

Indigent Defense Environmental Scan

Identifying Research Needs to Support Fair and Equitable Indigent Defense in the United States

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EXECUTIVE SUMMARY

In its 1963 *Gideon V. Wainwright* decision, the U.S. Supreme Court held that states have the responsibility to fulfill the right to counsel as guaranteed by the Sixth Amendment such that all persons accused of felony offenses are entitled to counsel in their defense, including those unable to afford an attorney. The Court extended this right to juveniles in 1967 in its *In re Gault* ruling and to all defendants facing the prospect of jail time in *Argersinger v. Hamlin* (1972), including those charged with a misdemeanor or other lesser offense. In response, states have established various approaches to provide for indigent defense. Some states administer all such programs at the state level, while others administer programs at the county level, and still others have a hybrid system in place. Furthermore, indigent defense systems may provide counsel through established public defender offices, an assigned counsel system, or a contract system. In most states, the right to counsel has been further specified by legislation, case law, and state constitutional provisions. In short, the systems that provide counsel for indigent adult and juvenile defendants in the United States vary considerably across states, localities, and judicial jurisdictions.

These myriad systems for providing indigent defense in the United States pose challenges to understanding the process, context, and impact of effective representation for indigent clients. Furthermore, the systems that provide for indigent defense have resource-related and other challenges that affect the quality of indigent defense counsel available. These challenges include a lack of sufficient resources in general, access to investigators and other support staff, workload standards and other standards to support effective representation, strategies to support the recruitment and retention of quality counsel dedicated to indigent defense, and specialized training and other needs related to the provision of public defense with certain clients or cases. Recent innovations to address these and other challenges related to the provision of indigent defense have included holistic defense approaches, participatory defense models, and an expansion of independent oversight.

SELECTED PRIORITY NEEDS



RESULTS

- Courts could be required to collect descriptive data on which defendants or juveniles have representation.
- Innovative options used in some jurisdictions to provide earlier access to a lawyer should be assessed.
- Areas with different levels of caseloads should be examined, along with differences across outcomes and impacts and for different types of clients and cases.
- Research can be conducted that offers a more nuanced understanding of the administration of indigent defense in small, rural areas.
- Research can be conducted to identify the impacts of nonattorney case support on case outcomes.
- Strategies for expanding access to paraprofessional expertise should be explored.
- Systems that are working well should be studied.
- Research should be conducted on the scope of rules, practices, and resource decisions that limit access to counsel.
- Client perspectives should be obtained on differences in the level and quality of representation received through different systems.
- Research could be conducted to identify the scope of issues that make it difficult to recruit qualified and diverse attorneys.
- Undergraduate and law school internship programs and defense counsel pipelines can be developed.
- Training opportunities can be evaluated to determine whether training is effective and under what circumstances.
- Research should be conducted on the complexities that public defense attorneys face and the support and resources needed to successfully manage these complexities.
- Impacted persons' perspectives should be obtained on what quality defense counsel means and how it is operationalized.
- Research could be conducted to understand the types of engagement that are most effective.

RTI International and the RAND Corporation, on behalf of the National Institute of Justice (NIJ), conducted an environmental scan to better understand research needs around the provision of indigent defense, discuss innovative solutions that may address those needs, and recommend priorities for NIJ and other entities to further explore those potential solutions. The environmental scan findings and resulting recommendations were informed by a literature review and direct input from a select group of stakeholders through individual interviews, group discussion, and interactive feedback. This report is part of the NIJ Priority Criminal Justice Needs Initiative, which regularly obtains direct feedback from practitioners, researchers, and policymakers to recommend priorities for research and innovation to meet the most-pressing needs of the field.

Through our environmental scan, we identified 17 information gaps related to the provision of indigent defense in the United States in general and particularly as those challenges relate to the judicial, legal, jurisdictional, and social contexts that affect indigent defendants, indigent defense counsel, and the provision of legal services. We identified challenges and potential solutions related to

- the jurisdictional context in which indigent defense is provided, including the type of indigent defense required by state and local statute (i.e., public defender, assigned counsel, contract attorney, or hybrid approaches), the characteristics of that indigent defense delivery system, and the characteristics of the jurisdiction itself
- the capabilities and needs of indigent defense counsel, including the recruitment and retention of qualified attorneys who reflect priorities around equity and fairness, as well as training and other resources to support qualified and engaged defense counsel
- the need for rigorous studies that explore the relationship between access to quality defense counsel and critical outcomes for indigent defendants—including case outcomes and the impact of defense counsel and jurisdictional process on defendants' perceptions of fairness and justice—and collateral consequences associated with not having representation.

