



## INTRODUCTION

The 6<sup>th</sup> Amendment holds that people charged with a crime have a right to counsel, yet for many people who cannot afford private attorneys, there is a chasm between a “right to counsel” and a right to *quality* representation in judicial proceedings. Public defense systems\* serve millions of people in the United States every year.<sup>1</sup> Yet many systems across the country have been in a state of “chronic crisis” for decades. The defender systems that people must rely on are too often completely overwhelmed; many defenders simply have too many cases, too little time and too few resources to provide quality or even adequate legal representation.

Ensuring that public defense systems have the resources necessary to provide quality representation to their clients can result in a more just system that reduces costs and incarceration and improves public safety and communities. Under-resourced public defense systems can lead to increased incarceration, which can have serious costs for individuals, families, communities and taxpayers:<sup>2</sup> for every \$1 spent on public defense, taxpayers spend nearly \$14 on corrections.<sup>3</sup>

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**7%**  
of all county-based public defender offices have enough investigators to meet national guidelines.

Quality public defense systems, on the other hand, can help to reduce unnecessary incarceration, saving money and having a positive impact on people and communities.

The following are some of the main findings in the Justice Policy Institute’s new report, *System Overload: The Costs of Under-Resourcing Public Defense*.

## PUBLIC DEFENSE IS UNDER-RESOURCED.

**The majority of public defender offices and systems have excessive caseloads.** Only 27 percent of county-based public defender offices and 21 percent of reporting state public defender systems have enough attorneys to meet caseload guidelines.<sup>4</sup> Statewide systems had only a median of 67 percent of the number of attorneys necessary to meet caseload guidelines.<sup>5</sup> Nearly 60 percent of county-based public defender offices do not have caseload limits or the authority to refuse cases due to excessive caseloads.<sup>6</sup> Overwhelming caseloads can prevent even the most dedicated and talented attorneys from providing their clients with a quality defense.

**A lack of resources limits the ability to prepare and investigate.** Only 7 percent of all county-based public defender offices have enough investigators to meet national guidelines and 87 percent of small county-based public defender offices do not have a single full-time investigator.<sup>7</sup> When defenders do not have access to sufficient resources they may be unable to interview key witnesses, collect or test physical evidence, or generally prepare and provide quality defense for their client, resulting in poorer outcomes for the client.<sup>8</sup>

\* “Public defense” is used to refer to all forms of indigent defense – public defender offices, assigned counsel and contract counsel.

**Public defense systems don't have enough independence or oversight.** Without independence from judicial and political influence, the defense system's legitimacy can be compromised.<sup>9</sup> A lack of oversight has also contributed to a system in which a person's access to justice varies wildly depending on the zip code or county in which he or she was accused of an offense.<sup>10</sup>

**Only 27 percent of county-based public defender offices and 21 percent of state public defender systems have enough attorneys to meet caseload guidelines.**

**A lack of resources limits training opportunities.** Ongoing education and training is vital, especially with technological advancements in DNA and forensics, which can make cases more time consuming and complicated.<sup>11</sup> Without this training—or the time to use it—defense attorneys may be less equipped to test the prosecution's evidence at trial or advise a client regarding a plea offer, possibly leading to a conviction or harsher sentence for their client.<sup>12</sup>

## **WITHOUT QUALITY PUBLIC DEFENSE, MORE PEOPLE ARE INCARCERATED.**

Overburdened, underfunded, inefficient and inadequate public defense systems lead to more incarceration, in the form of unnecessary pretrial detention, increased pressure to plead guilty, wrongful convictions, excessive sentences and increased barriers to successful community re-entry. Incarceration, in turn, can lead to higher costs for individuals, families, communities and taxpayers.

**Lack of quality defense may lead to pretrial detention.** In places where defender caseloads are very high or the court fails to appoint counsel

in a timely manner, poor people may spend a lot of time in jail before ever speaking to a lawyer or appearing in court.<sup>13</sup> Unnecessary or prolonged pretrial detention due to case delays, late appointments of counsel, lack of or limited pretrial advocacy can also increase costs. Pretrial detention is expensive and can have a negative impact on people and their families.

**Lack of quality defense could lead to excessive prison sentences.** A general lack of advocacy at sentencing, coupled with a lack of investigation throughout the process can lead to inappropriate and unnecessarily harsh sentences.

