

***INNOVATIVE
SOLUTIONS* IN PUBLIC DEFENSE**

Research-Practitioner Partnerships: Applying a Collaborative Model to Improve Indigent Defense Systems

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Introduction

In 2015, the Bureau of Justice Assistance¹ (BJA) of the U.S. Department of Justice, Office of Justice Programs released a grant solicitation for the Smart Defense Initiative - Answering Gideon's Call: Improving Public Defense Delivery Systems.² The solicitation explained: "The purpose of this program is to improve the quality of public defense delivery systems guided by the Ten Principles of a Public Defense Delivery System, promulgated by the American Bar Association (ABA) in 2002." The ABA Ten Principles list the American Bar Association's recommendations for government officials and other parties who are charged with improving public defense delivery systems and addressing defenders' appropriate functions, workload, resources, training, and quality of services.³ BJA awarded grants to five jurisdictions: the New York City Mayor's Office of Criminal Justice; the Kentucky Department of Public Advocacy; the Wisconsin State Public Defender; the Public Policy Research Institute of Texas A&M University; and the Office of the Public Defender of Alameda County, California. One year later, BJA selected a sixth site, the Public Defender Office of Contra Costa County, California.

BJA also selected the National Legal Aid & Defender Association (NLADA) to provide training and technical assistance for the awardees, and NLADA contracted with the National Criminal Justice Association (NCJA) to assist in the effort.

With these grants, BJA added indigent defense to its Smart Suite of Criminal Justice Programs.⁴ According to BJA,

The Smart Suite of programs represents a strategic approach that brings more "science" into criminal justice operations by leveraging innovative applications of analysis, technology, and evidence-based practices with the goal of improving performance and effectiveness while containing costs. The heart of the Smart Suite is practitioner-researcher partnerships that use data, evidence, and innovation to create strategies and interventions that are effective and economical.⁵

In 2017, BJA rebranded the Smart Defense Initiative and the Smart Suite as the Innovative Solutions in Public Defense Initiative (Innovative Solutions Initiative) and the Innovations Suite.

By these efforts, BJA has provided leadership to a growing movement toward testing criminal justice practices and policies against empirical evidence, i.e., knowledge gained by research: systematic observation or scientifically rigorous experimentation. Joining BJA in this effort is the National Institute of Justice (NIJ), another arm of the U.S. Department of Justice, Office of Justice Programs. NIJ established a website, CrimeSolutions.gov,⁶ which acts as a clearinghouse of criminal justice programs and practices and offers a process for rating the effectiveness of those programs and practices.⁷ Drawing on rigorous evaluations and meta-analyses, CrimeSolutions.gov indicates whether the catalogued programs achieve their intended outcomes. In other words, it catalogues what works, what doesn't work, and what's promising.

The provision of indigent defense services fulfills a constitutional mandate to provide all persons accused of crime with access to counsel, including those who cannot afford a lawyer.⁸ The ways in which indigent defense services are delivered and funded is left to states and localities, and a great deal of diversity exists. The Innovative Solutions Initiative seeks to support states' and localities' various efforts to uphold the right to counsel by investigating promising interventions that can be replicated in multiple jurisdictions.

This paper shares observations and advice about the use of practitioner-researcher partnerships as a mechanism for improving indigent defense systems. Chapter 1 discusses the gradual shift toward use of evidence-based interventions to assess indigent defense services. Chapter 2 profiles the goals and contours of the six Innovative Solutions Initiative projects. Finally, Chapter 3 offers lessons learned from the six projects and condenses information gathered from the sites into a road map to help those who seek to begin a researcher-practitioner partnership in indigent defense action research.

Chapter 1

From Medicine to Justice: The Trend Toward Empirical Evidence Guiding Practice

Efforts to bring an evidence-informed approach to criminal justice and other fields arose from movements beginning in the 1960s to examine medical decision-making in light of evidence provided by clinical trials.⁹ In medicine, as in other fields, decisions were often based on some combination of personal experience and conventional wisdom. Both approaches can be problematic. Anecdotal evidence from personal experience lacks the strength of rigorous systematic investigation, is subject to a variety of cognitive biases,¹⁰ and can lead to faulty judgments. Commonly accepted views on best practices might be based on untested assumptions and are similarly subject to cognitive biases. What followed from questioning prevailing medical wisdom was the development of evidence-based medicine, where judgments about treatment options or medical policy are based on rigorous scientific research grounded in randomized control trials,¹¹ meta-analyses,¹² or systematic reviews.¹³

More generally, one might speak of an evidence-based practice movement which consists of a variety of efforts to bring into widespread use programs, policies, and other practices already shown by experimental evaluation to be effective.¹⁴ The evidence-based practice movement first began to find application in the criminal justice system through the adoption of social sciences concepts and programs aimed at treatment and rehabilitation of those who committed offenses.¹⁵ Later, it was applied to efforts to identify effective crime control or prevention programs and practices, such as Boston's Operation Ceasefire or Hot Spots Policing. Since these early applications of evidence-based decision making, the use of evidence-based practices (EBP) has continued to expand in the criminal justice system.

The terms "evidence-based programs" and "evidence-based practices" have gained currency in a variety of fields. They are sometimes misused, however, most likely unintentionally. Because they are considered terms of art with specific meanings in the social sciences, including in criminology, the branch of sociology dealing with criminal justice, practitioners and researchers alike should use these terms with care. To use the terms otherwise is to dilute the strength of the designation "evidence-based."

Formulations used on the CrimeSolutions.gov website offer good working definitions:¹⁶

Key Terms

- Evidence-based program: a specific set of activities that have been shown to be effective to produce the observed result if it is implemented in exactly the same way.
- Practice: a general category of programs, strategies, or procedures that share similar characteristics with regard to the issues and how they address them.
- Evidence-based practice: a practice that has been found to be effective by meta-analyses of multiple experimental or quasi-experimental design research studies

An example of this distinction is whether a specific mentoring program is considered effective as compared to whether a general practice—mentoring programs considered collectively—are considered effective.

The terms “data-driven” and “research-based” similarly express the concept of informing practice through empirical evidence, though without imposing the rigor required to term something as “evidence-based.”

Action Research

Traditionally, research studies are conducted by individuals who collect and analyze data about a program but are not an active participant in the program, its design, or its execution. In the Innovations Suite “action research” model, working together the practitioner and researcher partners “us[e] science and data to: (a) support criminal justice planning and programming; (b) develop capacity to translate research into practice; (c) support the implementation of evidence-based practice; and (d) enhance public safety and improve the delivery of fair and cost effective justice.”¹⁷

This paper will discuss these activities and the partnerships in which they operate as undertaken through the Innovative Solutions in Public Defense Initiative.

In the Innovation Suite’s “action research” model, together the practitioner and researcher partners use science and data to:

- a) support criminal justice planning and programming;
- b) develop capacity to translate research into practice;
- c) support the implementation of evidence-based practice;

and

- d) enhance public safety and improve the delivery of fair and cost-effective justice.

Indigent Defense: Developing an Evidence Base

It is fair to ask as a starting point whether there is consensus as to what constitutes “good indigent defense” and any consensus as to how to measure it. Professor Jennifer Laurin’s insightful exegesis, *Gideon by the Numbers: The Emergence of Evidence-Based Practice in Indigent Defense*,¹⁸ is perhaps not very encouraging:

Imagine a research environment in which criminologists not only disagreed on whether arrests prevented crime, but also on whether crime prevention was a proper quality metric for policing, or one in which not only was the link between incarceration and non-recidivism unknown, but the value of non-recidivism disputed. This approximates the research environment for indigent defense, in that the field lacks any systematic understanding of how system inputs—attorney practices, client characteristics, compensation or hours spent—relate to desired outcomes, as well as any agreed-upon framework for stating and measuring what the desired outcomes are. Whether quality defense representation is evidenced by acquittals, favorable sentencing outcomes, charge reductions, pretrial release, protecting constitutional rights, sheer client satisfaction, or some mix of the above is a matter on which no consensus exists.¹⁹

Policy makers and legislative appropriating committees are turning to objective measurements to determine policy and expenditure priorities, especially in times of increasing demands for shrinking resources. Those objective measures are only going to be accessible through developing an evidence base.

Indeed, there are some who would question whether good indigent defense, or criminal defense generally, is susceptible to measurement at all, or whether, like Justice Potter Stewart, we should be content to know it when we see it. The evidence-based practice movement encountered similar resistance in the medical field, where the ipse dixit²⁰ school had long prevailed. But the simple truth is that the train has already left the station. Policy makers and legislative appropriating committees are turning to objective measurements to determine policy and expenditure priorities, especially in times of increasing demands for shrinking resources. Those objective measures are only going to be accessible through developing an evidence base.

Prof. Laurin is correct in asserting that there is currently no national consensus as to what constitutes “good indigent defense.” Depending on the stakeholder, the goal of “good” indigent defense could be provision of high-quality representation, or it might be efficient processing of cases. Even for defenders who agree their goal is to strive to achieve the best possible outcome for the client, that can be an amorphous concept. For example, consider that diversion from incarceration is generally considered a good outcome or, at least, a better outcome than a sentence of incarceration. However, some clients might make the rational choice to accept a short period of incarceration rather than a lengthy period of probation, knowing that a probation violation could lead to an even lengthier incarcerative sentence. In

evaluating the quality of criminal defense, there are also built-in confounding factors²¹ at the case level. For example, averting a conviction or avoiding a lengthy sentence is going to be more dependent on the facts of the individual case than on the competence, commitment, or time expended by defense counsel. Nevertheless, efforts are underway across the field, and in some of the Innovative Solutions in Public Defense sites, to define the elusive concept of good indigent defense and to develop means to measure it.

A starting point has been the development of standards for indigent defense. In 1971, with funding from the Law Enforcement Assistance Administration (the predecessor to BJA), the National Advisory Commission on Criminal Justice was created. The Commission's Report on the Courts recommended sixteen standards for the public defense function.²² In 2002, based on prior work by the National Legal Aid & Defender Association done with the Michigan State Appellate Defender Office, the American Bar Association promulgated the Ten Principles of a Public Defense Delivery System.²³ These and other suggested standards are the result of thoughtful consideration by respected experts and are logically and experientially appealing. We reasonably expect that if applied, they will result in stronger indigent defense, but they retain their ipse dixit quality: they have not, for the most part, been subjected to empirical testing.

