



The American Council of Chief Defenders is a national community of criminal defense leaders

1140 Connecticut Ave. NW, Ste. 900
Washington, DC 20036-4019
T: 202-452-0620
F: 202-872-1031
www.nlada.org

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ACCD Chair
NACDL Pretrial Release Liaison

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ACCD Remarks to the Task Force on the Preservation of the Justice System

American Bar Association Annual Meeting, Chicago, Illinois

It is a privilege to serve as a member of the American Bar Association's *Task Force on the Preservation of the Justice System* as an appointee of Kentucky's William T. Robinson III, American Bar Association President.

I am public advocate for Kentucky's statewide public defender program and chair of the American Council of Chief Defenders, an organization of chief defenders from across the nation.

On behalf of chief defenders nationally, I speak in support of adequate funding for our courts, prosecution, and especially public defense. We do not have a justice system absent proper funding of the *system*.

Eric Holder, United States Attorney General, urges that the indigent defense crisis be addressed. "Putting politics aside, we must address the fact that, simply put, there is a crisis in indigent defense in this country. Resources for public defender programs lag far behind other justice system programs, constituting only about 3 per cent of all criminal justice expenditures in our nation's largest counties."¹

Preserve our justice system

Protecting our justice system's independence from political interference and increasing financial support for our justice system so it has the capacity to insure fair process and reliable results in which the public has high confidence is central to the rationale for the founding of our nation.

¹ Remarks by Attorney General Eric Holder at the VERA Institute of Justice's Third Annual Justice Address, New York, NY, Thursday July 9, 2009.

Courts are essential to our ideal of justice; cutting funds threatens the rule of law

We appreciate ABA President William T. Robinson III's call to renew our understanding that the "judiciary is one of the three co-equal branches of government responsible for protecting our constitutional rights, deciding matters that go to the very core of our daily lives — like child custody cases — and protecting us from threats to our safety through criminal adjudication." In recognition of the financial decisions of legislators across the nation, President Robinson rightly states that because of the importance of courts, "when judiciary budgets are cut, we put the rule of law at risk."

Courts do not function in a vacuum

Courts cannot meet their responsibilities effectively without adequately funded, trained, and supervised prosecutors and public defenders. Without these professionals, the criminal justice system would not function.

The system is struggling

Courts, prosecution, and public defense across our nation increasingly do not have resources necessary to fulfill their responsibilities.

Nation's chief law officer: *indigent defense is in crisis nationwide*

United States Attorney General Holder has repeatedly called policy makers and the public to understand the essential role the public defender plays in our criminal justice system, to recognize the indigent defense crisis that puts justice at risk, and to implement the ABA's model principles for public defense.

According to Attorney General Holder, "the obstacles to representing the indigent are well-known. We know that resources for public defender programs lag far behind other justice system programs — they constitute about 3 percent of all criminal justice expenditures in our nation's largest counties. In many cases, contract attorneys and assigned lawyers often receive compensation that doesn't even cover their overhead. We know that defenders in many jurisdictions carry huge caseloads that make it difficult for them to fulfill their legal and ethical responsibilities to their clients. We hear of lawyers who cannot interview their clients properly, file appropriate motions, conduct fact investigations, or do many of the other things an attorney should be able to do as a matter of course. Finally, we know that there are numerous institutional challenges in public defense systems, like budget shortfalls."

The Attorney General noted the consequences of underfunding public defense: "our goal at the Department of Justice is 'that justice shall be done.' That means that when the system breaks down, we all lose. And this is true not just because our shared principles are undermined, but for practical reasons too. When defendants fail to receive competent legal representation, their cases are vulnerable to costly mistakes that can take a long time to correct. Lawyers on both sides can spend

years dealing with appeals arising from technical infractions and procedural errors. When that happens, no one wins.”²

An example of what this means

Kentucky is a simple example of the challenge to our justice *system*.

