with the judge's wishes.”).

¹⁷² NAT’L ASS’N PUB. DEFS., POLICY STATEMENT OF INDEPENDENCE, *supra* note 19 at 7.

¹⁷³ Joe, *supra* note 85, at 20.

¹⁷⁴ Jessa DeSimone, *Bucking Conventional Wisdom: The Montana Public Defender Act*, 96 J. CRIM. L. & CRIMINOLOGY 1479, 1486 (2006).

¹⁷⁵ ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 1.

¹⁷⁶ *Id.* at Principle 5.

¹⁷⁷ NAT’L ASS’N OF PUB. DEFS., *supra* note 19, at Principle 3.

¹⁷⁸ *Id.* at Principle 5.

¹⁷⁹ DeSimone, *supra* note 174, at 1485.

¹⁸⁰ Adam M. Gershowitz, *Raise the Proof: A Default Rule for Indigent Defense*, 40 CONN. L. REV. 85, 92 (2007).

¹⁸¹ Backus & Marcus, *supra* note 79, at 1579.

¹⁸² Gershowitz, *supra* note 180, at 92.

¹⁸³ *See* Backus & Marcus, *supra* note 79, at 1579.

¹⁸⁴ Carroll, *supra* note 116.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Backus & Marcus, *supra* note 79. Utah was also in this category until very recently, but has established a state-funded Indigent Defense Commission and moved to a statewide funding model. One area in which there *is* state funding is for lawyers for children in dependency cases. Pennsylvania Department of Human Services reimburses counties for 50% of the cost of guardians ad litem. 62 P.S. § 704.2(a)(5); 55 Pa.Code § 3140.23(2). Federal reimbursement is also available through Title IV-E of the Social Security Act for lawyers who represent children in foster care or at risk of entering foster care. <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2106.pdf>.

¹⁸⁸ NAT’L LEGAL AID & DEFENDER ASS’N, AN ASSESSMENT OF INDIGENT DEFENSE SERVICES IN MONTANA 4 (Aug. 4, 2004), <https://leg.mt.gov/content/Committees/Interim/2015-2016/Public-Defender/Committee-Topics/assessment-in-montana.pdf>. (last accessed Dec. 1, 2020).

¹⁸⁹ Joe, *supra* note 85, at 26; *see also* David A. Simon, *Equal Before the Law: Toward a Restoration of Gideon’s Promise*, 43 HARV. C.R.-C.L. L. REV. 581, 594 (2008) (describing how in counties with a disproportionately greater number of indigent residents, making funding schemes for public defender systems dependent on property tax revenues will lead to a diminishing number of indigent defendants who receive adequate representation).

¹⁹⁰ ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 9; *see also* ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 2-3.

¹⁹¹ Bryan Furst, BRENNAN CTR. FOR JUST., A FAIR FIGHT: ACHIEVING INDIGENT DEFENSE RESOURCE PARITY 6 (2019).

¹⁹² Robert L. Spangenberg & Marea L. Beeman, *Indigent Defense Systems in the United States*, 58 L. & CONTEMP. PROBS. 31, 32 (1995).

¹⁹³ Furst, *supra* note 191, at 5.

¹⁹⁴ MICH. INDIGENT DEF. COMM’N, DELIVERY SYSTEM REFORM MODELS: PLANNING IMPROVEMENTS IN PUBLIC DEFENSE 4 (2016), <https://michiganidc.gov/wp-content/uploads/2015/04/Delivery-System-Reform-Models-Final-Dec-2016.pdf>.

¹⁹⁵ ABA STANDARDS FOR CRIMINAL JUSTICE, *supra* note 106, at 7.

¹⁹⁶ MICHIGAN INDIGENT DEFENSE COMMISSION, *supra* note 194.

¹⁹⁷ Furst, *supra* note 191, at 5.

¹⁹⁸ Eve Hanan, *Big Law, Public Defender Style: Aggregating Resources to Ensure Uniform Quality of Representation*, 74 WASH. & LEE. L. REV. ONLINE 420, 432 (2018).

¹⁹⁹ *See* Spangenberg & Beeman, *supra* note 192, at 33-34.

²⁰⁰ Jeff Brown, *Disqualification of the Public Defender: Toward a New Protocol for Resolving Conflicts of Interest*, 31 U.S.F. L. REV. 1, 4 (1996).

²⁰¹ Spangenberg & Beeman, *supra* note 192, at 36.

²⁰² Wallace & Carroll, *supra* note 107, at 13.

²⁰³ ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 13.