More recently, some jurisdictions have begun to develop objective factors to quantify good indigent defense. One such jurisdiction that has taken an early step in that direction is North Carolina, where the legislature created the North Carolina Office of Indigent Defense Services (NCIDS) with an explicit mandate, *inter alia*, "to generate reliable statistical information in order to evaluate the services provided and funds expended."²⁴ In response to this mandate, NCIDS created the North Carolina System Evaluation Project (NCSEP)

to develop performance measures that would evaluate system outcomes and enable defense agencies to assess, with empirical data, how well the indigent defense system meets the needs of our clients, the criminal justice system, and the community. With empirical data NCIDS will be able to improve the quality of legal representation for the poor, increase system efficiency, and quantify the social and economic benefits that quality indigent defense services generate.²⁵

The project sought to develop measures that would allow comparisons across jurisdictions or in outcomes among public defenders, appointed counsel, and privately retained counsel.²⁶ Four jurisdictions took part in NCSEP,²⁷ and developed a set of eighteen key performance indicators (KPI) across a variety of dimensions. Of the KPIs, nine were measures of case outcomes and nine were measures of access to counsel. NCSEP created a toolkit and guidance for other jurisdictions that might want to perform similar analyses of their indigent defense systems.²⁸

NCSEP issued a final report on the work done in the four jurisdictions. Only two of the four, North Carolina and Travis County, Texas, were able to gather sufficient data to arrive at statistically significant conclusions. The report provides an analysis of indigent defense outcomes on various measures broken down by case type and type

of counsel both within the individual jurisdiction and as between North Carolina and Travis County. The report compares those two jurisdictions on a variety of factors categorized as either best outcomes or worst outcomes. Examples of “best” outcomes include percentage of cases ending in non-convictions, percentage of convictions ending in an alternative to incarceration, and average percentage of sentences avoided in cases ending in conviction. An example of a “worst” outcome is percentage of cases resulting in conviction of most serious charge. Issues that prevented the other two jurisdictions from being part of the analysis are found in the appendices to the NCSEP Final Report and are a worthy study for jurisdictions undertaking similar data collection and analysis.²⁹

A number of other jurisdictions have been the subjects of empirical studies of the effectiveness of indigent defense systems. A study of the indigent defense system in Wichita County, Texas compared case outcomes and costs among public defenders, appointed private attorneys, and retained private attorneys, and analyzed these defense service models in light of the ABA Ten Principles.³⁰ The public defender clients experienced better outcomes in a number of dimensions, though not all. Similar studies were conducted in Philadelphia, Pennsylvania (comparing outcomes in murder cases handled by public defenders with those handled by appointed counsel)³¹ and Los Angeles County, California (comparing outcomes in juvenile cases as between public defender clients and appointed counsel clients).³² In the Philadelphia study, clients represented by public defenders experienced better outcomes on a number of measures. The Los Angeles juvenile study is notable in several regards. It contains a comprehensive literature review of indigent defense studies. The study also contains a detailed discussion of the methodology used which would be of interest to those considering similar studies. Furthermore, the study examines a few certain selected inputs (i.e., attorney actions) and analyzes how those inputs relate to better client outcomes.

Two recent papers developed by NLADA directly address the measurement of “quality” representation in indigent defense services. First, *Assessing Quality: A History of Indigent Defense Quality Indicators*, traces the efforts of individuals and organizations, including NCSEP, over the past two decades to define and measure quality in indigent defense.³³ Second, NLADA’s *National Indicators of Quality Indigent Defense* provides a ready-to-use set of quality indicators of attorney performance that can be adopted by any indigent defense program in the United States.³⁴

The field continues to refine input and outcome measures but much work remains. By controlling for some variables that influence outcomes, such as the seriousness of the charges and the background of the client, and comparing attorney activities (inputs) to outcomes, it is possible to draw conclusions about whether the system’s response to indigent defendants or an individual attorney’s actions correlate³⁵ to better outcomes for the client and hence represent “good indigent defense.”

Timeline of Indigent Defense Standards

- **1971:** National Advisory Commission on Criminal Justice is created.
- **1973:** National Advisory Commission issues a report recommending sixteen standards for public defense.
- **2002:** American Bar Association publishes the *Ten Principles of a Public Defense Delivery System*.
- **2005:** North Carolina Office of Indigent Defense Services (NCIDS) creates the North Carolina Systems Evaluation Project (NCSEP) to evaluate indigent defense system performance and outcomes.
- **2011:** A study on quality and effectiveness of public defense counsel in murder cases in Philadelphia is published.
- **2012:** The NCSEP Performance Measures Guide is published, defining goals and objectives of an indigent defense system and identifying potential metrics to quantify system effectiveness.
- **2012:** Texas A&M University's Public Policy Research Institute publishes its study of indigent defense quality in Wichita County, Texas.
- **2013:** Loyola Law School Los Angeles publishes its study on the quality of juvenile defenders in Los Angeles County.
- **2014:** NCSEP publishes a revised list of eighteen performance indicators that track to client case outcomes and access to counsel.
- **2014:** The Massachusetts Committee for Public Counsel Services and the Center for Court Innovation publish a set of practice principles and quality indicators for indigent defense for the state.
- **2014:** The National Legal Aid & Defender Association (NLADA) publishes *Basic Data Every Defender Program Needs to Track: A Toolkit for Defender Leaders*, which sets out a set of fundamental data points for defender programs to track related to resources, attorney activities, and client outcomes.
- **2015:** Travis County, Texas develops performance indicators for the Capital Area Private Defender Service, a new managed assigned counsel program.
- **2015-2017:** NLADA hosts three convenings of the Defender Research Consortium, assembling researchers, defenders, social workers, paralegals, analysts, technologists, and others to discuss use of data in public defense, prominently including quality indicators.
- **2016:** The International Legal Foundation publishes *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers*, which presents practice principles and quality indicators for indigent defense in an international context.
- **2018:** NLADA publishes the *National Indicators of Quality Indigent Defense*, along with *Assessing Quality: A History of Indigent Defense Quality Indicators*.

Chapter 2

Project Overviews: A Closer Look at Innovative Solutions in Public Defense Initiative Sites

The six Innovative Solutions grantees undertook a variety of projects to improve public defense services. Two focused on direct practice interventions (Alameda and Contra Costa counties in California); two focused on ways to measure, assess, and message indigent defense performance (Texas and Wisconsin); and two tackled both of these considerations (Kentucky and New York City). The six projects are briefly profiled below.

Alameda County, California

Overview: The Alameda County Public Defender's Office (ACPDO) instituted public defender representation at arraignment (a client's first appearance before a judicial officer) on a pilot basis.



Issue Addressed and Program Design: Prior to receipt of the Innovative Solutions in Public Defense grant, Alameda County, which encompasses several municipalities, including Oakland, was the only large county in California where indigent people appeared in court for the first time with a judge and district attorney present but without defense counsel. At this quick court appearance, decisions of lasting impact are made. Defendants are informed of the charges filed against them, asked to enter a plea of guilty or not guilty and, perhaps most critically, a decision is made about their pre-trial release status. Will they remain in jail or be released on bond pending final adjudication of their case?

With the Innovative Solutions grant, the ACPDO hired attorneys to provide representation to clients at felony arraignments on a pilot basis. The key strategies of the program were to develop a system for providing high-quality representation at arraignment in Alameda County, and then use data on client outcomes to advocate for permanent funding of this service. The ACPDO Innovative Solutions in Public Defense grant project addressed Principle 3 of the ABA's Ten Principles relating to prompt screening for indigency and appointment of counsel.³⁶

Research Design: Impact Justice, a non-governmental organization whose aim is to improve outcomes for justice-involved individuals through innovation and research, conducted an evaluation of the ACPDO project and analyzed program data collected by the public defender project staff and from the public defender's case management system. The evaluation included a comparison of outcomes for a treatment group, individuals represented at arraignment during the project, to outcomes for a control group who were arraigned prior to the beginning of the project and were therefore not represented.

Preliminary findings of the project were promising. **The release rate at arraignment increased from just 0.7% of all clients before the pilot representation project began, to 20.4% during the period when representation was provided.**

Furthermore, the percentage of cases where motions to release were filed increased from 0.0% to 27.0%. Motions to release had a 75% success rate. Similarly, motions to reduce bail had an 83% success rate. Additional research focused on cost avoidance by the jail, as well as trends of release rates across demographic variables, such as race, gender and age.

The final report for the Alameda County project is available on Impact Justice's website.³⁷

Contra Costa County, California

Overview: The Contra Costa County Office of the Public Defender's (OPD) Early Representation Project (ERP) is a police and public defender partnership that sought to improve outcomes in misdemeanor cite-and-release cases.



Issue Addressed and Program Design: The Contra Costa County Innovative Solutions in Public Defense project was designed to reduce Failure to Appear (FTA) warrants in misdemeanor cases where a citation is issued in lieu of custodial arrest. In such cases, cited individuals are instructed to appear at court on a date written on the citation by the police officer, often six or eight weeks out. In typical practice, charges are rarely filed by that date, as district attorneys in California get up to a year to file charges in misdemeanor cases. When charges are eventually filed, frequently the individual does not receive notice of the filing or of the court date, so does not know to appear in court that day. Failure to appear at court triggers issuance of an FTA warrant, which ultimately results in the individual's arrest and often a significant disruption of the person's life. Another consequence is the otherwise unnecessary expansion in work that must be performed by various criminal justice system actors in making arrests, processing arrestees, and preparing anew for court appearances. The ERP took measures to improve this dynamic.

The pilot project relied on cooperation from participating police departments, the District Attorney's office, and the courts. The OPD cooperated with the police agencies in two significant ways. First, along with the citation, officers handed cited individuals an information card advising them of the immediate availability of no-cost legal representation at the OPD. Second, they sent the OPD names of individuals on their "request for prosecution" lists that are routinely sent to the District Attorney. Additionally, the OPD received early discovery on the cases and so was able to advocate for non-filing of charges. OPD then took affirmative steps to contact cited individuals to keep them informed of their actual court dates and advise them on how to prepare for that appearance. ERP addressed Principle 3 of the ABA Ten Principles of a Public Defense Delivery System: ensuring that counsel is assigned as soon as feasible after a client's arrest.³⁸

Research Design: The Justice Management Institute (JMI) served as research partner to the OPD, and was involved with the design, implementation, and evaluation of the ERP. The research design set out four steps:

1. Gather baseline information covering a period of three years prior to the program from a variety of stakeholder data systems. Create a project logic model.
2. Develop a data tracking system that gathers process and outcome data essential to testing program success. To the extent possible, conduct cost/benefit analysis consistent with justice reinvestment.
3. Collect data throughout project (by OPD with collaboration of JMI).
4. Evaluate process and outcome measures and present findings.

Before the program began, FTAs occurred in approximately 37% of the initial court appearance (arraignment) in misdemeanor cite-and-release cases. ERP reduced that FTA rate at arraignment to just under 20% during the grant period; an almost 50% decline. Almost half of those people who made it to their arraignment affirmed that they came to court as a direct result of ERP outreach. Put another way, those who had affirmative contact with ERP appeared at their arraignment 90% of the time, driving the FTA rate of that cohort down to just 10%.

Early success of the program was recognized by stakeholders in the county. As a result, the ERP was expanded even before the grant work was completed. The OPD now serves individuals cited and released by three police departments and the California Highway Patrol operating in the county.

Texas

Overview: The Texas Innovative Solutions in Public Defense grant provided support for creation of a data portal to provide detailed and easy-to-navigate information on indigent defense systems in all of Texas's 254 counties for use by multiple audiences, including the Texas Indigent Defense Commission (TIDC), the public, courts, elected officials, funders, bar associations, and the advocate community. Main goals of the portal were to 1) educate stakeholders; 2) take existing Texas reporting data and add improved local data to build and enhance the database; and 3) make comparative information widely available to policymakers and others at the state and local levels.



Issues Addressed and Program Design: The funding, delivery, and oversight of indigent defense services in Texas is primarily a county responsibility. Indigent defense practices vary widely throughout the state's 254 counties, making it difficult to easily access data about individual programs or to compare systems across counties. The project built upon the existing TIDC website to create the "A.C.T. Smart Defense Portal." The new site was intended to be a highly accessible communication system that informs counties of their performance on multiple quality indicators, and keeps policymakers apprised of the state of indigent defense in Texas. Other aspirations were that the site serve as a resource to help counties learn how to elevate their current performance and to understand why it is important to do so.

Guidepost measures, matrices, and indicator summaries will help counties self-assess their compliance with the ABA's Ten Principles and with TIDC policies and standards. The portal will collect various performance indicators at the county level rather than focus on individual indigent defense counsel.

