



# Communicating with Justice System Stakeholders about the Right to Counsel

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## Communicating with Justice System Stakeholders about the Right to Counsel

The Right to Counsel (R2C) National Campaign is a public awareness initiative that informs policymakers, criminal justice system actors and the public about the importance of strengthening the constitutional right to counsel and the public defense delivery systems for those who cannot afford representation in the criminal justice system.

**This guide will help you make the case for improving public defense to federal, state, and local justice system leaders in your community.**

If your public defender system needs expanded resources, development of professional standards or guidelines, or even fundamental changes to the way defense services are provided, the support from key stakeholder groups will be crucial for convincing local and state policymakers to protect and expand the right to counsel.

Since 2016, the R2C National Campaign has been conducting comprehensive opinion research to determine how to most effectively communicate with six key justice system stakeholder groups about public defense. The information contained on these pages is taken from that research and a copy of the full report *Engaging Key System Actors to Advocate for the Right to Counsel* is accessible [here](#).<sup>1</sup>



### Who is included in “public defense”?

This guide applies to all public defense delivery systems, including public defender offices, contract attorneys, panel attorneys, and court-appointed attorneys.



### Who are the stakeholder groups?

- County officials
- Court administrators
- Judges
- Law enforcement personnel
- Prosecutors
- State administering agency administrators

## The Core Message

The R2C research reveals that, like most Americans, members of the six stakeholder groups studied revere the right to counsel as a constitutional right but, unlike the general public, these stakeholders are well-informed about the challenges facing public defense delivery systems. The groups agree that that inadequate public defense stems from caseloads that are too heavy and resources that are too scarce.

## Build on a Shared Value

Highlighting how an issue relates to a person's values – the principles and ideas they believe in – is a highly effective way to persuade them of your position and convince them to take action to help. Use this to frame your description of the problem and your proposed solution.

**You can find a step by step guide to building a value-based message in [American's Views on Public Defenders and the Right to Counsel: Message Guide](#).<sup>2</sup>**

**The R2C research identified a single core message with which all stakeholder groups agree:**

### Value

In America, every person accused of a crime has a constitutional right to have access to and representation by a competent lawyer.

### Problem

This fundamental right is threatened when public defenders have too few resources and too many cases to adequately represent their clients.

### Value + Solution

Providing more support for public defense will help our courts to run more efficiently and improve the quality of justice, and that will benefit every American.

### Solution

Providing competent legal representation is necessary to prevent innocent people from going to jail and will help reduce overincarceration.

Most system actors are motivated by a desire to make the criminal justice system fairer, more efficient, and less dependent on incarceration, so be sure to communicate that fixing public defense is a key component of overall criminal justice reform. This increases its importance with system actors and helps demonstrate to them how the quality of public defense can improve the speed and quality of justice and reduce the number of people incarcerated.

# The role of each stakeholder group and how to tailor your message

To maximize the effectiveness of your messaging, it is important to understand how differences between the stakeholder groups affect the values and ideas you should highlight as you tailor the core message, and what type of action you should ask each group to take.

*Remember:* The information on this page describes common characteristics of each system stakeholder group and suggested messaging approaches that are most likely to be successful with members of each group. General group advice will not apply to every situation. You should always research the specific individuals with whom you are communicating in order to understand their personal positions on public defense and their particular policy priorities.

## Judges

Judges enjoy high levels of credibility that make them well-positioned to influence legislators and other policymakers, and they often see themselves in a leadership role on this issue. **They should, therefore, be among your first recruits in your efforts to engage system stakeholders.** Do not assume they are too busy or too apolitical to be involved.

Judges agree that overcoming the reluctance of policymakers to add funding for public defense would solve many of the problems with public defense. Those who participated in the R2C research indicated that they believe their jurisdictions are doing a fairly good job upholding the right to counsel but recognize that public defenders suffer from a lack of resources, such as investigators, social workers, mental health workers, paralegals, and expert witnesses.

Ask judges to:

- Advocate for adequate resources for public defense
- Champion the right to counsel publicly
- Recruit colleagues on the bench to promote the message of the right to counsel

## Messages to Highlight: Justice, Fairness, The Constitution, Efficiency, Reducing Incarceration

### State Administering Agency (SAA) Administrators

SAA administrators are responsible for strategic justice system planning and often serve in advisory roles within state executive branches. They directly affect the level of resources allocated to public defense in their role as distributors of federal criminal justice funding to states and local governments through the Edward Byrne Memorial Justice Assistance Grant Program.

The SAA administrators who participated in the R2C research are generally highly motivated to improve public defense but need to be convinced that positive policy and system change is possible. They recognize that caseloads and insufficient resources are major problems and believe that other justice system reforms would help make courts fairer, more efficient, and prevent the expensive and unnecessary incarceration of young people that can cause them to become a greater threat to public safety when they return to their communities. Administrators perceive voters and elected officials as budget-conscious, so help them make the argument that investing in public defense saves money in the long run.