²⁰⁴ *Argersinger v. Hamlin*, 407 U.S. 25, 43 (concurring opinion).

- ²⁰⁵ Ronald F. Wright, *Parity of Resources for Defense Counsel and the Reach of Public Choice Theory*, 90 Iowa L. Rev. 219, 225 (2004).
- ²⁰⁶ *Id.* at 222.
- ²⁰⁷ *Id.* at 230-31.
- ²⁰⁸ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 63.
- ²⁰⁹ Backus & Marcus, *supra* note 79, at 1096.
- ²¹⁰ Wright, *supra* note 205, at 232. (The federal system pays the federal public defenders on the same scale as Assistant United States Attorneys. Kansas, Massachusetts, North Carolina, Tennessee, and Wyoming have pay parity on a statewide basis, as do some jurisdictions operating under a county funding models, including Orange County, California and Maricopa County, Arizona.).
- ²¹¹ See Backus & Marcus, *supra* note 79, at 1062.
- ²¹² CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 61.
- ²¹³ See Backus & Marcus, *supra* note 79, at 1062.
- ²¹⁴ See also, Newsletter, *The high costs of low pay for public defenders*, THE APPEAL (Nov. 2018), <https://theappeal.org/the-high-costs-of-low-pay-for-public-defenders> (accessed 1/26/2021); Roberto Roldan, *Bill to Increase Pay Parity Among VA Prosecutors and Public Defenders Dies, but Fight Continues*, VPM NPR NEWS (Mar. 5, 2020), <https://vpm.org/news/articles/11229/bill-to-increase-pay-parity-among-va-prosecutors-and-public-defenders-dies-but> (accessed 1/26/2021); Noah Goldberg, *NYC public defenders to get pay parity with city lawyers*, BROOKLYN DAILY EAGLE (June 14, 2019), <https://brooklyneagle.com/articles/2019/06/14/citys-public-defenders-to-get-pay-parity-with-city-lawyers/> (accessed 1/26/2021).
- ²¹⁵ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 63.
- ²¹⁶ *Id.*
- ²¹⁷ Nicholas Chrastil, *City Council Passes Ordinance Bringing Public Defender Budget Closer to DA's Office*, THE LENS (Aug. 20, 2020), <https://thelensnola.org/2020/08/20/city-council-passes-ordinance-bringing-public-defender-budget-closer-to-das-office/>
- ²¹⁸ Wright, *supra* note 205, at 232.
- ²¹⁹ ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 3.
- ²²⁰ *Id.*
- ²²¹ ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 88-89.
- ²²² See Wright, *supra* note 205, at 230.
- ²²³ Backus & Marcus, *supra* note 79, at 1062.
- ²²⁴ See Wright, *supra* note 205, at 230.
- ²²⁵ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 63.
- ²²⁶ Wright, *supra* note 205, at 233.
- ²²⁷ See Backus & Marcus, *supra* note 79, at 1062.
- ²²⁸ Chrastil, *supra* note 217.
- ²²⁹ See, e.g., Furst, *supra* note 191, at 9; ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 91.
- ²³⁰ Wallace & Carroll, *supra* note 107, at 13.
- ²³¹ CONST. PROJ., JUSTICE DENIED: *supra* note 97, at 93.
- ²³² *Id.* at 93-94 (2009).
- ²³³ ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 91.
- ²³⁴ Furst, *supra* note 191, at 8.
- ²³⁵ *Id.*
- ²³⁶ Joseph J. Senna, *Social Workers in Public Defender Programs*, 20 SOC. WORK 271, 272 (1975).
- ²³⁷ ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 93.
- ²³⁸ *Id.*
- ²³⁹ See ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 3.
- ²⁴⁰ Furst, *supra* note 191, at 9.
- ²⁴¹ See Wright, *supra* note 205, at 231.
- ²⁴² AMERICAN BAR ASS'N STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE 14 (2004).
- ²⁴³ Wright, *supra* note 205, at 236.