Known as the Texas A.C.T. Smart Web Portal Project, measures on the website will address factors of access, competence and trust:

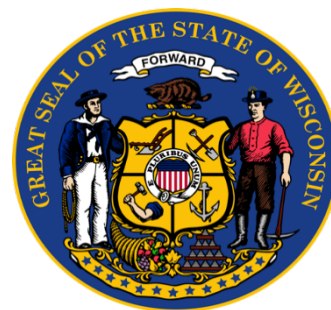
- A = Access to counsel measures. These are administrative and statutory compliance measures covering things such as: Can the accused request counsel in a timely manner? Is that attorney appointed in a timely manner? Is there a fair and neutral attorney selection process?
- C = Competence. These are quality measures, for example: Are attorneys overloaded with cases? Do they take CLE? Is there continuity of counsel? Is first contact with a client done promptly? Do attorneys have access to resources such as interpreters? Also included under "competence" are some case outcome measures. For example, is the trial rate of appointed counsel in line with that of retained counsel? What about sentence types and lengths?
- T = Trust. These are measures relating to reliability, efficiency and cost effectiveness. For instance, is the defense function independent? Is there adequate funding for attorneys? Does billing/payment work without interference from judges?

Research Design: The Public Policy Research Institute (PPRI) at Texas A&M University, with the assistance of the American Bar Association, worked to inform and support TIDC in selecting the content and functionality of the A.C.T. Smart Defense Data Portal. This involved identifying performance indicators and other data elements to be included in county reporting, the ongoing design of the web portal, serving as a liaison with counties that piloted the proposed reporting system, and providing considerable technical assistance to counties in developing their reporting capacity.

By project's end, the portal was online at <http://smartdefense.pprinet.tamu.edu>. PPRI will continue working with counties to incorporate data on the desired indicators for years to come. As the system matures and data can be supplied by all counties, PPRI and TIDC plan to recognize counties for increased data reporting capacity. Efforts will be acknowledged by ranking counties across three levels: a basic level indicating compliance with standards required by applicable law, an intermediate level indicating that the county has gone beyond the basic requirements, and a third level indicating high-level achievements.

Wisconsin

Overview: Through the grant-funded Reporting, Analysis, and Mining Project (RAMP), the Wisconsin State Public Defender (SPD) sought to vastly enhance its existing case management system (CMS) with improved and expanded data collection and then use that data to assist in oversight and monitoring of services provided by public defenders and assigned counsel throughout the state. Automatic data feeds from the state's court management system, the Consolidated Court Automation Program (CCAP), were integrated into the SPD's CMS and new performance indicators were identified to produce richer reports about system performance.



Issues Addressed and Program Design: RAMP grant activities were directed at addressing two of the ABA Ten Principles: Principle 5, which concerns controlling attorney workload, and Principle 10, concerning systematic supervision and review of defense counsel for quality and efficiency.³⁹ Like the other Innovative Solutions in Public Defense projects, the work impacts multiple areas. RAMP was intended to further the ability of the SPD to use data in its CMS to measure and assess system performance and in turn assist in SPD's efforts to obtain adequate funding from the Wisconsin legislature. SPD engaged the services of several SQL programmers, who, working with existing SPD I.T. staff, enhanced the existing CMS and expanded the data fields collected both from CCAP and from staff and assigned counsel web-based reporting, and worked to develop a series of performance reports which could be generated by SPD staff and management.

These new reports are proving of benefit to SPD in a variety of ways. SPD can now track case-level data and attorney activity with a facility and speed never before possible. One of the many significant accomplishments of the project was the development of a web-based reporting tool for assigned counsel to report their time and case activity. Prior to RAMP, the vouchering system used open text fields for assigned counsel to report case activity, which made it much more difficult and labor-intensive to extract and analyze data from the reports. The development of the new system involved creating drop-down menus which standardize data reporting and thus permit analysis not previously possible. Similarly, staff attorneys directly enter data on case activity and reports have been developed which will be useful in monitoring staff performance and assisting in annual staff performance reviews. Another significant accomplishment was the development of an automated tool that saves hours of administrative staff time in identifying attorneys able to accept conflict case appointments. Also, with the CCAP data, reports on disposition and sentencing outcomes—searchable by offense, county, judge, and prosecutor—were developed that will provide significant assistance to SPD attorneys in advising clients and in negotiating pleas. SPD will attempt to use the results of the grant project to assist in obtaining appropriations of other funding to continue the RAMP project.

Research Design: Throughout the project, the University of Wisconsin's Population Health Institute (PHI) was an active partner with SPD in the design and execution of the project, attending monthly RAMP meetings and staying in constant

communication with the SPD project manager. The PHI conducted a significant amount of qualitative research, including a number of focus groups of staff and assigned counsel throughout the state to determine existing features and functionality which users of the system find beneficial, and to identify potential features and functionality as well as impediments encountered by the users of the existing system. Senior SPD staff and the PHI worked collaboratively to define appropriate performance indicators. The PHI also analyzed the results of beta testing of various aspects of the RAMP system and its reports.

The final report for the Wisconsin project is available on the UW-Population Health Institute's website.⁴⁰

Kentucky

Overview: Kentucky's Department of Public Advocacy (DPA) instituted ongoing supervision of contract attorneys handling conflict of interest cases in one of the five regions of the state served by the state public defender system and provided resources and training for those attorneys.



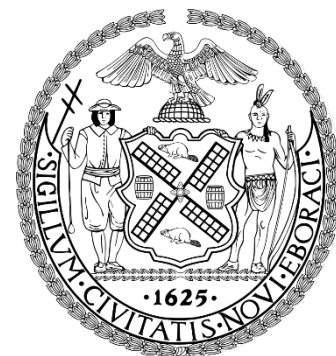
Issues Addressed and Program Design: The DPA operates public defender offices across the state, except for the Louisville area. In cases presenting a conflict of interest to staff public defenders, representation is provided by private counsel who are on contract with DPA. DPA identified aspects of the present system which do not comply with Principles 8 and 10 of the ABA Ten Principles.⁴¹ Attorneys who handle DPA conflict of interest cases are paid under low, flat-fee pay schemes which are well below market rates. As a result, there is no parity between prosecution and indigent defense resources, in conflict with Principle 8.⁴² The case fee caps create a disincentive for contract conflict counsel to devote adequate time to cases that proceed to trial or are otherwise complex. This is particularly troublesome since Kentucky conflict counsel practice also deviates from ABA Principle 10 concerning systematic supervision and review of defense counsel for quality and efficiency.⁴³ The Innovative Solutions in Public Defense project sought to implement sustainable modifications to DPA's conflict counsel system, including:

- Hiring a Conflicts Director to monitor and provide assistance to conflict counsel;
- Modifications of contracts with conflict counsel to require:
 1. case reviews with an experienced attorney,
 2. co-counsel for cases going to trial if the attorney does not meet certain experience requirements,
 3. mandatory filing of a motion for an investigator if the case is of a certain class felony or higher, and
 4. mandatory reporting of data about case activities; and
- Delivery of two intensive, multi-day, all-expenses-paid trainings targeted at the needs of conflict attorneys.

Research Design: Research for the project conducted by University of Louisville professors encompassed a variety of research questions. The overall goal was to measure whether the institution of the grant program made an impact on the performance of conflict attorneys. To that end, surveys were conducted of conflict counsel at various junctures to measure the impact of various components of the program. For example, attorneys attending the intensive trainings were given pre- and post-training tests to determine training effectiveness. The research also included collecting case data to monitor the performance of conflict counsel in the target region and to compare that performance to attorneys from a control region.

New York City

Overview: The Mayor’s Office for Criminal Justice (MOCJ) and its research partner, the Center for Court Innovation (CCI), sought to identify shortcomings in the existing system of monitoring, supervision, and data collection for the city’s assigned counsel program, and develop and implement strategies to address those shortcomings.



Issues Addressed and Program Design: The majority of indigent defense services in New York City are provided not by a governmental public defender agency, but rather by several independent, non-profit organizations (the largest of which is the Legal Aid Society). Collectively, these organizations are referred to as “Institutional Providers” (IPs). The city has a very large number of arraignments (over 365,000 in 2013), of which 95% involve clients who are indigent. Most clients are represented by the IPs, but a sizeable number of conflict of interest cases are handled by private attorneys appointed by the Assigned Counsel Plan (ACP) program serving the two Judicial Departments of the New York City Courts: the First Department (encompassing Manhattan and the Bronx) and the Second Department (encompassing Brooklyn, Queens, and Staten Island).

Issues identified prior to the start of the project included:

- 1) inadequate funding;
- 2) limited administrative oversight and monitoring (just two administrators were responsible for supervising approximately 700 active ACP attorneys);
- 3) lack of a computerized case management system; and
- 4) limited reporting and performance monitoring capacity for the ACP program.

The only data which historically had been available about attorney performance was that included in an ACP attorney’s payment voucher, which is filed not with the ACP administrators but with the City’s Department of Finance (DoF) at the conclusion of a case. The issues identified were not limited to those addressed by the Ten Principles, but the limited administrative oversight and monitoring is inconsistent with ABA Principle 10.⁴⁴

Research Design: As noted by one of the site team members,

The initial expectations for this project were that CCI would be producing a series of research-based deliverables for this project, including a series of data analyses, some performance indicators, and best practices. The project evolved to be more oriented towards information gathering that would support a diagnostic process to identify problem areas in the ACP organization.⁴⁵

As part of the modified research plan, CCI conducted a detailed needs assessment of the ACP system. This review included interviews with representatives of various system sectors and an analysis of the legal structure of the ACP, which had not been clear to many of the system actors for decades. The resulting needs assessment document made fifteen findings and recommendations in the areas of governance, administration, ACP attorneys, technology, and vouchering. This assessment proved absolutely critical in justifying recommendations for change made by the Project Lead to other parts of the Mayor's Office, the judiciary, and other stakeholders. For instance, after documenting the grossly inadequate level of staff to supervise and monitor the ACP, MOCJ obtained commitment and dedicated funding from the Mayor's office to create additional staff positions. CCI also conducted a capacity and needs study of relevant I.T. systems that will provide guidance as MOCJ develops a new case management system for the ACP program.

Chapter 3

Lessons Learned and a Road Map for Indigent Defense Action Research Projects

Through working closely with site teams for each of the six Innovative Solutions in Public Defense projects, the NLADA/NCJA training and technical assistance (TTA) team observed commonalities among the sites that may prove useful to other jurisdictions looking to engage in defender-researcher partnerships. This chapter synthesizes lessons learned from the sites through observation and surveys of the site teams.

Survey of Participants

To better probe attitudes of researchers and practitioners about the action research partnership process, the TTA team administered two short surveys to each team. One survey was answered by a practitioner representative and the other was answered by a researcher representative from each site. The survey instruments are attached as Appendix A.

The surveys revealed some general characteristics and key differences about the sites' experience and process that are worth sharing before turning to lessons drawn from their work:

- Level of experience. Three of six practitioner organizations reported having worked with a researcher before. Five of six researcher organizations had worked specifically with indigent defense organizations in the past.
- Understanding the researcher role. Only three of the practitioners reported having a clear understanding of the role of the researcher at the outset of the grant project.
- Project design. Varying degrees of researcher involvement in the project design and scope were reported, with four sites responding the research partner was involved or very involved in project design and two sites reporting that project design was solely done by the practitioner.
- Research design. Almost universally, the practitioners relied upon the research partner to develop the research agenda and goals. Only in one instance did the researcher indicate that the practitioner should have been less involved in the research end.
- Methodology used. Four of the six researcher respondents characterized their work as quantitative research, four conducted qualitative work, three described process evaluations, and two reported an aim to do outcome evaluations at project close.
- Quality of communication. Generally, but not universally, respondents reported adequate communication between the partners.
- Unforeseen issues. A number of respondents indicated that external issues affected the project, as did internal staffing changes, but all so affected were able to modify the scope of their project to mitigate these situations.

The practitioner-researcher partnership ideally should begin in the planning stages.