WHAT WE FOUND

Basic research, metrics, and agreed-on outcomes are needed to support a full understanding of the contexts in which indigent defense is provided, the skills and supports required to provide quality indigent defense, and the variety of services and

strategies required to advance justice for individual cases and to address the co-occurring and collateral factors surrounding indigent defendants. Research priorities were identified to (1) understand the practice and implications of indigent defense delivery in rural jurisdictions, (2) incorporate defendant perspectives about the quality of representation and perceptions of case processing, and (3) translate research findings for judicial and policymaker audiences. Research is needed to address the following specific gaps identified through the environmental scan:

- There is a lack of basic descriptive data about indigent defendants (e.g., which defendants have lawyers representing them and which are deprived of lawyers).
- Many jurisdictions are not equipped to provide pre-court or pre-charge representation.
- Excessive caseloads have an impact on the quality of representation, the ability to adhere to professional practice standards, and client-attorney relationships; that impact is not well understood.
- In some jurisdictions, there is limited or no access to attorneys with the qualifications, experience, and desire needed to represent people in criminal cases who are unable to afford counsel.
- In many jurisdictions, particularly rural communities, there is limited or inconsistent access to the nonattorney case support needed to provide quality indigent defense representation.
- It is difficult to hire qualified and diverse indigent defense attorneys.
- Because of the differing systems for assigning counsel across the United States, many defendants who are accused of misdemeanor or other lower-level crimes do not receive the assistance of counsel when facing pretrial detention or fines, fees, or other penalties associated with a guilty plea.
- There is a lack of understanding about the extent to which the racial, cultural, and socioeconomic backgrounds of indigent defense attorneys affect the experiences of the clients they serve.
- Emerging research shows that holistic defense strategies, which address co-occurring and collateral factors associated with criminal cases, hold promise for advancing justice and improving outcomes for individuals and communities.

INTRODUCTION

In its 1963 *Gideon V. Wainwright* decision, the U.S. Supreme Court held that states have the responsibility to fulfill the right to counsel as guaranteed by the Sixth Amendment such that all persons accused of felony offenses are entitled to counsel in their defense, including those unable to afford an attorney. The Court extended this right to juveniles in 1967 in its *In re Gault* ruling and to all defendants facing the prospect of jail time in *Argersinger v. Hamlin* (1972), including those charged with a misdemeanor or other lesser offense. In response, states have established various approaches to provide for indigent defense. Some states administer all such programs at the state level, while others administer programs at the county level, and still others have a hybrid system in place. Furthermore, indigent defense systems may provide counsel through established public defender offices, an assigned counsel system, or a contract system.

As a result, the types of cases to which public defenders can be assigned, as well as the stage of case processing when that assignment is made, can and do vary significantly from jurisdiction to jurisdiction. Most states do not mandate that counsel be present at a defendant's first appearance (Gross, 2017), and only half of U.S. jurisdictions require defense counsel at bail hearings (Colbert, 2011). Furthermore, although individuals charged with a misdemeanor have a constitutionally protected right to counsel if they face jail time, states and localities regularly do not comply with this requirement (Carroll, 2015; Institute for Social Research, University of Michigan, 2002). In short, the systems that provide counsel for indigent adult and juvenile defendants in the United States vary considerably across states, localities, and judicial jurisdictions (American Bar Association, 2005).

Background

The long-standing challenge among indigent defense attorneys and provider systems is that they are underresourced, understaffed, and overburdened (American Bar Association, 2005; Taylor, 2011). In this section, we describe the results of the literature review portion of the environmental scan, first exploring what we know about challenges to providing quality indigent defense, including in rural jurisdictions, and the impact that indigent defense provision can have on client outcomes. This summary of challenges identified in the literature is followed by a discussion of innovative and potentially promising strategies to address those challenges.