Ask SAA administrators to:

- Direct maximum grant funding to public defense
- Prioritize the right to counsel in justice system strategic planning work
- Advocate for the inclusion of public defenders in stakeholder meetings and policy forums

### **Messages to Highlight: Efficiency, Reducing Incarceration, Protecting the Innocent, Justice, Fairness**

#### **Prosecutors**

Prosecutors, who are charged with protecting public safety, are a powerful ally in efforts to improve the rights of people accused of crimes. While prosecutors' opinions of the performance of public defense systems are mixed, they generally feel a responsibility to work with public defenders to improve fairness in the justice system. They understand the effect of resource constraints, and, specifically, the consequences of public defenders being forced to leave their jobs due to inadequate pay before developing experience.

Prosecutors also believe that the public has a poor opinion of public defenders – which they do not believe is deserved – and that this “branding” problem makes it easy for state and local governments to ignore requests for increased funding.

Some prosecutors may be concerned that their vocal support for public defense could undermine public trust in the adversarial system as a whole, so we suggest identifying opportunities for them to assist in settings where this is less likely to be an issue.

Ask prosecutors to:

- Highlight the need for effective public defense in meetings, including those with policymakers
- Acknowledge the right to counsel when communicating about system improvements in broad strokes
- Be mindful not to harm the public defender's “brand” when communicating publicly

### **Messages to Highlight: Justice, Fairness, Efficiency, the Constitution**

#### **County Officials**

County officials understand that improving public defense is a critical piece of the movement to reduce the number of people incarcerated in America. They also consider reforms that provide alternatives to jail as key components of improved criminal justice systems, so be sure they also understand the role that public defense plays in these settings. These alternate mechanisms should not be viewed as replacement systems that can reduce defender caseloads because defense counsel must still be involved to protect client rights and ensure due process.

County officials see themselves as playing an active role in improving public defense – largely because they have some responsibility for funding it. They generally believe that public defense systems are performing at a satisfactory level and are receptive to considering data about their own jurisdictions, so use local examples and statistics to demonstrate the need.

Ask county officials to:

- Direct additional resources towards hiring more public defenders at higher pay and other needed staff, including investigators and expert witnesses
- Include public defenders in strategic planning conversations about alternatives to incarceration
- Seek data from public defenders and other system stakeholders to make informed decisions about public defense system needs

### **Messages to Highlight: Justice, Fairness, Protecting the Innocent, Reducing Incarceration**

## Court Administrators

Court administrators see public defenders as dedicated advocates but understand that high caseloads and insufficient resources for expert consultants, interpreters, investigators, and office support staff can negatively affect the quality of representation they can provide.

Their primary concern about overburdened public defense systems is that a constitutional right is not being met. While they believe that improving public defense may actually slow down case processing in their courts, for example if fewer people choose to plead guilty as a result of access to an effective defense counsel, they still support this improvement because it would advance the quality of justice delivered.

Court administrators do not see themselves in a leading role in efforts to improve public defense because they do not think they have the power to help. Rather, they believe that responsibility for improving public defense lies primarily with the judges in their courts.

Ask court administrators to:

- Inform judges about the impact of inadequate public defense on the functioning of their courts
- Encourage judges to lead public advocacy around public defense and support their efforts

### Messages to Highlight: The Constitution, Justice, Fairness, Protecting the Innocent

## Law Enforcement Personnel

Representatives of law enforcement believe that the criminal justice system is biased against people of lesser means and they see improving public defense as an important component of fixing this “broken” criminal justice system. They believe that public defenders have too many cases to handle at one time and lack access to important resources, such as investigators or forensic analysts.

Law enforcement feel that as “part of the same system” they have a stake in striving toward a criminal justice system in which public defenders have the resources to represent clients effectively. They feel, however, that the issue is more pertinent to prosecutors and defenders themselves and therefore is a relatively low priority for them.

They may also be unwilling to publicly advocate for improvements in public defense because they worry about appearing to take a side in the adversarial system, so we suggest identifying smaller and more manageable ways for them to advocate for public defense.

Ask law enforcement to:

- Learn more about how improving public defense strengthens public safety
- Be mindful not to speak negatively of public defenders themselves when communicating in public but rather communicate about the problems with public defense delivery systems
- Highlight the role of public defense within criminal justice reform in meetings, including those with policymakers

### Messages to Highlight: The Constitution, Efficiency, Protecting the Innocent

## Sample Message: Fairness

*“Fairness requires that all accused persons have access to a competent legal attorney to represent them.”*

A person cannot be said to have received a fair trial if their attorney has failed to represent them adequately. Fairness is one of the fundamental principles of the criminal justice system, and our belief that all persons are entitled to a level playing field when they are facing loss of freedom within the criminal justice system.

## Sample Message: Justice

*“The quality of justice a person receives should not be determined by how much money that person has.”*

Whether a person accused of a crime is found guilty should depend only on evidence and circumstances of their case. Where public defense systems are inadequate, it is deeply unjust that a person’s inability to pay for private counsel can determine whether they lose their liberty or suffer other life-long collateral consequences.