The balance of this chapter offers a road map, or process, to follow in undertaking a new researcher/practitioner action research project which is broken into three stages: 1) Project Development and Design, 2) Project Launch and Continuity (addressing Ingredients of Success as well as Cautions and Constraints), and 3) Project Sustainability.

Stage 1: Collaborative Project Development and Design

In the action research model, both practitioners and researchers are active participants in the planning and execution of the program and the research agenda. Thus, the practitioner-researcher partnership ideally should begin in the planning stages. Taking time initially to plan strategically is the single most important factor for a successful action research project. Key planning components are discussed below.

a. Develop project goals and objectives

The first step in any contemplated practitioner-researcher project is to decide what the project is trying to achieve overall, i.e., the project's goal. As noted by the NCJA Center for Justice Planning,

Goals are the ends toward which a program or problem solution is directed. Goals are outcome statements to guide implementation of the strategy (i.e., the tactics of what is planned to be done). While goals tend to be general or broad and ambitious, they also must be clear and realistic in order to clarify the team's direction and gain support of other stakeholders.⁴⁶

The next step is to decide how to achieve the goal, i.e., the objectives of the project. "Objectives are more detailed than goals and explain how goals will be accomplished. Objectives detail the activities that must be completed to achieve the goal."⁴⁷ It is sometimes said that goals and objectives of a project must be "SMART": Specific, Measurable, Attainable, Relevant (to the organization's mission), and Time-oriented.



The clearer and more specific the project goal and objectives are, the easier it is to identify the steps that will be needed to achieve them.⁴⁸

b. Find a Suitable Research Partner

Practitioners seeking to undertake a research project should identify a suitable research partner early in the planning process. Having a researcher on board from the beginning to help define project goals and to provide counsel on critical factors such as research cost and process will help the practitioner shape an attainable initiative.

Avenues for finding the right research partner include: contacting other local criminal justice agencies to inquire who they may have worked with; contacting academic communities, including criminal justice departments at universities and colleges or law schools; and connecting with other public defender offices that have experience working with researchers.⁴⁹ Other

If available, partnering with a research organization that has prior indigent defense experience is preferable. If a research organization with experience working with an indigent defense agency is not available, the researcher should at least be familiar with the state or local jurisdiction's criminal justice system.

starting points for locating a competent research organization are the National Legal Aid & Defender Association⁵⁰ or the Indigent Defense Research Association.⁵¹

Another starting point is to contact a state's Statistical Analysis Center (SAC).

Each state has a SAC devoted to criminal justice research issues. While the state's SAC may not be able to directly provide research assistance, it may be a source for

locating a researcher or research organization in the state with criminal justice interests and experience. SACs are most frequently located within the State Administering Agency that distributes Bureau of Justice Assistance funding in the state, although some are located in other state agencies or in a university in the state. Contact information for SACs is available from the Justice Research and Statistics Association (JRSA).⁵²

If available, partnering with a research organization that has prior indigent defense experience is preferable. As one of our practitioner survey respondents put it, "The key difference between good and less than ideal collaborations is the research partner's baseline knowledge of indigent defense." JMI, the research organization for the Contra Costa Innovative Solutions Initiative project, elaborated:

The work in [past indigent defense projects] and our other work where we collaborate with criminal justice agencies/stakeholders, including indigent defense providers, did indeed provide us with a deeper understanding of best practices, the general state of affairs of data systems in indigent defense systems, and the challenges inherent in

collaborating with other agencies, especially law enforcement and prosecution.

If a research organization with experience working with an indigent defense agency is not available, the researcher should at least be familiar with the state or local jurisdiction's criminal justice system.

Another benefit to engaging a research partner early: researchers can be helpful in grant preparation. It is not unusual for an indigent defense practitioner to have limited, if any, experience applying for grants, while research organizations frequently turn to grants for funding their activities. In Wisconsin, PHI and SPD jointly worked on their project's grant proposal. The project funded by the Innovations Suite solicitation was the team's third attempt at crafting and refining a successful proposal.

Appendix B provides information on how the Innovative Solutions practitioner organizations identified their research partners.

c. Budget Adequately for Research

Practitioners should consult with their research partner to budget appropriately for the research portion of the project. The amount of funding required for individual research projects will vary depending on the nature of the project and practitioners usually have little familiarity with projecting research costs. Underfunding the research can put a project's completion in jeopardy.

Two Innovative Solutions sites with more modest research budgets and less initial input from the research partner experienced some challenges. At one of the sites, the practitioner organization had to seek authorization from BJA to shift some of its budget to cover research activities mid-stream in the project; an administrative process that can stall a project. The practitioner respondent from the site wrote: "More detailed collaboration with the research partner at the time of the application would have improved the process." At the other site, the cost of obtaining Institutional Review Board (IRB) approval of the research portion of the project became problematic. The practitioner partner did not know to include costs for the IRB process when developing their budget. Each of these situations underscores the need for thoughtful collaboration in the planning stages.

d. Design the Project Jointly: What Will You Measure?

An action research project encompasses two key components: a programmatic innovation, typically conceptualized and implemented by the practitioner partner, and an assessment of the effectiveness of that innovation, typically conceptualized by the research partner. Thinking through both components jointly will produce the strongest project design. In particular, the researcher will be able to help establish the scope of research, or what will be measured.

The project goals and objectives inform the nature of the research needed. Researchers will help translate the goals into research questions, and identify what

should be measured to answer those research questions. In New York City, MOCJ's prior experience working "with a variety of researchers allowed us to work with researchers from CCI to refine our research outputs and to develop research tasks that would better serve the objectives and goals of the projects."

Examples of project designs, including goals and research questions, from the Innovative Solutions sites are available at Appendix C.

e. Make a Logic Model

A great way to crystallize project goals and objectives is to develop a logic model. As BJA's Center for Research Partnerships and Program Evaluation (CRPPE) notes, "Developing a logic model requires a program planner to think systematically about what they want their program to accomplish and how it will be done."⁵³ Done correctly, "[t]he logic model should illustrate the linkages among the elements of the program including the goal, objectives, resources, activities, process measures, outcomes, outcome measures, and external factors."⁵⁴ BJA offers guidance for developing logic models for action research projects.⁵⁵

Alternative names for "logic model" include logical framework, theory of change, or program matrix. BJA's CRPPE explains:

While there are many forms, logic models specify relationships among program goals, objectives, activities, outputs, and outcomes. Logic models are often developed using graphics or schematics and allow the program manager or evaluator to clearly indicate the theoretical connections among program components: that is, how program activities will lead to the accomplishment of objectives, and how accomplishing objectives will lead to the fulfillment of goals. In addition, logic models used for evaluation include the measures that will be used to determine if activities were carried out as planned (output measures) and if the program's objectives have been met (outcome measures).⁵⁶

The research partner may well have more experience in developing logic models than the practitioner, and so can take the lead. Some of the Innovative Solutions Initiative sites developed a logic model, which not only served well in the planning stages but served as a guide for the execution and evaluation of the project. At one site, the process of developing a logic model was found "extremely useful in making sure that [the researcher] has the kind of data it needs in order to properly evaluate the program." The logic model developed for the Contra Costa County project is a good example and can be found in Appendix D.

f. Develop a Memorandum of Understanding (MOU)

All of the planning that goes into building the goals, objectives, timeline, and budget should be fortified with a written agreement that memorializes the plan. The writing can take the form of a binding contract or a nonbinding *memorandum of understanding (MOU)* outlining the terms and details of each party's requirements and responsibilities.

An effective MOU will not only cover the planned project activities but it is also the place to define roles, responsibilities, and expectations of the parties. The MOU can be invaluable in avoiding assumptions that can creep into partnerships when the parties do not spend time thinking through every known aspect of the work from the perspective of each partner.

The MOUs of Innovative Solutions sites varied in their level of role specificity. Sites with very specific MOUs experienced fewer issues than those where the agreements were not as detailed. To the extent that matters are left ambiguous, there exists the danger that necessary work may go undone or that one partner will make assumptions about the role or duties of the other partner which go unmet, which might harm the relationship between the partners.

g. Create a Project Timeline

Time invested on the front end developing a thoughtful project timetable can save much time and frustration in the execution stage of the project.

A timeline for project activities can help guide the execution of the project, ensure that necessary activities are undertaken at the appropriate time, and gauge progress over time toward accomplishing project goals and objectives. A timeline does not replace a research contract or an MOU, but can translate that agreement into a plan of action.

Beyond setting up a timetable for expected milestones and deliverables, calendaring regular check-ins for the research and practitioner partners is a great way to stay connected and avoid project drift. The Wisconsin SPD team went even further, holding monthly working meetings of its full project team, including both researchers and practitioners. This high level of team communication and connectedness contributed to the on-schedule completion of the ambitious SPD project. By comparison, in another site, the team that undertook the work did not start out working with a formal project timetable. Although administrators executed an MOU between practitioner and research partners that spelled out agreed-upon roles and deliverables, the project team was not aware of the MOU until questions arose about project deliverables. A project timetable setting out tasks, milestones, and roles would have helped avoid later questions that arose over expected deliverables.

Ideally, project timelines serve as the “to-do” list or “playbook” for achieving goals. Start-up tasks should be included because they can consume considerable time before actual project work can begin. For example, where relevant, build in time to hire necessary personnel, navigate required procurement processes, or pursue Institutional Review Board approval.⁵⁷ Contra Costa County’s project timeline is a good example and is included as Appendix E.

Stage 2: Project Launch and Execution

Once the goals and objectives of the project are developed, the hard work of actually launching and maintaining the project work can begin. The implementation phase is the heart of any project. Building a trusting and collaborative working relationship between the practitioner and research partner, and maintaining it over the course of the project, will contribute greatly to project progress. Otherwise, the differing institutional purposes, cultures, and values of an indigent defense organization and a research organization carry potential for misunderstanding or miscommunication, which can hinder success.

An indigent defense organization is primarily focused on providing representation to its clients, whereas a research organization is primarily focused on studying how aspects of a system work (or don't work). Several of our survey respondents reported that at times, such cultural differences bubbled to the surface. As one reported:

These differences have caused some confusion and frustration at times, but have been discussed and resolved as issues arose. In some ways, these differences have strengthened the relationship as the partners have worked to come to an agreement about how to best implement the various aspects of the project and fully utilize the strengths that each organization brings to the Innovative Solutions Initiative project.

An example of a strong working relationship was New York City, where the Mayor's Office and the Center for Court Innovation had previously worked together on other projects. That experience gave each partner a baseline knowledge of how the other partner conducts its work. It also produced a mutual respect for the capacity and ability of the other partner. Similarly, in Texas, PPRI and TIDC share a long history with PPRI having served as researcher for TIDC since the latter's inception. These pre-existing relationships brought strength to the projects and smoothed out the path to achieving project goals.

Partners in action research must remain willing to listen to each other, and maintain the ability to understand the partner organization's perspective.

A lesson from the six sites is that partners in action research must remain willing to listen to each other, and maintain the ability to understand the partner organization's perspective. Working relationships generally build over time. Several project sites demonstrated that a willingness to share control over the project and decision-making strengthened the partnership and the mutual respect of the partners.

a. Ingredients of Success

Across the six Innovative Solutions projects, four factors stood out as contributing to strong projects: 1) project commitment, 2) project management, 3) support from the top, and 4) good communication.

i. Project Commitment

Perhaps the most striking common characteristic of the Innovative Solutions sites was the enthusiasm and commitment of practitioner and research staff carrying out the projects. Such commitment is necessary to actually getting the work done. Almost universally across the sites, people working on the project had other pressing responsibilities: for practitioners, their day jobs; and for researchers, other research projects and/or teaching. But participants believed in the importance of the projects, and dedicated time and effort to ensure that they remained on track.