SOURCES CONSULTED TO INFORM THE ENVIRONMENTAL SCAN

Alameda County Public Defenders Office

American Bar Association, Standing Committee on Legal Aid and Indigent Defense

Center for Court Innovation

The Center for Holistic Defense

The Deason Criminal Justice Reform Center at Southern Methodist University

The Gault Center

Minnesota Board of Public Defense

National Association of Criminal Defense Lawyers

National Association for Public Defense

National Legal Aid and Defender Association

New Hampshire Public Defender Offices

New York State Office of Indigent Legal Services

Office of Justice Programs, U.S. Department of Justice

Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Carey Law School

Sixth Amendment Center

Challenges to Providing Quality Indigent Defense Services

Quality indigent defense counsel is critical to advancing justice and addressing the needs of defendants. Analyzing data collected from indigent defendants, Pruss, Sandys, and Walsh (2022) underscore the importance of communication, investigation, and advocacy, but they also offer new insight into client definitions of those core functions. Clients saw communication as more than just “showing up”; they prioritized honesty and transparency and expressed a desire for greater voice, agency, and collaboration. Innovations include the development of checklists to assess the quality and impact of attorney-client communication (Campbell and Henderson, 2022).

Challenges to providing quality indigent defense have likely been exacerbated following the coronavirus disease 2019 (COVID-19) pandemic, which caused courtrooms across the United States to cease operations in 2020, creating an extensive backlog of criminal cases and prolonged case resolution, limiting access to attorneys (through limits on interpersonal contact), and ultimately prolonging the impact of case processing on sentencing and collateral consequences. Daftary-Kapur, Henderson, and Zottoli (2021) surveyed practicing defense attorneys in the United States to assess their perceptions of how the plea-bargaining process had changed during the pandemic. The responding attorneys reported that prosecutors might have been offering more-lenient plea deals, but defendants were also more likely to accept plea bargains than they may have been otherwise. The survey further found that attorneys perceived more challenges to accessing and communicating with their clients.

One of the leading struggles in the public defense realm is the large amount of cases public defenders are expected to take on. Public defender caseload and workload studies have repeatedly found that there are insufficient resources to handle the number of cases that are assigned to public defenders and others who provide representation to indigent defendants. For example, a study by the National Center for State Courts of public defense in North Carolina found that attorneys need

an average of 75 hours to sufficiently represent a client charged with a serious felony, but the available resources allowed them to spend an average of only 42 hours on those cases (Lee, Hamblin, and Via, 2019). Other studies have found similarly deficient resources to handle the caseload of public defenders in Rhode Island (BlumShapiro, American Bar Association Standing Committee on Legal Aid and Indigent Defendants, and National Association of Criminal Defense Lawyers, 2017), Missouri (RubinBrown, 2014), and Utah (Pace et al., 2021), among other states.

Decriminalization of minor offenses may also be a partial solution. In 2009, the National Association of Criminal Defense Lawyers estimated that 10.5 million misdemeanor prosecutions occur annually (Reimer, 2009). In the absence of increased funding, decriminalizing misdemeanors seems a viable option to lessen this caseload and reduce the indigent defense resources needed to address such cases. Decriminalization can mean moving an offense to a civil rather than a criminal offense. It could also mean that the offense remains criminal, but imprisonment is removed as a possibility of punishment. Decriminalization of certain misdemeanors would not only lighten the load for public defenders but also reduce the burden on an overpopulated incarceration system (Altman, 2017).

Challenges to Providing Indigent Defense in Rural Areas

Several studies have highlighted the increased challenges to providing indigent defense in rural communities because of a lack of available, qualified, and proximate attorneys (e.g., Clark, Davies, and Curtis, 2022). To address such challenges, Metzger (2022) recommends that researchers focus on rural communities; specifically, that those communities be equal participants with urban and state-level stakeholders in the development of criminal legal reforms and that these jurisdictions and their state and federal counterparts invest in strategies to recruit, retain, and train defense counsel in rural communities. Strate-

In the absence of increased funding, decriminalizing misdemeanors seems a viable option to reduce caseloads and the indigent defense resources needed to address such cases.

gies to address the continuing crisis of access to justice in rural areas include employing telepresence technologies and other innovations to allow access to defense counsel and associated investigators, paralegals, and others. These innovations rely on access to technology and internet services, which continue to be limited in rural areas, particularly among indigent defendants. Jurisdictions could explore policies that enhance incentives for defense attorneys to practice in rural areas (Beskin and Pruitt, 2023); they also could implement policies that enhance recruitment pipelines in rural areas.