## Sample Message: The Constitution

*“Guaranteeing that every person accused of a crime has the right to a lawyer is a fundamental American right that is written into our Constitution.”*

The Supreme Court affirmed in *Gideon v Wainwright* that the Sixth Amendment guarantees that adequate counsel be provided to defendants who cannot afford to pay for it. Like all constitutional mandates, it must be followed, but inadequate public defense systems fail to meet this fundamental requirement.

## Sample Message: Efficiency

*“A lack of funding in many places has resulted in people accused of minor crimes waiting in jail as long as six months to have a lawyer assigned to them and a hearing held.”*

Aside from instances where improvements to public defense systems will reduce delays in processing cases, strengthening the right to counsel will also save taxpayer dollars in the long run by reducing expensive incarceration and helping people return to productive lives that contribute to society.

## Sample Message: Protecting the Innocent

*“Providing competent legal representation is necessary to prevent innocent people from going to jail.”*

When public defender systems lack resources to investigate cases or hire experts that could prove a client’s innocence, some innocent people take unnecessary guilty pleas to avoid jail, which can lead to life-long collateral consequences.

## Sample Message: Reducing Incarceration

*“Providing competent legal representation will mean that alternatives to incarceration are considered more often for poor people who are accused of less serious crimes.”*

Effective public defense can help ensure that people who have committed relatively minor crimes receive just sentences that avoid or limit expensive and unnecessary incarceration, and avoid the potential lifelong consequences of criminal a record. Truly effective public defender programs can also help clients resolve the problems that led to their justice system involvement in the first place, and help avoid unnecessary incarceration.

## Top Messaging Tips

### **Focus on the system, not individuals.**

In general, justice system stakeholders have a positive impression of public defenders. They agree that inadequate public defense stems from caseloads that are too heavy and resources that are too scarce. They understand that addressing these problems will improve the fairness and efficiency of the criminal justice system overall.

**Do:** Connect the message about protecting the innocent with the larger effort to reduce over-incarceration.

**Do:** Assert that better public defense will save money for the criminal justice system.

**Do:** Remind stakeholders who want to help strengthen public defense that they can do so without criticizing defenders themselves.

**Don't:** Make the message about public defense alone

**Don't:** Focus only on protecting the innocent without mentioning overincarceration.

**Don't:** Say “restore the constitutional right.” Some stakeholders reject the notion that the right has gone away. Instead use “ensure” or “protect.”

### **Use numbers carefully when describing the problem.**

Prosecutors, law enforcement personnel, and court administrators may reject statistics and examples demonstrating problems with the current workings of public defense, such as the length of time some people wait in jail before being assigned a public defense provider or the short amount of time a public defender can give to each client, because they view it as a negative portrayal of the professionals in their jurisdictions. However, this information is embraced by judges, county officials, and state administering agency administrators, who see these examples as helpful to make the case for more funding for public defense.

**Do:** Describe the human cost of inadequate public defense delivery systems in broad terms, such as “clients waiting weeks and sometimes months in jail to see a public defender,” but be ready with specifics if asked.

**Don't:** Use specific statistics about wait times, etc., unless they apply to the local situation.

## Describe standards as a goal.

While the American public supports the creation of national standards relating to quality and minimum level of resources for public defense providers, many of the stakeholder groups react negatively to the idea. If your objective is to build support for the introduction of standards for public defense in your jurisdiction, be aware that prosecutors, law enforcement personnel, and court administrators in particular are concerned that national standards could lead to a loss of local control over the public defense system. Even stakeholder groups that are more receptive to this idea are more comfortable when standards are described as “aspirational” or “recommended” rather than mandated.

**Do:** Call for recommended basic standards for what constitutes an adequate public defense delivery system.

**Don't:** Call for national standards without making it clear that they are recommended guides to be considered by each jurisdiction, not mandates.

## Don't be afraid to talk about funding.

The stakeholder groups easily identified what they believe are the elements that go into good public defense systems: adequate compensation, resources for investigators and experts, and manageable workloads that give public defenders sufficient time with their clients. A key problem, as they see it, is getting these needs funded. If your primary objective is to advocate for adequate resources, most stakeholder groups are likely to agree that the need exists. The challenge is convincing them to play an active role in advocating for it.

**Do:** Reference the big picture needs for adequate financing, such as attorney compensation, investigation, and caseload reduction.

**Do:** Point out discrepancies in resources for prosecutors vs. public defenders.

**Don't:** Frame a lack of resources as a “burden” on public defenders. Describe instead the effect on their ability to adequately represent their clients.

<sup>1</sup>Available at: “to be confirmed”

<sup>2</sup>Available at: <https://static1.squarespace.com/static/55f72cc9e4b0af7449da1543/t/5a022502c83025f13ca810f1/1510089989803/New+Messaging+Guide.pdf>



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