As mentioned above in the “Create a Project Timeline” section, Wisconsin was a particularly striking example. There the entire RAMP team—comprised not only of the project manager, researchers, and IT staff, but also the senior staff responsible for each of the major divisions of the state public defender agency—met for several hours every single month to carry the project along. Without this commitment, the RAMP project likely would not have achieved what it did in the two-year grant period.

ii. Project Manager

Another key factor across the sites was a strong project manager who coordinated the activities of all and ensured that the project continued to move forward. The enthusiasm and dedication of these managers was motivating to all project members.

iii. Support from the Top

Backing from senior management—both for the research and practitioner organizations—is essential for project health. While not involved in the day-to-day work of the projects, senior managers are key to signaling that the project is a priority, for dedicating adequate staff, and for empowering the project manager. Without such backing, project staff can easily feel that they are not supported and their contributions and efforts are not appreciated, which may produce adverse consequences for the project.

iv. Communication

Finally, as with any team-based undertaking, communication in these research projects was essential for success. Although a few sites did report some issues and frustrations with communications between the partners, which hampered project efforts to a degree, most reported good communication. To our observation, the more regular and consistent the communication, the more the partnership was strengthened, which in turn strengthened the overall projects.

b. Cautions and Constraints

Just as there were several key ingredients for success observed across the six sites, there are also some cautions and constraints that emerged.

i. Keep Expectations Realistic

A caution gleaned from experiences at the sites is to be realistic about what the project can accomplish, given available resources and time. Lofty goals can be tempting, but a realistic assessment during the planning stages of how much work will be entailed for both the practitioner and the researcher can avert later problems.

In the planning stage it is beneficial to confer with the staff who will actually be doing the work and who likely have the most realistic assessment of the time a particular task, activity, or project segment, will take. This was particularly true for sites that implemented changes to direct client services (Alameda County and Contra Costa County), thus needed to have attorneys collect case-related data about the changes in real time. Having staff record accurate case-related data

The general level of cooperation with other sectors and organizations was striking and much of that is attributable to outreach efforts in the planning stages.

while in the course of actually representing clients can be challenging. Also, some sites reported that their research agenda needed to be narrowed. One practitioner respondent wrote: “We initially had tried to collect too much data and later had to narrow it.” Another wrote: “I think the researchers had to sometimes be reined

in by the practitioners. The researchers sometimes pushed for more granular approaches or were overly ambitious. The practitioners served as a pragmatic check.”

ii. Seek Stakeholder Cooperation

Another related area where a realistic assessment is essential is determining what cooperation can be obtained from other criminal justice or related sectors and developing a plan to obtain it. All of the sites required some extent of collaboration from other system actors. Indeed, it is fair to say that the general level of cooperation with other sectors and organizations was striking and much of that is attributable to outreach efforts in the planning stages.

Some stakeholder outreach is necessary because the project design includes requesting data sharing or other cooperation. Contra Costa County’s project required direct participation from police agencies, courts, and the District Attorney. Early outreach and planning meetings

were essential to that project's design. It is also important to be transparent about project plans when the study does not require participation from stakeholder parties, but when the study outcomes will potentially produce practice changes that affect them. In New York City, a key constituency was the private bar attorneys who accept court-appointed cases. Although their direct participation was not part of the project design, they would certainly be affected by changes to the Assigned Counsel Program stemming from the project. At the outset of the project, MOCJ held informational meetings about it with bar leaders and other stakeholders. As was done in New York, build in time to 1) think through these needed allies and 2) undertake an education and outreach program about your project.

Examples of the stakeholder ground work undertaken by the Innovative Solutions sites appears in Appendix F.

iii. Data Availability

A particular area where special caution needs to be taken in any research project is the availability of data. The reality is that criminal justice data systems are often based on older legacy platforms that might not easily permit, and may preclude entirely, the retrieval of data without added I.T. resources that may not be available. And even where it might otherwise be available, some criminal justice actors take a proprietary view of their data and simply do not want to share it. In determining the research agenda in the planning stages, it is critical to ensure that necessary data will be available and develop a plan for obtaining it.

Given the state of criminal justice data systems, it is not surprising that some of the sites experienced data issues. The most striking example was in Alameda County, where the court changed its case management system over to that of a new vendor. The changeover caused tremendous problems. One such problem was that the system was not reflecting the current status of cases where individuals had been arrested on invalid or recalled warrants or were being held in custody past the time they should have been released. As a result of these data issues, the Alameda County project was not able to download accurate court data and was required to do manual data entry, which was itself problematic. Nor could data from the previous CMS be obtained because county I.T. staff were too occupied in trying to correct the host of problems under the new system to entertain data requests from ACPDO.

In Texas, a number of counties were receptive to serving as pilot sites for the A.C.T. Smart Portal, whose success ultimately will depend on receiving accurate data feeds from all 254 counties. But even among the larger and more technically sophisticated counties, technical issues arose that either slowed or prevented county-level data from being

made available. This necessitated PPRI providing assistance to some counties in developing methods to pull data. In some instances, the best solution was for PPRI to extract the data in less than ideal formats and then devote considerable time and effort to converting it to a more usable format. The prospect of being required to do that for all 254 counties was described by the lead researcher as “scary.”

In New York City, a substantial amount of effort was required on the part of CCI to examine the attorney vouchering system data structure and format to make a preliminary determination of what might be available under the system. As is frequently the case with older, legacy data systems, there was inadequate documentation of how the system was built. Such lack of documentation can significantly hamper efforts to obtain data from such systems.

iv. Heed Time Constraints

Grants are issued for limited periods. If not anticipated, certain activities can chew up significant amounts of precious project time. So another consideration for early project planning stages is identifying start-up tasks that can consume considerable time before actual project work can begin. One is simply the time that it takes to hire necessary personnel. Some jurisdictions have lengthy or complex processes for approving staff hiring. When planning for program execution and budget, a realistic assessment of the time it will take to have the program fully staffed and operating is important.

Procurement is another possible source of delay and frustration. Procurement practices in many jurisdictions and for federal grants generally require that procurements be competitive. Even where a sole source procurement may be permissible, for example, for a research partner, the practitioner needs to be aware of the process for gaining approval and the time that the approval process can take.

One other matter that should be considered in the planning stage is whether your project will require Institutional Review Board (IRB). Any federally funded research project involving human subjects, for instance, surveys or focus groups, could require IRB approval. Federal regulations are stringent in protecting human subjects from harm that may result from participating in a research project. IRB approval takes time to obtain and can also require that the researcher incur costs in making application for IRB approval.

v. Expect the Unexpected: Flexibility Is Crucial

Almost without exception, the sites encountered impediments which necessitated some changes from their original plans, no matter how well thought-out those plans were. Personnel changes, data challenges, and necessary program design changes can and do occur. A hallmark

of the action research model is the ability to regroup and, if necessary, change course, as road blocks or challenges arise. Change in action research does not mean the end of a project.

As noted earlier, initial expectations in New York City's project were that the CCI would be producing a series of traditional, research-based deliverables for the Mayor's Office, including data analyses, recommended performance indicators, and sharing of best practices. However, the project evolved to be much more practitioner-focused and less analytical as it became apparent there was need for deeper understanding of the Assigned Counsel Plan's challenges before a data solution could be developed. Over the decades that the ACP system had been in operation, delineation of program responsibilities had blurred to the point where the lines of authority were no longer clear to system actors. So one matter that required unanticipated effort by CCI was to determine the statutory and administrative bases for the ACP system.

In the end, staying flexible in New York City paid off. The project turned more from a quantitative analysis of the ACP operation to the development of a comprehensive needs assessment. That assessment was used not only to guide the work, but ultimately proved invaluable in obtaining the cooperation of necessary parties, including the Department of Finance and upper level management in the Mayor's Office.

Changes to core project staff occurred at four of the six sites. Such staff changeover has the potential to adversely affect a project but can be avoided. In Wisconsin, the original project manager who had worked with PHI to develop the grant proposal left the agency and a new project manager took her place. In survey responses, both the practitioner and research partner identified the change as creating issues which needed to be addressed. SPD and PHI cited training given by the outgoing manager to the new one, as well as consistent and robust communication between the partners as mitigating against negative impacts on the project.

Alameda County and Texas encountered issues with data systems which hampered electronic data collection and necessitated the development of alternative methods to collect the data.

Stage 3: Project Sustainability

Federal grant funding is often used as seed money to start a project with the anticipation that other funding sources will be found to continue promising projects after the federal grant funding expires. Although it may feel premature, it is worthwhile to think about project sustainability in the early strategic planning phases of an action research project. Staff turnover at the practitioner or researcher organization during the research period can make it difficult to champion the

resulting work at the back end. Map out a plan for the project’s work to continue early on. In particular, think about building in time to synthesize and promote project findings. Without a plan for messaging, the real value of a research project—the findings—can go unnoticed. Action research project staff understandably focus on successfully completing the project at hand. But the work is not completed until the findings are shared with relevant parties, such as management, funders, and other justice system stakeholders.

Strategies for sustainability undertaken by the Innovative Solutions sites are detailed in Appendix G.

Conclusion

The BJA Innovative Solutions in Indigent Defense Initiative supported six sites in the development of collaborative projects intended to advance the quality and performance of their indigent defense systems and to develop an evidence base for the new practices. The projects documented measurable success.

Results from the two direct service interventions in California both point to important impact of the interventions introduced:

- In Alameda County, providing public defenders to represent clients at arraignment contributed to dramatic increases in the pre-trial release rate at arraignment: up from just 0.7% of all clients before the pilot representation project began, to 20.4% during the period when representation was provided. Furthermore, the percentage of cases where motions to release were filed increased from 0.0% to 27.0%. Motions to release had a 75% success rate.
- In Contra Costa County, the involvement of counsel prior to arraignment in misdemeanor cases contributed to an almost 50% reduction in the FTA rate at arraignment, from approximately 37% before the EarlyRep program began to just under 20% during the grant period.

The projects in Texas and Wisconsin that focused on increasing capacity to measure, assess, and message indigent defense performance produced new data infrastructures that will serve those jurisdictions for years to come. The Kentucky project equipped the Department of Public Advocacy with evidence-based information on what types of trainings and other supports make a difference in conflict counsel preparedness and performance. And the New York City project laid the groundwork and leveraged appropriations for long-needed improvements in the system to manage and assess performance of the assigned counsel system.

The opportunity to apply for federal grants to support action research projects is not something that will always be available. But the results of the work, and the lessons learned in implementing the projects, stand to benefit other defender programs interested in pursuing similar projects. This paper offers guidance into taking advantage of other action research opportunities that arise, whether through federal grant making or other avenues.

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¹ BJA's mission is to provide leadership and services in grant administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities. BJA supports programs and initiatives in the areas of law enforcement, justice information sharing, countering terrorism, managing offenders, combating drug crime and abuse, adjudication, advancing tribal justice, crime prevention, protecting vulnerable populations, and capacity building. Bureau of Justice Assistance, *About the Bureau of Justice Assistance*, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, <https://www.bja.gov/About/index.html>.

² BUREAU OF JUSTICE ASSISTANCE, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, OMB No. 1121-0329, SMART DEFENSE INITIATIVE ANSWERING GIDEON'S CALL: IMPROVING PUBLIC DEFENSE DELIVERY SYSTEMS FY 2015 COMPETITIVE GRANT ANNOUNCEMENT (2015), *available at* <https://www.bja.gov/Funding/15SmartDefenseSol.pdf>.

³ AM. BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2002), *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ten_principlesbooklet.authcheckdam.pdf.