²⁴⁴ *Id.*
²⁴⁵ *Id.*
²⁴⁶ *Id.*
²⁴⁷ See <https://montcopa.org/3670/Structure>; <https://montcopa.org/1819/Bureau-Organization>.
²⁴⁸ See *Id.*
²⁴⁹ See Furst, *supra* note 191, at 9.
²⁵⁰ Douglas v. California, 372 U.S. 353, 355 (1963).
²⁵¹ Joe, *supra* note 85, at 24.
²⁵² Spangenberg & Beeman, *supra* note 192, at 44.
²⁵³ See *Id.* at 45.
²⁵⁴ *Id.* at 46.
²⁵⁵ See *Id.* at 45.
²⁵⁶ SIXTH AMENDMENT CTR., NEW JERSEY, HOW THE RIGHT TO COUNSEL IS ADMINISTERED AND STRUCTURED, <https://sixthamendment.org/know-your-state/new-jersey/> (last accessed Nov. 8, 2020).
²⁵⁷ Interviews, *supra* note 101.
²⁵⁸ *Id.*
²⁵⁹ *Id.*
²⁶⁰ *Id.*
²⁶¹ *Id.*
²⁶² Bender v. Wisconsin, No. 19-CV-29-WMC, 2019 WL 4466973, at *1 (W.D. Wis. Sept. 18, 2019).
²⁶³ *Id.*
²⁶⁴ Sprint Communications, Inc. v. Jacobs, 134 S. Ct. 584 (2013).
²⁶⁵ *Id.*
²⁶⁶ Bender, 2019 WL 4466973, at *4.
²⁶⁷ Yarls v. Bunton, 905 F.3d 905, 912 (5th Cir. 2018).
²⁶⁸ *Id.*
²⁶⁹ This was, in fact, the argument raised by the *Yarls* plaintiffs in their application for appeal. The question was not resolved in the court’s denial of the application, as the court leaned on the alternative ground of Article III non-justiciability to justify denying the appeal. See *Id.*
²⁷⁰ Kuren, 146 A.3d at 719.
²⁷¹ *Id.*
²⁷² The suit also listed a cause of action under 42 U.S.C. §1983.
²⁷³ Kuren at 146 A.3d at 718.
²⁷⁴ *Id.* at 730.
²⁷⁵ Wallace & Carroll, *supra* note 107, at 19.
²⁷⁶ Donald J. Farole, Jr. & Lynn Langton, *A National Assessment of Public Defender Office Caseloads*, 94 JUDICATURE 87, 87 (2010).
²⁷⁷ Carrie Dvorak Brennan, *The Public Defender System: A Comparative Assessment*, 25 IND. INT’L & COMP. L. REV. 237, 247 (2015).
²⁷⁸ *Id.* at 247-48.
²⁷⁹ *Id.* at 246.
²⁸⁰ Farole, Jr. & Langton, *supra* note 276, at 87.
²⁸¹ Bennett H. Brummer, *The Banality of Excessive Defender Workload: Managing the Systemic Obstruction of Justice*, 22 ST. THOMAS L. REV. 104, 106 (2009).
²⁸² CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 65.
²⁸³ ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 2.
²⁸⁴ See NAT’L ASS’N OF PUB. DEFS., *supra* note 19, at Principle 3.
²⁸⁵ For discussion of caseloads in delinquency cases, see American Bar Association *Standards Relating to Counsel for Private Parties*, 2.2(b)(iv), 2.4; and National Juvenile Defender Center, *National Juvenile Defense Standards* (2012). For discussion of caseloads in dependency cases, see National Association of Counsel for Children, *Recommendations for Representation of Children in Abuse and Neglect Cases* (2001), III.A.2. Comment B, quoting HHS: “Primary causes of inadequate legal representation of the parties in child welfare cases are low compensation

and excessive caseloads.” See also ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996).

²⁸⁶ Furst, *supra* note 191, at 7.

²⁸⁷ Anthony C. Thompson, *The Promise of Gideon: Providing High-Quality Public Defense in America*, 31 QUINNIPIAC L. REV. 713, 732 (2013).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Susan Herlofsky & Geoffrey Isaacman, *Minnesota’s Attempts to Fund Indigent Defense: Demonstrating the Need for a Dedicated Funding Source*, 37 WM. MITCHELL L REV. 559, 581 (2011).

²⁹¹ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 66.

²⁹² Samantha Jaffe, “It’s Not You, It’s Your Caseload”: Using Cronin to Solve Indigent Defense Underfunding, 116 MICH. L. REV. 1465, 1477 (2018). Modern cases increasingly rely on developments in science and technology, which require specialized training and more time to develop an effective defense; ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, A CONSTITUTIONAL DEFAULT: SERVICES TO INDIGENT CRIMINAL DEFENDANTS IN PENNSYLVANIA 70 (2011).

²⁹³ Jaffe, *supra* note 292, at 1477.

²⁹⁴ Heidi Reamer Anderson, *Funding Gideon’s Promise by Viewing Excessive Caseloads as Unethical Conflicts of Interest*, 39 HASTINGS CONT. L.Q. 421, 427 (2012).