Impact of Indigent Defense Provision on Client Outcomes

Pretrial detention and reliance on monetary bail can result in several collateral consequences for indigent defendants in addition to incarceration prior to conviction, such as loss of housing and employment. In its 2008 *Rothgery v. Gillespie County* ruling, the Supreme Court clarified that the protections set forth in *Gideon v. Wainwright* and the defendant's Sixth Amendment right to counsel are triggered at the defendant's initial appearance before a judicial officer. As noted by Colbert (2011, p. 342), counsel at first appearance would not only support more immediate and just bail determinations but also permit "immediate investigation, preparation of a defense, and evaluation of the charge." One study of indigent defendants in Pittsburgh, Pennsylvania, found that those who were provided a public defender at the initial bail hearing were less likely to be detained, and the increase in release on their own recognizance did not lead to subsequent increases in failure to appear (Anwar, Bushway, and Engberg, 2023). Colbert, Paternoster, and Bushway (2002) found that representation at bail hearings for indigent defendants charged with nonviolent crimes resulted in a greater likelihood of being released on their own recognizance, a greater likelihood of having bail reduced to affordable amounts, judicial officers making more-informed pretrial release decisions, earlier case dispositions, and a decline in jail crowding because of pretrial detention. In the same study, the authors found that detainees who were represented at bail hearings were more likely to report that they were treated fairly. Similar findings were reported by Worden and colleagues in their studies of indigent defendants charged with misdemeanors in rural counties in upstate New York (Worden et al., 2018; Worden et al., 2020).

The 2010 *Padilla v. Kentucky* decision requires defense counsel to advise clients on the consequences of accepting a guilty plea or pleading guilty. Leasure and colleagues (2022)

Pretrial detention and reliance on monetary bail can result in collateral consequences for indigent defendants, such as loss of housing and employment.

surveyed South Carolina public defenders and found that respondents reported that a minority of their colleagues did a good job of communicating the collateral consequences of a conviction or a finding of guilt to their clients, including deportation and obstacles to employment and housing.

Mixed results on the difference in outcomes for those represented by public defenders and private attorneys can be found in various studies on the subject (Cohen, 2014; Freeman, Peterson, and Hartley, 2022; Iyengar, 2007; Ostrom and Bowman, 2021; Posner and Yoon, 2011; Spohn and Holleran, 2000). Some studies found that assigned counsel had better client outcomes, such as being less likely to accept a plea deal, when compared with public defenders (Freeman, Peterson, and Hartley, 2022), while others found that public defenders had better outcomes for their clients in other aspects, such as shorter sentence length (Anderson and Heaton, 2012; Freeman, Peterson, and Hartley, 2022; Iyengar, 2007). However, Duhart Clarke (2021) found that, when it comes to negative criminal justice-related outcomes, there is a much larger discrepancy between indigent defendants and those who retained counsel than between indigent defense types (i.e., public defenders versus assigned counsel). Duhart Clarke (2021) purports that this finding points to disadvantages in court that stem from biases rather than attorney performance. Sharma, Stolzenberg, and D'Alessio (2022) investigated the differential impact of public defenders compared with private defense counsel. That study also underscores the negative impacts and disadvantages that pretrial detention can have on indigent clients, particularly at the sentencing decision points in a case. Although each of these studies has applied methodologies to identify and limit selection bias—where, unmeasured factors may have informed attorney assignment and, therefore, also resulted in the outcomes observed—more-rigorous research is needed to support

causal inferences about the type of indigent defense received and client outcomes.