⁴ The first BJA program now considered part of the Suite was Project Safe Neighborhoods, launched in 2001. Over the years, BJA added additional programs to the Suite: Smart Policing, Byrne Criminal Justice Innovation, the Prescription Drug Monitoring Program, the Second Chance Act Demonstration Program, Smart Supervision, Smart Prosecution and Encouraging Innovation (Field Initiated Programs). After the launch of the Smart Policing Initiative in 2009, BJA adopted the term Smart Suite of Programs in 2010. The Suite was re-branded in 2017 as the Innovations Suite.

⁵ Bureau of Justice Assistance, Center for Research Partnerships and Program Evaluation, *Smart Suite*, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, <https://www.bja.gov/programs/crpe/smartsuite.html>.

⁶ *CrimeSolutions.gov*, NAT'L INST. OF JUSTICE, <https://www.crimesolutions.gov>.

⁷ In September, 2017 CrimeSolutions.gov reached a milestone with 500 programs evaluated.

⁸ This mandate was first affirmed in *Gideon v. Wainwright*, 372 U.S. 335 (1963), and broadened in subsequent opinions.

⁹ *See generally* ALVAN R. FEINSTEIN, CLINICAL JUDGEMENT (1967); ARCHIBALD L. COCHRANE, EFFECTIVENESS AND EFFICIENCY: RANDOM REFLECTIONS ON HEALTH SERVICES (1972).

¹⁰ DANIEL KAHNEMAN, PAUL SLOVIC & AMOS TVERSKY, JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES 249-67 (1982).

¹¹ In a randomized control trial, subjects are placed by random selection either in a group that receives a treatment or intervention (the treatment group) or in group that does not (the control group) and the groups are then compared for the dimension(s) to be tested.

¹² In a meta-analysis, researchers engage in a comprehensive review of the scientific literature on a topic and use statistical analysis to determine a weighted average of the strength of the treatment effect shown in the individual studies.

¹³ Systematic reviews are similar to meta-analyses but are limited to the comprehensive collection of studies and critical (but not statistical) analysis of the individual studies.

¹⁴ Anthony Biglan & Terje Ogden, *The Evolution of Evidence-based Practices*, 9 EUR. J. BEHAV. ANALYSIS 81 (2008), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3066513>.

¹⁵ E.g., the Blueprints for Healthy Youth Development program hosted by the Center for the Study and Prevention of Violence (CSPV) at the Institute of Behavioral Science, University of Colorado-Boulder. *See Blueprints for Healthy Youth Development*, BLUEPRINTS FOR HEALTHY YOUTH DEV., <http://www.blueprintsprograms.com>.

¹⁶ *See* CrimeSolutions.gov, *Glossary*, NAT'L INST. OF JUSTICE, <https://www.crimesolutions.gov/Glossary.aspx>; *see also* CrimeSolutions.gov, *All Programs & Practices*, NAT'L INST. OF JUSTICE, <https://www.crimesolutions.gov/Programs.aspx> (further explaining the distinction between programs and practices).

¹⁷ Sch. of Criminal Justice, Coll. of Soc. Sci., Mich. State Univ., *Innovations Suite Researcher Practitioner Fellows Academy*, MICH. STATE UNIV., <http://cj.msu.edu/programs/smart-suite-researcher-practitioner-fellows-academy>. The Innovations Suite Researcher Practitioner Fellows Academy (formerly the Smart Suite Researcher Practitioner Fellows Academy) is conducted by Michigan State University's College of Social Science, School of Criminal Justice under grants from BJA. For additional information on action research, *see Gun Violence Prevention Strategies: Action Research*, NAT'L INST. OF JUSTICE (May 19, 2010), <https://www.nij.gov/topics/crime/gun-violence/prevention/Pages/action-research.aspx>.

¹⁸ 12 OHIO ST. J. CRIM. L. 325 (2015).

¹⁹ *Id.* at 335-36.

²⁰ Loosely translated as "because he said so."

²¹ A confounding variable (factor) is a fact which the researcher could not or did not control or eliminate which damages the validity of an evaluation.

²² NAT'L ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS & GOALS, *Chapter 13: The Defense*, in THE REPORT OF THE TASK FORCE ON THE COURTS (1973), *available at* http://www.nlada.net/sites/default/files/nac_standardsforthedefense_1973.pdf.

²³ AM. BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2002), *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ten_principlesbooklet.authcheckdam.pdf.

²⁴ N.C. Gen. Stat. Ann. § 7A-498.1 (West 2014).

²⁵ *North Carolina Systems Evaluation Project (NCSEP)*, N.C. COURT SYS. OFFICE OF INDIGENT DEFENSE SERVS., <http://www.ncids.org/Systems%20Evaluation%20Project/SEP%20HomePage.html?c=Research%20%20and%20%20Reports,%20Systems%20Evaluation%20Project>.

²⁶ *Indigent Defense Key Performance Indicators (KPIs)*, N.C. COURT SYS. OFFICE OF INDIGENT DEFENSE SERVS., http://www.ncids.org/Systems%20Evaluation%20Project/PerformanceMeasures/KPIs_Table.pdf.

²⁷ The four jurisdictions were: Connecticut; North Carolina; Knox County, Tennessee; and Travis County, Texas.

²⁸ *See Performance Measures*, N.C. COURT SYS. OFFICE OF INDIGENT DEFENSE SERVS., http://www.ncids.org/Systems%20Evaluation%20Project/PerformanceMeasures/PM_Links.htm.

²⁹ The Connecticut Division of Public Defender Services, a statewide agency, was unable to get data from the statewide court case management system in time to do analyses to contribute to the final report. The Knox County, Tennessee Public Defender Community Law Office also ran into a number of difficulties importing and verifying data and analyzing it using open-source software. These data issues prevented the inclusion of an analysis of Knox County in the final NCSEP report.

³⁰ DOTTIE CARMICHAEL & MINER P. MARCHBANKS III, PUBLIC POLICY RESEARCH INSTITUTE, TEX. A&M UNIV., WICHITA COUNTY PUBLIC DEFENDER OFFICE: AN EVALUATION OF CASE PROCESSING, CLIENT OUTCOMES, AND COSTS (2012), *available at* <http://tidc.texas.gov/media/18620/wichitapdstudy101212.pdf>

³¹ JAMES M. ANDERSON & PAUL S. HEATON, HOW MUCH DIFFERENCE DOES THE LAWYER MAKE? THE EFFECT OF DEFENSE COUNSEL ON MURDER CASE OUTCOMES (2011), *available at* <http://ssrn.com/abstract=1884379>.

³² CYN YAMASHIRO, TAREK AZZAM & IGOR HIMMELFARB, KIDS, COUNSEL AND COSTS: AN EMPIRICAL STUDY OF INDIGENT DEFENSE SERVICES IN THE LOS ANGELES JUVENILE DELINQUENCY COURTS (Loyola-LA Legal Studies Paper No. 2013-9, 2013), *available at* <http://ssrn.com/abstract=2222376>.

³³ MAREA BEEMAN, CLAIRE BUETOW & MICHAEL MROZINSKI, NAT'L LEGAL AID & DEFENDER ASS'N, ASSESSING QUALITY: A HISTORY OF INDIGENT DEFENSE QUALITY INDICATORS (2018), *available at* <http://www.nlada.org/sites/default/files/pictures/2018-03-08%20History%20of%20Indicators%20paper%20covered.pdf>.

³⁴ MAREA BEEMAN, NAT'L LEGAL AID & DEFENDER ASS'N, NATIONAL INDICATORS OF QUALITY INDIGENT DEFENSE (2018), *available at* <http://www.nlada.org/sites/default/files/pictures/2018-03-08%20Quality%20Indicators%20Project%20covered.pdf>.

³⁵ A strong word of caution is in order: correlation does not necessarily signify causation, but at times correlation is the most complete logical connection that we can formulate in the absence of evidence showing causation.

³⁶ Principle 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." AM. BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM 1 (2002), *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lisclaid_def_tenprinciplesbooklet.authcheckdam.pdf.

³⁷ *See* DANIELLE SOTO & MARK LIPKIN, IMPACT JUSTICE, REPRESENTATION AT ARRAIGNMENT: THE IMPACT OF "SMART DEFENSE" ON DUE PROCESS AND JUSTICE IN ALAMEDA COUNTY (2018), *available at* <https://impactjustice.org/wp-content/uploads/Smart-Defense-Report-2019.pdf>.

³⁸ *See* AM. BAR ASS'N, *supra* note 36 at 1.

³⁹ Principle 5: "Defense counsel's workload is controlled to permit the rendering of quality representation." *Id.* Principle 10: "Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards." *Id.*

⁴⁰ *See* MICHAEL TOBIN, WIS. STATE PUBLIC DEFENDER, ET AL., WISCONSIN SMART DEFENSE REPORTING, ANALYSIS, AND MINING PROJECT (RAMP): FINAL REPORT OF PROJECT IMPLEMENTATION AND OUTCOMES (2015 - 2017) (2017), *available at* https://uwphi.wiscweb.wisc.edu/wp-content/uploads/sites/316/2018/03/AnalysisAndMiningProject_12192017_FinalReporting.pdf.

⁴¹ Principle 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." AM. BAR ASS'N, *supra* note 36 at 1. Principle 10: "Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards." *Id.*

⁴² *See id.*

⁴³ *See id.*

⁴⁴ *See id.*

⁴⁵ This quote is from one of the New York City team member's responses to the TTA survey discussed in Chapter 3. The survey instrument appears in Appendix A.

⁴⁶ NCJA CTR. FOR JUSTICE PLANNING, STRATEGIC PLANNING GUIDE 25, *available at* http://higherlogicdownload.s3.amazonaws.com/NCJA/8d0b2ead-b5b8-47ef-96d0-9aca227fcbb2/UploadedImages/Strategic_Planning/strategic-planning-guide-ncjp.pdf.

⁴⁷ *Id.*

⁴⁸ For additional discussion on project planning, *see* MAREA BEEMAN & MICHAEL MROZINSKI, NAT'L LEGAL AID & DEFENDER ASS'N, DEFENDER DATA EXCHANGE: BOOSTING DEFENDERS' RESEARCH AND DATA CAPABILITIES 11 (2018), *available at* <http://www.nlada.org/sites/default/files/pictures/2018-03-20%20DDX%20Paper%20covered.pdf>.

⁴⁹ For suggestions in locating research partners, *see id.* at 8.

⁵⁰ *See National Legal Aid & Defender Association*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org>.

⁵¹ *See The Indigent Defense Research Association*, INDIGENT DEFENSE RESEARCH ASS'N, <https://www.indigentdefenseresearch.org>.

⁵² *See State Analysis Centers (SACs)*, JUSTICE RESEARCH & STATISTICS ASS'N, <http://www.jrsa.org/sac/index.html>.

⁵³ Bureau of Justice Assistance, Center for Research Partnership and Program Evaluation, *Logic Models*, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, <https://www.bja.gov/programs/crppe/logic-models.html>.

⁵⁴ *Id.*

⁵⁵ *See id.*

⁵⁶ *Id.*

⁵⁷ *See* "Heed Time Restraints," *infra* at 24.

Appendix A

Practitioner and Researcher Survey Instruments



Practitioner and Researcher Partnership Survey

Thank you for your participation in this survey. We are respectful of the demands upon your time and suggest limiting your answers to the essential highlights on each subject area in a brief paragraph. Feel free to type directly in this document. Please return the survey no later than April 28, 2017.

