

## Make Our Justice System Fair and Our Communities Safer by Supporting Quality Public Defense Systems

### SECTION I: SUMMARY

The United States Department of Justice (hereafter “the Department”) has responsibility for ensuring that our justice system is fair and balanced. With overwhelming evidence of racial disparity in our criminal justice systems, the Department must make reducing such disparity a priority that flows throughout its work. The availability of adequately funded indigent defense, a core element for ensuring fairness in the justice system, is also a key mechanism for addressing racial inequity. The Department should address the historic underfunding of indigent defense by:

- Supporting balance in the allocation of federal funds for state and local criminal justice systems;*
- Identifying indigent defense as a priority area for training and technical assistance;*
- Establishing a program of loan repayment assistance as required by section (c) of the John R. Justice Prosecutors and Defenders Incentive Act of 2008 (“The JRJ Act”) to assist in the recruitment and retention of public defenders and prosecutors; and*
- Conducting a nationwide study to determine the extent to which people are convicted without access to counsel in misdemeanor and low-level felony cases.*

### SECTION II: RACIAL DISPARITY AND DISPROPORTIONATE MINORITY CONFINEMENT

Racial disparity in the criminal justice system weakens the foundation of our system of justice, and strikes at the very core of the Department’s responsibility to ensure the “fair and impartial administration of justice for all Americans.” To eliminate racial disparities in federal and state criminal justice systems, the Department should:

- Advocate for passage of the Justice Integrity Act of 2008 (S.3245/H.R.6518), which calls for a collaborative approach linked to ten pilot sites that would collect, analyze and address issues raised by racial disparity data;*
- Coordinate and fund a study to determine whether failure by states to provide constitutionally adequate public defense systems contributes to racial disparities within criminal justice systems. This study should be conducted by an entity that is independent of government, such as a university or impartial research foundation;*
- Support funding for the Second Chance Act; and*
- Play a leadership role in monitoring, encouraging, supporting and ultimately enforcing compliance with the right to counsel.*

### SECTION III: INDIGENT DEFENSE

The necessity of adequately funded indigent defense systems that provide well trained attorneys is repeatedly identified as a critical part of any strategy aimed at disrupting the cradle to prison pipeline and eliminating racial disparities in our justice systems. However, indigent defense systems throughout our nation have been underfunded since the United States Supreme Court declared in *Gideon v. Wainwright* that it is an “obvious truth” that “lawyers in criminal courts are necessities, not luxuries.” With states left on their own to determine how to fulfill this federal mandate, the result has been what the Department described as a “chronic state of crisis.” The failure to provide adequate counsel for the criminally accused who cannot

afford to hire an attorney calls into question the integrity of the criminal justice system as it undermines the legitimacy of criminal convictions – innocent people go to jail, wrongdoers escape responsibility, money is wasted, people are harmed and racial disparities present in the system are exacerbated.

Despite the federal nature of the right to counsel mandate, the federal government’s actions have more often exacerbated rather than alleviated the crisis by increasing the already existing resource imbalances between prosecution and defense. For example, the government funds a training center for prosecutors with no corresponding resource for indigent defense. Moreover, even when the Byrne-Justice Assistance Grant (“JAG”) legislation contained specific language designating indigent defense as one of the program areas, less than 1% of the funding went to support the defense function. The Department should take the following steps to take back its rightful place as the guardian of the American ideal of justice for all:

***Support balance in the allocation of federal grant funds.*** The Department should request increased funding for Byrne-JAG Grants to provide support for needed state, local, and territorial public safety initiatives. The request should support language in the Byrne-JAG authorization that clearly delineates indigent defense as one of the funding areas, which requires indigent defense representation on the state or local grant advisory groups, and that requires a fair and proportional distribution of funds between prosecution and public defense entities.

***Identify indigent defense as a priority area for training and technical assistance.*** The Department should support technical assistance and training for state, local, and territorial public defense systems comparable to the federal government’s support for the prosecution function. This should include:

- ❑ *Convening yearly national gatherings of criminal justice leaders and stakeholders to examine the progress and setbacks in collaborative efforts to improve public defense since the National Symposia on Indigent Defense held in 1999 and 2000 and to develop new models of collaboration, technical assistance and support; and*
- ❑ *Supporting the creation of a National Center for Public Defense Services to provide training, technical assistance and leadership support similar to that provided to state prosecutors through the federally funded Ernest F. Hollings National Advocacy Center on the campus of the University of South Carolina.*

***Establish a program of loan repayment assistance as required by section (c) of the John R. Justice Prosecutors and Defenders Incentive Act of 2008.*** The JRJ Act authorizes student loan repayment assistance for prosecutors and public defenders in order to improve public safety by assisting prosecutor and defender offices in their ability to hire and retain high-quality lawyers. P.L. 110-315, Title IX, Part E, Sections 951, 952. Those steps should include: (a) convening an advisory group to assist in fashioning the structure of The JRJ Act program and identifying the resources that will be necessary to effectuate the Act’s requirements; and (b) requesting Congress to fully fund The JRJ Act program.<sup>1</sup>

***Conduct a nationwide study to determine the extent to which people are convicted without access to counsel in misdemeanor and low-level felony cases.*** An increasing body of evidence suggests the alarming reality that a significant number of people continue to be convicted without ever having access to counsel. The Department needs to conduct a definitive study to determine the extent and cause of our nation’s continued failure to fulfill *Gideon’s* mandate.

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<sup>1</sup> Full funding for fiscal year 2009 is authorized at \$25,000,000. Thereafter, Congress has authorized funding in “such sums as may be necessary” for each of the next five fiscal years.