Recently, Kentucky’s Chief Justice announced that the Kentucky Courts will be closed for 3 days as a result of cuts of \$25.2 million for Fiscal Year 2013.³ Kentucky Chief Justice John D. Minton Jr. said the budget cuts are hollowing out courts. This is the first time since Kentucky’s modern court system was formed in 1976 that the Judicial Branch must close courthouse doors to balance its budget. The consequences are significant.⁴

The Kentucky public defender reality is likewise stark and is in the crisis identified by Attorney General Eric Holder. Kentucky defenders provide representation in over 150,000 cases per year. Caseloads are 456 newly opened cases per attorney. The average funding per trial case is \$225. The statewide defender program refers conflict cases to private counsel at an average of \$406 per case; most are felonies. A Kentucky defender’s entry level salary is \$38,770. These numbers are not misprints.

Amidst the recent budget cuts to Kentucky’s Judicial Branch, Kentucky’s statewide public defender program was spared cuts in this biennium but now has 2.5% less funding for the representation of clients than in 2008 while County and Commonwealth Attorneys were provided a total of \$2 million additional funding over the biennium. With 75% of the cases, defenders have but 3.25% of Kentucky’s criminal justice system funding as compared to 6.33% for prosecutors.

Unfortunately, Kentucky is not alone among public defender programs in facing budget reductions. The defender crisis is broad from Miami and Missouri to New York, Michigan, and Nevada. Louisiana just restricted defender services in another district and expects to restrict services in 11 more parishes by June 2013 after laying off defenders in New Orleans.

² Remarks by Attorney General Eric Holder at the American Council of Chief Defenders Conference, Washington D.C., Wednesday, June 24, 2009.

³ This includes a permanent reduction to the annual base operating budget of \$16.2 million and a one-time transfer of \$9 million in payroll to the state’s general fund.

⁴ • The Kentucky Supreme Court will suspend its rule requiring pretrial officers to interview a defendant within 12 hours after incarceration. No Pretrial Services staff will work on furlough days.

- Deputy clerks will not be available to process bonds, and no release orders will be issued.
- Local court designated workers will not be available. The Court Designated Worker Program will have a supervisor available to ensure that law enforcement adheres to its statutory requirements in cases involving the arrest and custody of juveniles.
- Technology Services staff will not be available to recover the CourtNet database in the event the system experiences an interruption in service.
- Drivers’ licenses will not be issued.
- Any hours worked by local court security officers will not be eligible for reimbursement.

The charter for progress is evident

The American Bar Association has repeatedly called for adequate funding for public defense, ethical workloads,⁵ and mechanisms to insure professional independence. The ABA identified what is necessary to implement *Gideon v. Wainwright*, 372 U.S. 335 (March 18, 1963), in the ABA *Ten Principles of a Public Defense Delivery System* (2002). The *Ten Principles* are a “practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems.”⁶

The Attorney General recently affirmed this ABA framework for the future. “Fortunately, the American Bar Association has responded to this crisis not with despair, but with dedication, optimism, and a plan of action. For years, ABA members have taken a leadership role in advocating for quality indigent defense systems. You’ve laid out important guidelines and policies for improving legal representation for disadvantaged populations. In many cases, you’ve lent your time and expertise to help make these policies a reality. And – through the *Ten Principles of a Public Defense Delivery System* that the ABA released exactly a decade ago – you’ve not only given shape to our aspirations, but quite literally set the standard, and developed a framework for progress.”⁷

As *Gideon* approaches its 50-year mark, “this is no time to become complacent... [L]et us come together – in the spirit of fidelity to the law, and in service of those it protects and empowers – to realize the promise of our justice system for all Americans. As we build on this work, let us seize the opportunity to ensure that it becomes not just our shared priority, but our common cause. Let us redouble our efforts not merely to win cases, but to do justice.”⁸

The American Council of Chief Defenders asks the ABA *Task Force on the Preservation of the Justice System* to renew the call for expeditious implementation of the ABA *Ten Principles of a Public Defense Delivery System* (2002) across our land.

⁵ See ABA *Eight Guidelines of Public Defense Related to Excessive Workloads* (2009).

⁶ The ABA *Ten Principles* are:

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

⁷ Remarks of Attorney General Eric Holder at the American Bar Association’s National Summit on Indigent Defense, New Orleans, Saturday, February 4, 2012.

⁸ *Id.*

Respectfully submitted,

A handwritten signature in blue ink that reads "Edward C. Monahan". The signature is written in a cursive style with a prominent initial "E".

Edward C. Monahan
Chair, American Council of Chief Defenders