Practitioner Survey

1. How did the practitioner organization locate and enlist the support of the research partner?
2. Have you worked with a researcher before? If so, did that experience contribute to the success of this project? If not, what was new or unique about partnering with a researcher?
3. How was the scope of work and budget for the research aspect of the project developed? Could the process have been improved and if so, how?
4. At the outset, what were your expectations or understanding of the role that the research partner would play in the project?
5. Did the research partner contribute to the overall design of the programmatic aspects of the project? If so, please describe how that came about and the nature of that contribution. Would it have been better to have the research partner either more or less involved in the programmatic aspects of the project?
6. Did the practitioner organization contribute to the research design and selecting the research goals? If so, please describe how that came about and the nature of the contribution. Would it have been better to have the practitioner either more or less involved in the research aspects of the project?

7. Did you find that the two partners had differing perspectives, values, practices and institutional cultures? If so, how did those differences impact the relationship?
8. Has communication between the partners been sufficiently frequent and comprehensive? Could it have been improved and if so, how?
9. Have there been any internal or external challenges to the partnership? If so, how were those challenges were bridged?
10. Has technical assistance either helped, or hurt, the success of the partnership?
11. How has your understanding of your partnership, and/or the programmatic and research goals, evolved during the course of the project to date?
12. Is there anything else that we have not covered which you would like to share?

Researcher Survey

1. Prior to this Smart Defense Initiative grant, has your research organization worked with this or any other indigent defense entity? If so, do you feel that prior work facilitated your role in the project and if it did, please describe how? If not, how did you develop sufficient understanding of the overall function of the practitioner organization to place this project in context?
2. At the outset, did the practitioner organization have clear expectations or a clear understanding of the role that the research partner might play in the project?
3. How was the scope of work and budget for the research aspect of the project developed? Could the process have been improved and if so, how?
4. Did the research partner contribute to the overall design of the programmatic aspects of the project? If so, please describe how that came about and the nature of that contribution. Would it have been better to have the research partner either more or less involved in the programmatic aspects of the project?

5. Did the practitioner organization contribute to the research design and selecting the research goals? If so, please describe how that came about and the nature of the contribution. Would it have been better to have the practitioner either more or less involved in the research aspects of the project?

6. How would you characterize the nature of the research being conducted for the project? Please check all that apply and briefly describe.

____ Qualitative, please describe:

____ Quantitative, please describe:

____ Process evaluation, please describe:

____ Outcome evaluation, please describe:

____ Impact evaluation, please describe:

____ Focus groups to determine user needs for the overall project

____ Focus groups to determine user needs for tools of the project, e.g. reporting forms

____ Other, please describe:

7. Did you find that the two partners had differing perspectives, values, practices and institutional cultures and if so, how did those differences impact the relationship?

8. Has communication between the partners been sufficiently frequent and comprehensive? Could it have been improved and if so, how?

9. Have there been any internal or external challenges to the partnership? If so, how were those challenges were bridged?

10. How has your understanding of your partnership, and/or the programmatic and research goals, evolved during the course of the project to date?

11. Is there anything else that we have not covered which you feel is important to share?

Appendix B

How Sites Located Their Research Partner

Some of the Innovative Solutions Initiative projects were fortunate enough to have ongoing relationships with their research partner. For example, the Texas Indigent Defense Commission (TIDC) has a long-standing and active relationship with Texas A&M's Public Policy Research Institute (PPRI). Indeed, unlike the other Innovative Solutions projects, the grant applicant in Texas was the research organization, PPRI, rather than the practitioner organization.

In New York City, the Mayor's Office of Criminal Justice has contracted with a number of different research organizations for various projects over the years, including the selected partner, the Center for Court Innovation. Similarly, the Kentucky Department of Public Advocacy had worked with the University of Louisville on a number of past projects.

In the absence of an ongoing or periodic relationship with a research organization, the search can begin close to home. Indigent defense organizations might be part of other projects or collaborative efforts with other criminal justice system sectors or community organizations which have made use of a research organization. The Wisconsin State Public Defender (SPD) had not itself worked with a researcher before but was part of another statewide initiative for which the University of Wisconsin's Population Health Institute (PHI) had conducted research. Based on this experience, SPD felt confident in the ability of PHI to serve as research partner.

The Alameda County Public Defender Office had not worked with a research organization previously. It first looked into academic partners at local law schools and colleges. In that process, Impact Justice was recommended and ultimately became the research partner.

Appendix C

Examples of Project Design, with Goals, Objectives, and Research Questions

Alameda County

In Alameda County, indigent defendants were not represented at first appearance. Intuitively it was believed, as research studies have suggested,ⁱ that unrepresented defendants fared worse in both immediate consequences such as release on bond and in long-range case and life outcome consequences. The goal of the Alameda County Public Defender was to improve these short- and long-term consequences. The primary objective to achieve this was to provide counsel at first appearance. The research question asked was: If indigent persons are supplied counsel at first appearance, are their short-term and long-term outcomes better? These desired outcomes suggested the research needs: a working definition of “better outcomes,” and methods to gather necessary data and measure the outcomes to answer the research question.

Kentucky

In Kentucky, DPA was concerned about the quality of the representation provided by contract conflict counsel. Not only was compensation for conflict counsel based on a low, flat-fee structure, but they received no training or supports for their work, in stark contrast to the DPA staff public defenders. Historically, DPA had no means to track what occurred in conflict cases after appointment but suspected that the flat fee structure and lack of supervision compromised quality representation. One objective was for DPA to develop means to monitor the quality of that representation and at the same time DPA sought ways to improve that quality. One research question was: Would the availability of added supports change what activities conflict attorneys undertake for their clients? DPA needed to gather information about what activities conflict counsel were actually doing in their representation. Three data sources were used:

- 1) a survey of conflict counsel;
- 2) self-reporting by counsel at case closing on certain activities thought to be essential to quality representation; and
- 3) administrative case tracking of activity through the statewide court CMS.

An overall goal was to improve the quality of representation provided, and to that end, DPA provided conflict counsel with a number of resources:

- two annual trainings addressing criminal law and practice;
- access to the DPA Motion Bank;
- case reviews offered in cases heading to trial; and
- availability of an experienced co-counsel at trial for those with limited trial experience.

These augmented resources were made available to conflict counsel in one of DPA's administrative regions. The study sought to answer the question: Did these resources produce better quality representation for clients in that target region compared to regions that did not receive the added resources?

A survey instrument was developed and distributed to all DPA conflict counsel to establish a baseline against which any improvements might be measured. Results of the survey were also used to develop the content of the trainings, which were offered—free of cost—to all DPA conflict counsel. Those attending each of the two annual two-day training sessions were given a pre-training test on matters of importance to criminal defense which were covered during the training. These individuals were then given a post-training test immediately after the training in order to test whether the trainings were effective in improving knowledge. The research partner performed statistical analyses on these surveys and tests.

For attorneys in the target group, the Conflicts Director provided or facilitated case reviews and arranged for co-counsel if requested. The hypothesis was that the trainings, coupled with other resources, would improve the quality of the representation as measured by improved or additional case activities of counsel. The Conflicts Director collected court CMS data about conflict counsel activity in their cases to allow the research partner to analyze whether the hypothesis was borne out. Activities of conflict counsel in the target area, who had access to the enhanced services, were compared to those working outside of the target area.

Wisconsin

The goal of the Wisconsin State Public Defender's (SPD) Innovative Solutions Initiative project was not to measure the effect of a new practice in actual representation of clients, but rather to improve its analytics capacity of data about both public defenders and private assigned counsel. The project sought to improve the utility and reporting of the State Public Defender's case management system, called eOPD, and to enhance the data collected through the vouchering system for its Assigned Counsel Program.

The Population Health Institute of the University of Wisconsin (PHI), which served as the research partner for the SPD, undertook several activities to support SPD in these efforts:

- On an ongoing basis, PHI assisted SPD in strategic planning for the project by developing goals, objectives, outcomes, and measures.
- PHI performed a literature review to help identify key performance indicators to assist SPD in infusing evidence-based practices into their practice.
- PHI conducted a survey of all SPD staff eOPD users—attorneys, managers, and administrative staff—regarding their use of eOPD.
- PHI followed up by conducting focus groups around the state to probe eOPD users' perceptions about the best and worst aspects of the system, and get their suggestions for improvement.

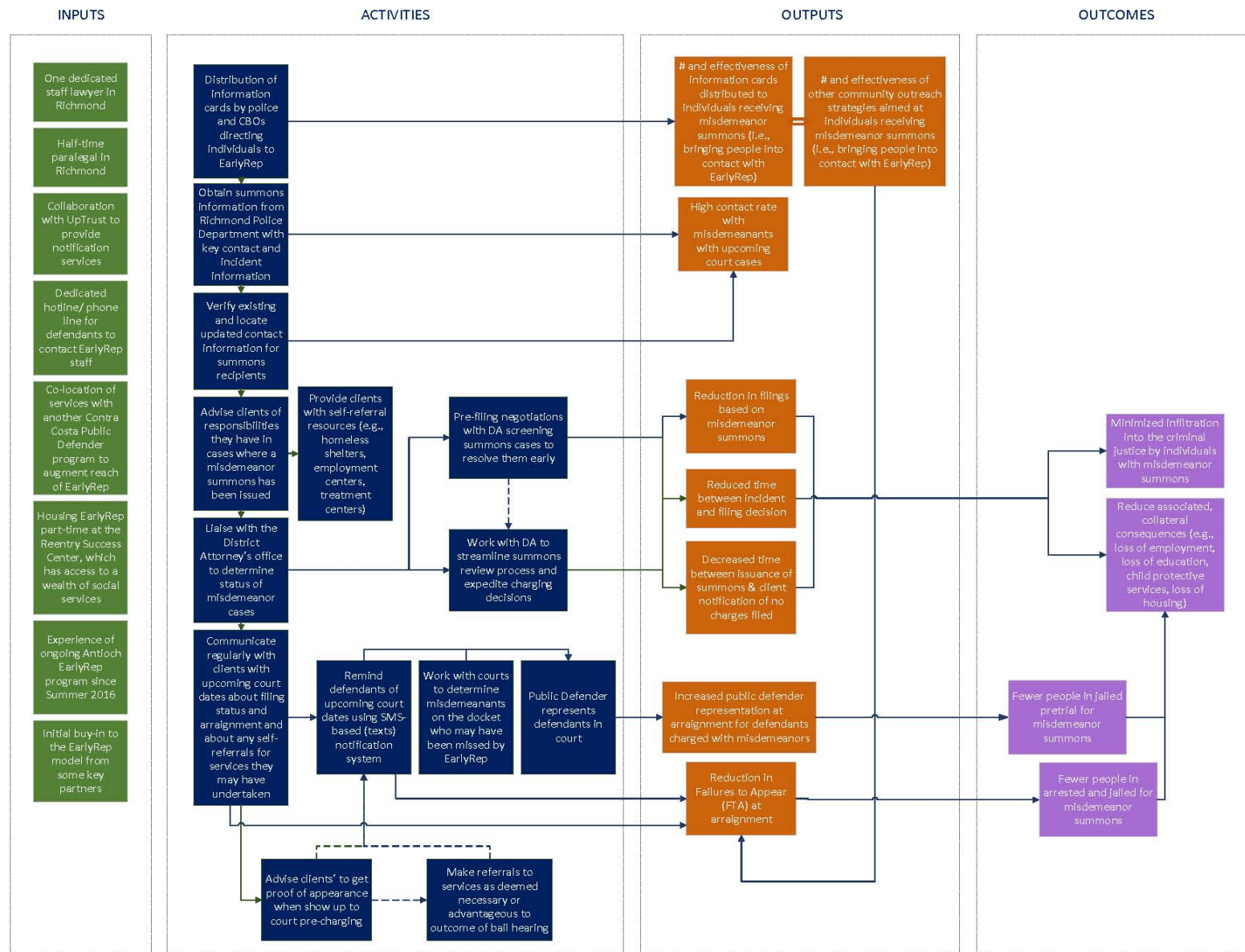
- The strategic planning process assisted the RAMP team in prioritizing the needs identified in the focus groups and led to the development of the overall topic of each new report to be developed in eOPD and the content to be included.
- As the SPD I.T. team and grant-supported programmers developed new reports for SPD managers and a new vouchering tool for private conflict counsel, PHI assisted SPD in beta testing and refining these new materials.