²⁹⁵ Cynthia G. Lee et al., NAT. CTR. STATE COURTS, NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES WORKLOAD ASSESSMENT 3 (2019).

²⁹⁶ MICH. INDIGENT DEF. COMM’N, MINIMUM STANDARDS FOR INDIGENT CRIMINAL DEFENSE SERVICES 7 (Nov. 18, 2020), <https://michiganidc.gov/wp-content/uploads/2020/10/MIDC-Standards-November-2020-complete.pdf>.

²⁹⁷ Eve Brensike Primus, *Culture as a Structural Problem in Indigent Defense*, MINN. L. REV. 1771 (2016) https://www.minnesotalawreview.org/wp-content/uploads/2016/06/Primus_Online.pdf

²⁹⁸ *Id.*

²⁹⁹ Backus & Marcus, *supra* note 79, at 1090.

³⁰⁰ F. Randall Karfonta, *Balancing the Scales of Justice: Training and Support Services for Appointed Criminal Defense Lawyers*, 71 MICH. B.J. 164, 165 (1992).

³⁰¹ *Id.*

³⁰² ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 11.

³⁰³ Karfonta, *supra* note 300, at 168.

³⁰⁴ ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 3.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 11; see also NAT’L ASS’N OF PUB. DEFS., *supra* note 19, at Principle 3.

³⁰⁸ Karfonta, *supra* note 300, at 166. For example, the National Association of Criminal Defense Lawyers offers free public defense training programs for indigent defense providers whose training may be considered “grossly inadequate.” Nat’l Assoc. Criminal Def. Lawyers, Public Defense Training Programs, <https://www.nacdl.org/Content/PublicDefenseTrainingPrograms> (last accessed Dec. 5, 2020).

³⁰⁹ Thompson, *supra* note 287, at 730-31.

³¹⁰ ABA Standards Relating to Counsel for Private Parties, 2.1(a)(i); National Juvenile Defender Center, *National Juvenile Defense Standards*, Guiding Principle 2; ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, II.H.4; NACC Recommendations for Representation of Children in Abuse and Neglect Cases.

³¹¹ ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 96.

³¹² Model Rules of Prof’l Conduct R. 5.1 (2019).

³¹³ *Id.* at R. 5.1(c).

³¹⁴ ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 3.

³¹⁵ Backus & Marcus, *supra* note 79, at 1090.

³¹⁶ NAT’L ASS’N OF PUB. DEFS., *supra* note 19, at Principle 4.

³¹⁷ Norman Lefstein & Georgia Vagenas, *Restraining Excessive Defender Caseloads: The ABA Ethics Committee Requires Action*, *Champion*, Dec. 2006, at 10, 14.

³¹⁸ *Id.*

³¹⁹ MICH. INDIGENT DEF. COMM’N, *supra* note 194, at 15.

³²⁰ *Id.*

³²¹ Robert C. Boruchowitz, Malia N. Brink, & Maureen Dimino, *Minor Crimes, Massive Waste The Terrible Toll of America’s Broken Misdemeanor Courts*, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS 40 (2009) <https://www.nacdl.org/getattachment/20b7a219-b631-48b7-b34a-2d1cb758bdb4/minor-crimes-massive-waste-the-terrible-toll-of-america-s-broken-misdemeanor-courts.pdf>

³²² Backus & Marcus, *supra* note 79, at 1092.

³²³ *Id.*

³²⁴ Robin Steinberg & David Feige, *Cultural Revolution: Transforming the Public Defender’s Office*, 29 N.Y.U. REV. L. & SOC. CHANGE 123, 125 (2004).

³²⁵ Wallace & Carroll, *supra* note 107, at 13-14.

³²⁶ *Id.*

³²⁷ *Id.* at 47.

³²⁸ *Id.*

³²⁹ Lynn Langton & Donald Farole, Jr., Ph.D., *State Public Defender Programs, 2007*, U.S. DEP’T JUST. NCJ 228229, at 8 (Sept. 2010), <https://www.bjs.gov/content/pub/pdf/spdp07.pdf>

³³⁰ Irene Oritsweyini Joe, *Systematizing Public Defender Rationing*, 93 DENV. L. REV. 389, 414 (2016).

³³¹ See ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *SUPRA* NOTE 25, AT 7.

³³² Langton & Farole, Jr., *supra* note 329, at 8.

³³³ Joe, *supra* note 330, at 392.