**Lack of quality defense can lead to more mistakes and wrongful convictions.** Excessive caseloads can cause defenders to make mistakes, harming their client and ultimately contributing to greater corrections costs. Evidence of the extent of wrongful convictions has grown, largely due to advancement in the use of DNA.<sup>14</sup> While ineffective counsel may not be the sole or even primary reason for many wrongful convictions, according to former Attorney General Janet Reno, "in the end, a good lawyer is the best defense against wrongful conviction."<sup>15</sup>

**Lack of quality defense may lead to more pressure to plead guilty.** Sometimes clients feel additional pressure to waive their right to counsel and plead guilty fearing that refusing to do so could result in having to stay in jail or a harsher sentence in the future.<sup>16</sup> Being detained before trial can augment existing pressure<sup>17</sup> and when people do not have the assistance of counsel early on in the process, they may end up pleading guilty in order to get out of jail and back to their families and jobs, unaware of the potentially serious collateral consequences of the criminal conviction they will have as a result of their plea.

**Lack of quality defense may prevent people from successfully returning to the community from prison.** People with criminal convictions and those who have spent time behind bars face numerous collateral consequences that can make it difficult to access basic supports and services

shown to be correlated with remaining crime-free, including housing, college tuition assistance, and jobs.<sup>18</sup> While a number of public defense systems work with clients to expunge records and help people access jobs and other services, many do not have the capacity to do so, leaving their clients to fend for themselves as they reenter the community.<sup>19</sup>

**Lack of quality defense erodes public trust.** Poor quality defense compromises the integrity of the entire justice system and people who experience the harsh consequences of a poor quality defense system may lose confidence that the justice system will treat them fairly. An eroded trust in the justice system can negatively impact public safety and community wellbeing. An effective public defense system can be a powerful tool in restoring public faith in justice, improving public safety and lawfulness.<sup>20</sup>

## PEOPLE OF COLOR AND COMMUNITIES WITH LESS INCOME ARE DISPROPORTIONATELY AFFECTED BY INADEQUATE PUBLIC DEFENSE SYSTEMS.

A lack of quality public defense and the costs that accompany them disproportionately affect people of color and those with low income, as public defense is provided to people who cannot afford to hire an attorney. Furthermore, people from communities with low income are more likely to be arrested than people from more affluent communities.<sup>21</sup> Research also shows that the justice system in general also disproportionately affects people of color.<sup>22</sup> As people of color are also disproportionately affected by poverty,<sup>23</sup> they are also more likely to require court appointed counsel when arrested.

## RECOMMENDATIONS

Quality public defense services can reduce heavy financial and social burdens associated with incarceration. A system in which defenders have the time and resources to provide a quality defense can actually save money, as well as have a positive impact on people and communities.

1. Follow The ABA Ten Principles of a Public Defense Delivery System.
2. Integrate a holistic and community-based approach to public defense.
3. Collect better data and conduct more empirical evaluations on the impact of public defense systems on people, communities and criminal justice.
4. Involve public defenders and affected communities in the policy making process.
5. Policymakers, researchers and advocates should actively seek out the voices and perspectives of people who have used public defender services to gain a better understanding of the realities of various systems and the implications for people.

The Justice Policy Institute is a national nonprofit organization that changes the conversation around justice reform and advances policies that promote well-being and justice for all people and communities. To read the full report, *System Overload: The Costs of Under-Resourcing Public Defense*, please visit [www.justicepolicy.org](http://www.justicepolicy.org) or contact us at Justice Policy Institute 1012 14th St. NW, Suite 400 Washington, DC 20005 Phone: (202) 558-7974 or at [info@justicepolicy.org](mailto:info@justicepolicy.org).

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<sup>1</sup> Bureau of Justice Statistics, “Indigent Defense Systems” (accessed July 18, 2011)

<http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=28>.

<sup>2</sup> Norman Lefstein and Robert L. Spangenberg (Reporters), *Justice Denied: America’s Continuing Neglect of our Constitutional Right to Counsel Report of the National Right to Counsel Committee* (Washington, D.C.: The Constitution Project, 2009), 87.

[www.nlada.org/DMS/Documents/1239831988.5/Justice%20Denied\\_%20Right%20to%20Counsel%20Report.pdf](http://www.nlada.org/DMS/Documents/1239831988.5/Justice%20Denied_%20Right%20to%20Counsel%20Report.pdf).

<sup>3</sup> **Corrections:** National Association of State Budget Officers, State Expenditure Reports, [www.nasbo.org](http://www.nasbo.org); **Indigent Defense:** Holly R. Stevens, Colleen E. Sheppard, Robert Spangenberg, Aimee Wickman and Jon B. Gould, *State, County and Local Expenditures for Indigent Defense Fiscal Year 2008* (Fairfax, Virginia: The Spangenberg Project, George Mason University’s Center for Justice, Law and Society, 2010).