ⁱ See, e.g., Douglas L. Colbert, Ray Paternoster & Shawn Bushway, *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 CARDOZO L. REV. 1719 (2001-2002), available at http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1290&context=fac_pubs; CHRISTOPHER T. LOWENKAMP, MARIE VANNOSTRAND & ALEXANDER HOLSINGER, LAURA & JOHN ARNOLD FOUND., INVESTIGATING THE IMPACT OF PRETRIAL DETENTION ON SENTENCING OUTCOMES (2013), available at https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf; CHRISTOPHER T. LOWENKAMP, MARIE VANNOSTRAND & ALEXANDER HOLSINGER, LAURA & JOHN ARNOLD FOUND., THE HIDDEN COSTS OF PRETRIAL DETENTION (2013), available at https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf; WILL DOBBIE, JACOB GOLDIN & CRYSTAL YANG, THE EFFECTS OF PRE-TRIAL DETENTION ON CONVICTION, FUTURE CRIME, AND EMPLOYMENT: EVIDENCE FROM RANDOMLY ASSIGNED JUDGES (Nat'l Bureau of Econ. Research paper no. 22511, 2016), available at http://scholar.harvard.edu/files/cyang/files/dgy_bail_july2016.pdf.

Appendix D

Logic Model Example

Contra Costa County Public Defender Office's **Early Representation Project** in Richmond, CA (A Smart Defense Initiative)

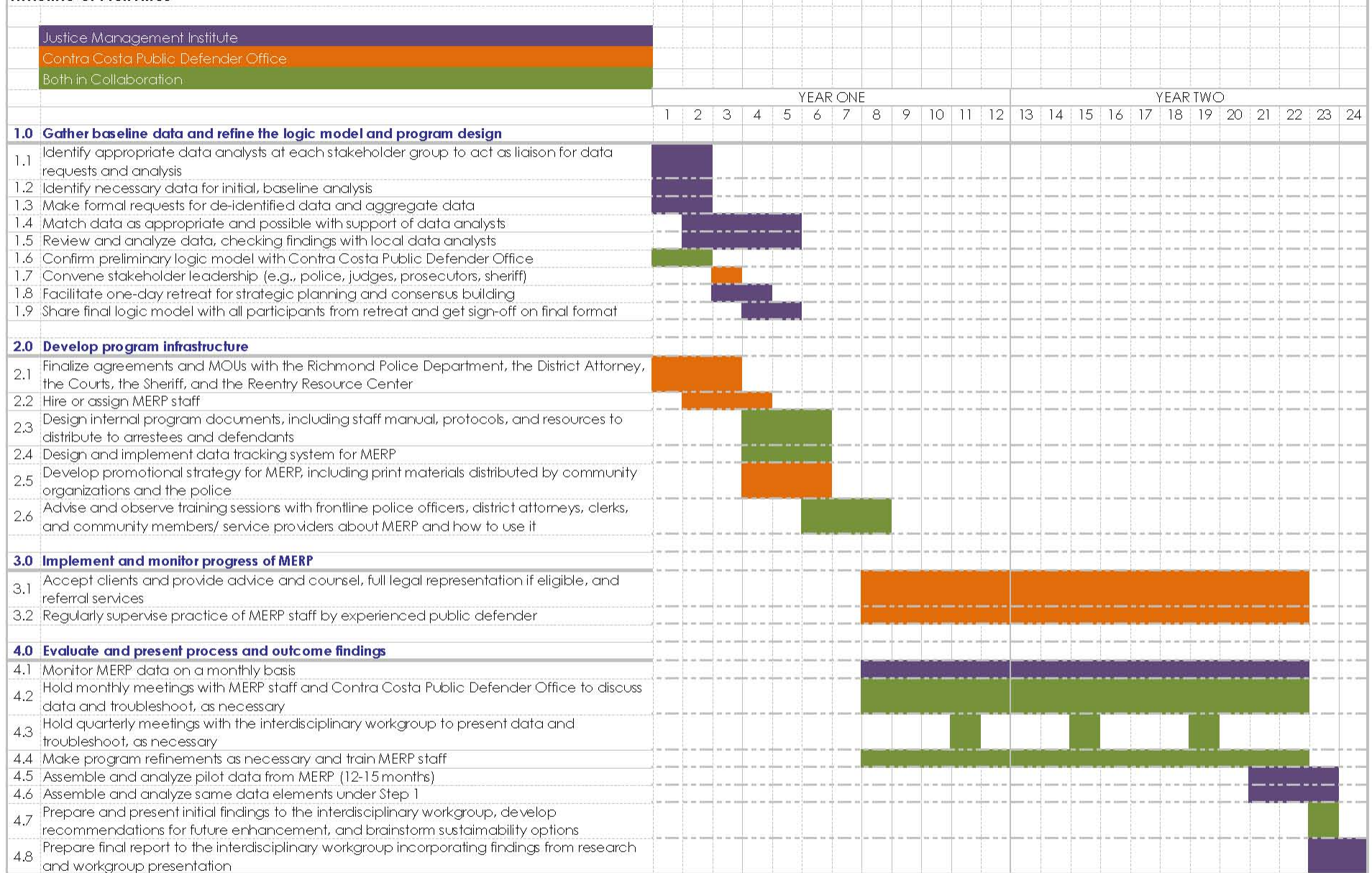


Appendix E

Timeline Example

Contra Costa County Office of the Public Defender Misdemeanor Early Representation Project

Timeline of Activities



Appendix F

Strategies Undertaken to Secure Stakeholder Support

In New York City, in a series of meetings arranged as part of the TTA team's first site visit, meetings were held with the Mayor's Office of Criminal Justice (MOCJ); the Center for Court Innovation (CCI); and representatives of various criminal justice sectors, including six judges before whom Assigned Counsel Plan (ACP) attorneys practice, the various institutional providers of indigent defense in New York City's boroughs, five bar associations whose members are part of the ACP, the two ACP administrators, and the two Department of Finance staff who administer the vouchering system for payment of ACP attorneys. These parties were generally supportive of MOCJ's efforts to improve the ACP system, though for some the support was tentative due to concern that possible changes in the ACP system might affect their respective interests. As the project progressed, MOCJ held a series of meetings with upper level staff of other parts of the Mayor's Office. In the meetings, MOCJ was able to demonstrate the shortcomings of the current system and make its case for building capacity in the new system for the ACP administrators to monitor the work of the ACP attorneys. MOCJ also gained a commitment to expand the ACP staff to provide assistance to the two overburdened administrators. By the time the project was wrapping up, regular stakeholder meetings to implement changes were being held.

In Texas, TIDC and PPRI assembled two advisory groups to gain advice and buy-in. One was a national advisory group, which included nationally recognized indigent defense leaders, law professors, researchers, and policy analysts. The other was a state advisory group, comprised of state and local court administrators, county officials, a legislator, a prosecutor, county public defenders, state criminal justice advocacy and interest groups, professors from a number of Texas law schools, and others. The two advisory groups both met formally twice, and provided ongoing advice and assistance that created momentum to bring other system actors into the project. Gaining the cooperation of a number of Texas counties was critical to the development and refinement of the A.C.T. Smart web portal, the primary grant deliverable. Several counties voluntarily committed a significant amount of staff time acting as beta testers, gathering and formatting data PPRI hoped to export to the web portal from all counties.

In preparing for its grant project, the Contra Costa County Public Defender's Office (CCPDO) gained the support of a number of local criminal justice stakeholders, including the Richmond Police Department, the court, the District Attorney, the Sheriff, and a local reentry center. While the CCPDO's primary interest was obtaining the best possible results for its clients, that specific interest was not necessarily shared among all criminal justice actors. However, the overall purpose of the grant project, reducing the number of failures to appear (FTA) and resulting FTA warrants, gave police, judges, the District Attorney, and the sheriff the benefit of reducing the

time spent processing unnecessary FTA warrants and arrests, which was key to gaining their cooperation.

In the Contra Costa County, New York City, and Texas projects, the sites developed clear and compelling reasons why the project was beneficial to indigent defense and the justice system as a whole, and used these reasons to gain the cooperation of other sectors.

In Alameda County, the situation was somewhat different. The Public Defender Office did meet with various other sectors but did not experience the same degree of cooperation as did their Contra Costa County counterparts. The ACPDO reported that the presiding judge was not particularly receptive and did not feel that the courts had a role in the project. That foreshadowed problems that developed later when a new suburban courthouse was opened and all arraignments were transferred there. The new courthouse lacked adequate facilities for client interviews, among other problems, which affected the ACPDO's ability to represent clients at arraignment. After a chaotic period, many of the arraignments were transferred back to the Oakland courthouse, thus alleviating some of the problems encountered. The difficulties were further ameliorated when the county courts rotated to a new presiding judge.

Appendix G

Examples of Project Sustainability Strategies

In New York City, MOCJ staff intentionally sought project sustainability during the grant period, using findings from the project's Needs Assessment, before those staffers were reassigned to other projects. MOCJ staff successfully pressed for funds and authorization to hire expanded staff for the Assigned Counsel Program and to begin development of new administrative systems that will enhance data collection, facilitate coordination between program administrators and the Department of Finance, improve case management capabilities and attorney oversight, and lay critical groundwork for extensive system-wide evaluations in the future.

In Wisconsin, the Reporting, Analysis, and Mining Project (RAMP) accomplished a goal of giving SPD senior staff and administrators access to information that was previously not readily available or not available at all. The project team knew it would want to continue building this analytics capacity after the grant period ended. SPD leadership committed to continuing to advocate for support from the Wisconsin state legislature to allow for continued improvements (aka "RAMP 2.0").

In Kentucky, DPA hopes to be able, for the first time, to prepare an accurate picture of the activities of conflict counsel and a realistic portrait of the efforts they do, or do not, take in representing their clients. DPA plans to use this information to clearly present to the legislature deficiencies in the system, primarily due to the low, flat fee structure used to compensate conflict counsel. DPA also hopes to use the results of the project to advocate for permanent funding for a director of the conflict counsel program, a position which has been authorized for some time but has never been funded.

In Texas, for some time before the grant, TIDC, with the assistance of PPRI, has made information available about each county's indigent defense system through the TIDC website. The federal grant allowed for major expansion of available data with the new A.C.T. Smart web portal, which will be linked to the TIDC site and share more granular information about the counties' indigent defense systems and how the counties meet certain standards. Grant funding allowed PPRI and TIDC to develop a functioning portal and begin collecting the expanded data from several pilot counties. The new portal will permit users to select a county or counties to examine and compare on selected parameters for a given year or years. Eventually it is hoped that all 254 counties will participate. TIDC receives funding from the state legislature for operating expenses and grants and will look to the legislature for funding to continue the web portal work.

Both California sites collected data about the effects of their programs that help make the case for sustainment of the pilot interventions. In Alameda County, the representation being provided at arraignment is resulting in more people being released on bond, and earlier in the process. This translates into fewer days that

individuals are incarcerated in jails, which helps justify the Public Defender's requests for permanent staffing at arraignment. The Contra Costa County Public Defender shared word about the early success of the Richmond Early Release Project with stakeholders in the county. As a result the ERP was not just sustained, it was expanded, even before the grant work was completed. The Public Defender Office was appropriated resources to serve individuals cited and released by three police departments and the California Highway Patrol operating in the county.



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