³³⁴ *Id.*

³³⁵ *Id.* at 396. “Messenger representation, if it lacks substantial counseling on the benefits and consequences of accepting or rejecting a plea offer, is likely deficient and can lead to systemic and individual case challenges to the representation.”

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ Steinberg & Feige, *supra* note 324, at 123-24.

³³⁹ *Id.* at 124-25.

³⁴⁰ See NAT’L ASS’N OF PUB. DEFS., *supra* note 19, at Principle 4.

³⁴¹ *Id.*

³⁴² Sarah Buchanan and Roger Nooe, *Defining Social Work within Holistic Public Defense: Challenges and Implications for Practice*, National Association of Social Workers Volume 62, Number 4, 335 (Oct, 2017).

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ James Anderson, Maya Buenaventura, and Paul Heaton, *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 Harv. L. Rev. 819 (2019).

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ See ABA STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at Introduction.

³⁵⁰ DeSimone, *supra* note 174, at 1486.

³⁵¹ ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 53.

³⁵² *Padilla*, 559 U.S. at 366.

³⁵³ Norman Lefstein, *In Search of Gideon’s Promise: Lessons from England and the Need for Federal Help*, 55 HASTINGS L.J. 835, 906 (2004).

³⁵⁴ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 91.

³⁵⁵ See ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 9.

³⁵⁶ New York State, First Judicial Department Indigent Defense Organization Oversight Committee, GENERAL REQUIREMENTS FOR ALL ORGANIZED PROVIDERS OF DEFENSE SERVICES TO INDIGENT DEFENDANTS, Indigent Defense Organization Oversight Committee, 1 (July 1, 1996, as amended May 2011) <http://www.courts.state.ny.us/courts/ad1/Committees&Programs/IndigentDefOrgOversightComm/general%20requirements.pdf>

³⁵⁷ *Id.* at 4.
³⁵⁸ *Id.*
³⁵⁹ Wallace & Carroll, *supra* note 107, at iii.
³⁶⁰ *Id.*
³⁶¹ *Id.* at 30.
³⁶² Carroll, *supra* note 116.
³⁶³ *Id.*
³⁶⁴ Wallace & Carroll, *supra* note 107, at iv.
³⁶⁵ *Id.*
³⁶⁶ See CONST. PROJ., JUSTICE DENIED, *supra* note 97.
³⁶⁷ Wallace & Carroll, *supra* note 107, at 8.
³⁶⁸ *Id.*
³⁶⁹ *Id.*
³⁷⁰ *Id.* at 9 (emphasis added).
³⁷¹ *Id.*
³⁷² *Id.*
³⁷³ *Id.*
³⁷⁴ CONST. PROJ., JUSTICE DENIED, *supra* note 97, at 162.
³⁷⁵ *Id.*
³⁷⁶ *Id.* at 163-64.
³⁷⁷ Carroll, *supra* note 116.
³⁷⁸ *Id.*
³⁷⁹ *Id.*
³⁸⁰ SIXTH AMENDMENT CTR., *Texas*, <https://sixthamendment.org/know-your-state/texas/>
³⁸¹ Interviews, *supra* note 101.
³⁸² *Id.*
³⁸³ *Id.*
³⁸⁴ *Id.*
³⁸⁵ *Id.*
³⁸⁶ *Id.*
³⁸⁷ *Id.*
³⁸⁸ *Id.*
³⁸⁹ *Id.*
³⁹⁰ Examples of formal policies adopted by public defender offices include those setting forth guidance regarding equal employment and diversity; confidentiality; maintenance and form of case files; caseload management; political activity; expenditures for expert services; performance standards and evaluations; ineffective assistance of counsel responses; general code of conduct; ethical adherence; promotions and salary increases; complaint channels and procedures; adverse action/discrimination claims; time off and leave; client correspondence and decisionmaking; CLE compliance and training expectations; etc.
³⁹¹ See 16 PA. STAT. AND CONS. STAT. ANN. § 9960 (West 2020).
³⁹² Interviews, *supra* note 101.
³⁹³ *Id.*
³⁹⁴ *Id.*
³⁹⁵ *Id.*
³⁹⁶ *Id.*
³⁹⁷ *Id.*
³⁹⁸ *Id.*
³⁹⁹ *Id.*
⁴⁰⁰ See 16 PA. STAT. AND CONS. STAT. ANN. §§ 9960.1–9960.13.
⁴⁰¹ *Id.*
⁴⁰² See NAT’L ASS’N OF PUB. DEFS. POLICY STATEMENT ON INDEPENDENCE *supra* note 19.
⁴⁰³ See Montgomery County website, Boards & Commissions, <https://www.montcopa.org/94/Boards-Commissions> (last accessed 01/27/2021).