[www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/defender/downloads/Indigent\\_Defense\\_Expenditures\\_FY08.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/defender/downloads/Indigent_Defense_Expenditures_FY08.authcheckdam.pdf)

<sup>4</sup> Donald J. Farole Jr. and Lynn Langton, *County-based and Local Public Defender Offices, 2007* (Washington, D.C.: Bureau of Justice Statistics, 2010). [bjs.ojp.usdoj.gov/content/pub/pdf/clpdo07.pdf](http://bjs.ojp.usdoj.gov/content/pub/pdf/clpdo07.pdf); Lynn Langton and Donald Farole Jr., *State Public Defender Programs, 2007* (Washington, D.C.: Bureau of Justice Statistics, 2010).

<http://bjs.ojp.usdoj.gov/content/pub/pdf/spdp07.pdf>

<sup>5</sup> Lynn Langton and Donald Farole Jr., *State Public Defender Programs, 2007*

<sup>6</sup> Donald J. Farole Jr. and Lynn Langton, *County-based and Local Public Defender Offices, 2007*

<sup>7</sup> Donald J. Farole Jr. and Lynn Langton, *County-based and Local Public Defender Offices, 2007* Table 13.

<sup>8</sup> Norman Lefstein and Robert L. Spangenberg, 2009.

<sup>9</sup> *Ten Principles of a Public Defense Delivery System* (Chicago, IL: ABA Standing Committee on Legal Aid and Indigent Defendants, 2002): The first principle is independence; Norman Lefstein and Robert L. Spangenberg, 2009, 80.

<sup>10</sup> Interview with James Neuhard, Former Director of the Michigan State Appellate Defender Office, April 27, 2011

<sup>11</sup> Norman Lefstein and Robert L. Spangenberg, 2009, 76.

<sup>12</sup> Interview with Arthur Ago, Deputy Trial Chief, Public Defender Service for the District of Columbia, May 4, 2011

<sup>13</sup> *Halting Assembly Line Justice: PDS: A Model of Client-Centered Representation* (Washington, D.C.: National Legal Aid & Defender Association, 2008), 8. [www.nlada.net/sites/default/files/dc\\_haltingassemblylinejusticejseri08-2008\\_report.pdf](http://www.nlada.net/sites/default/files/dc_haltingassemblylinejusticejseri08-2008_report.pdf); *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice* (Washington, D.C.: American Bar Association, 2004), 23. [www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/defender/brokenpromise/execsummary.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/defender/brokenpromise/execsummary.authcheckdam.pdf)

<sup>14</sup> Norman Lefstein and Robert L. Spangenberg, 2009, 44.

<sup>15</sup> Remarks of U.S. Attorney General Janet Reno at the 2000 National Symposium on Indigent Defense.

[www.nlada.org/Publications/Indigent\\_Defense/OctNovArticle3?printable=yes](http://www.nlada.org/Publications/Indigent_Defense/OctNovArticle3?printable=yes)

<sup>16</sup> Norman Lefstein and Robert L. Spangenberg, 2009, 88-89.

<sup>17</sup> Robert C. Boruchowitz, Malia Brink, Maureen Dimino, *Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Court*, (Washington, D.C.: National Association of Criminal Defense Lawyers, 2009), 32.

[www.nacdl.org/public.nsf/defenseupdates/misdemeanor/\\$FILE/Report.pdf](http://www.nacdl.org/public.nsf/defenseupdates/misdemeanor/$FILE/Report.pdf)

<sup>18</sup> Personal Interview with Betsy Biben, Chief of the Office of Rehabilitation and Development, Public Defender Service for the District of Columbia, Washington, D.C., April, 2011

<sup>19</sup> For example, the Neighborhood Defenders in Baltimore provide expungement assistance to clients and community members. Public Defender Service of D.C. hosts a Community Re-entry and Expungement Summit every year.

<sup>20</sup> Interview with James Neuhard; Interview with Randolph Stone, Director, Criminal & Juvenile Justice Project, Clinical Professor of Law, The University of Chicago Law School, May 4, 2011; and Interview with Robert Boruchowitz, Professor, Seattle University School of Law, Former Director, The Defender Association, April 26, 2011.

<sup>21</sup> Interview with Arthur Ago; Sarah Lyons and Nastassia Walsh, *Money Well Spent: How positive social investments will reduce incarceration rates, improve public safety, and promote the well-being of communities* (Washington, D.C.: Justice Policy Institute, 2010) [www.justicepolicy.org/research/1904](http://www.justicepolicy.org/research/1904)

<sup>22</sup> See Sarah Lyons and Nastassia Walsh, 2010

<sup>23</sup> According to Current Population Survey data from 2010, the poverty rate for people who identified as black or African American was over 25 percent, while the rate for non-Hispanic whites was over 9 percent. U.S. Census Bureau Current Population Survey, Annual Social and Economic Supplement, 2010.