⁴⁰⁴ SIXTH AMENDMENT CTR., OREGON, *supra* note 145.

⁴⁰⁵ See NAT'L ASS'N OF PUB. DEFS. POLICY STATEMENT ON INDEPENDENCE *supra* note 19.

⁴⁰⁶ It is critical that there is no implication that public defenders are subject to control of their adversaries. See AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE, *Providing Defense Services* (3rd ed. 1992), Standard 5-1.3; see also NAT'L ASS'N OF PUB. DEFS. POLICY STATEMENT ON INDEPENDENCE *supra* note 19.

⁴⁰⁷ CONST. PROJ., JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 160 (2009).

⁴⁰⁸ See UNIV. PA. QUATTRONE CTR., LEGAL LANDSCAPE (2020) (describing the Travis County, TX local commission comprising academic, private defense attorney, former public defender, individuals impacted by the criminal justice system, community advocates, a retired judge, and a commissioner's court representative).

⁴⁰⁹ See NAT'L ASS'N OF PUB. DEFS. POLICY STATEMENT ON INDEPENDENCE *supra* note 19. (stating that an independent commission "should have appointees who have staggered term limits made by multiple appointing authorities").

⁴¹⁰ See 16 PA. STAT. AND CONS. STAT. ANN. §§ 9960.1–9960.13 (West 2020).

⁴¹¹ See NAT'L ASS'N OF PUB. DEFS. POLICY STATEMENT ON INDEPENDENCE *supra* note 19 (advocating for removal of the Chief Public Defender for good cause only and after being given due process).

⁴¹² Interviews, *supra* note 101.

⁴¹³ *Id.*

⁴¹⁴ Interviews, *supra* note 101.

⁴¹⁵ ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 88-89.

⁴¹⁶ Steinberg & Feige, *supra* note 324, at 124.

⁴¹⁷ To maintain a positive office culture within indigent defense services and ensure the quality of indigent representation, the caseloads of defense attorneys should be effectively managed and kept to reasonable levels. See, Wallace & Carroll, *supra* note 107, at 19.

⁴¹⁸ Professional rules of conduct and model systems require that an attorney's caseload and workload be controlled to ensure that they can deliver quality representation for their indigent defendants. See Farole, Jr. & Langton, *supra* note 276.

⁴¹⁹ Brennan, *supra* note 277, at 247.

⁴²⁰ Including non-attorney staff, such as administrators, paralegals, social workers, investigators and legal interns.

⁴²¹ Steinberg & Feige, *supra* note 324, at 127.

⁴²² *Id.* at 126.

⁴²³ *Id.*

⁴²⁴ F. Randall Karfonta, *Balancing the Scales of Justice: Training and Support Services for Appointed Criminal Defense Lawyers*, 71 Mich. B.J. 164, 166 (1992). For example, the National Association of Criminal Defense Lawyers offers free public defense training programs for indigent defense providers whose training may be considered "grossly inadequate." NAT'L ASSOC. CRIMINAL DEF. LAWYERS, PUBLIC DEFENSE TRAINING PROGRAMS, <https://www.nacdl.org/Content/PublicDefenseTrainingPrograms> (last accessed Dec. 5, 2020).

⁴²⁵ MONTGOMERY CTY. OFFICE OF PUB. DEF.

⁴²⁶ DeSimone, *supra* note 174, at 1486.

⁴²⁷ Wallace & Carroll, *supra* note 107, at 8.

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ See NAT'L ASS'N OF PUB. DEFS. POLICY STATEMENT ON INDEPENDENCE *supra* note 19 (describing how adopting nationally recognized standards can be useful guides in implementing public defense).

⁴³² See 16 PA. STAT. AND CONS. STAT. ANN. § 9960.

⁴³³ See *Id.*

⁴³⁴ See *Gideon*, 372 U.S. 335.

⁴³⁵ See NAT'L ASS'N OF PUB. DEFS., *supra* note 19; ABA STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25, at 2.

⁴³⁶ See ABA STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, *supra* note 25 ("The responsibility to provide public defense rests with the state...there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.").

⁴³⁷ NAT'L ASS'N OF PUB. DEFS., *supra* note 19.

⁴³⁸ ADVISORY COMM. ON SERVS. TO INDIGENT CRIMINAL DEFENDANTS, *supra* note 16, at 13.