This need is underscored by the fact that private attorneys have the ability to choose which clients and cases they take on, while public defenders cannot (Cohen, 2014; Hartley, Miller, and Spohn, 2010; Liang, Long, and Brame, 2012; Shinall, 2010). This can allow private attorneys to choose cases that they believe will have a strong defense and will therefore be more likely to have a chance of winning (Liang, Long, and Brame, 2012; Primus, 2017; Shinall, 2010). Furthermore, the way in which indigent lawyers are compensated can affect the outcomes of their clients' cases. For example, Lee (2022) examined the outcomes of switching indigent defense lawyers' compensation from an hourly rate to a flat fee in six counties in North Carolina: Lee found that defendants were 11 percent more likely to be convicted and 37 percent more likely to be incarcerated because of an increase in guilty pleas. Under the flat fee compensation, lawyers reported spending less time on their cases and were 36 percent more likely to dispose a case on the same day they met their client or the defendant.

Promising Strategies to Address Challenges to Providing Indigent Defense

In recognition that resource challenges have a significant impact on indigent defendants, some jurisdictions have adopted minimum defense standards. For example, Michigan's standards include (1) timely and relevant training of assigned attorneys, (2) confidential meeting space for clients to meet with their attorneys and an initial client interview within three business days of appointment, (3) access to and use of investigators and experts, and (4) legal counsel present on a defendant's initial appearance to answer to the charges against them. However, resources are needed to support adherence to those guidelines. The Defender Association of Philadelphia piloted a program to help improve pretrial outcomes. Bail advocates were assigned to interview defendants after their arrest to collect information to more effectively argue for their pretrial release. The advocates found that this program reduced a defendant's likelihood of bail violation by 64 percent and future arrest by 26 percent. Although it did not reduce detention rates, it was found to reduce racial disparities in pretrial detention (Heaton, 2021). The American Bar Association suggested annual caseload maximums of 150 felony cases, 400 misdemeanor cases, 200 juvenile cases, or 25 appeals per year. However, many attorneys end up taking on more than this in a year. Jaffe (2018) calls for these standards to become hard limits.

Holistic defense is defined by the Center for Holistic Defense as

combin[ing] aggressive legal advocacy with a broader recognition that for most poor people arrested and charged with a crime, the criminal case is not the only issue with which they struggle. The key insight of holistic defense is that to be truly effective advocates for our clients, we as defenders must broaden the scope of our work to include both the collateral consequences of criminal justice involvement as well as the underlying issues, both legal and non-legal, that have played a part in driving our clients into the criminal justice system in the first place. (Center for Holistic Defense, undated, p. 3)

The Center for Holistic Defense has developed an office-level self-assessment tool that reflects the four pillars of holistic defense: “seamless access to services that meet clients’ legal and social support needs”; “dynamic, interdisciplinary communication”; “advocates with an interdisciplinary skill set”; and advocates with a “robust understanding of, and connection to, the community served” (Center for Holistic Defense, undated, pp. 5–6). Davidson, Ostrom, and Kleiman (2022) found that connections to needed social services are not always made; however, positive outcomes occur when such connections are made. These positive outcomes include clients’ perceptions of being heard. Additionally, Ostrom and Bowman (2021) found that holistic defenders and public defenders are able to resolve their cases more quickly than private attorneys, which does not come at the expense of their clients. Both holistic and traditional public defenders are able to achieve results that are just as favorable as those of their private counterparts. Furthermore, Anderson, Buenaventura, and Heaton (2019) found that holistic defense strategies, compared with more-traditional defense approaches, reduced the likelihood of a custodial sentence upon conviction, resulting in a lower reliance on incarceration without compromising public safety.

Approach

To better understand research needs around the provision of indigent defense, discuss innovative solutions that may address those needs, and recommend priorities for the National Institute of Justice (NIJ) and other federal agencies to further explore those potential solutions, researchers from RTI International and the RAND Corporation conducted a comprehensive environmental scan. The NIJ Indigent Defense Environmental Scan (IDES) explored the literature around the needs of the indigent defense field; obtained input from leading practitioners through

individual interviews, group discussion, and interactive feedback; and reviewed the priorities of federal and private research and practitioner organizations.

As a first step in the environmental scan, RTI researchers conducted a preliminary literature review to identify potential research priorities and information gaps as cited in peer-reviewed literature, along with some emerging strategies that may address those priorities. The literature review identified broad research gaps and needs related to

- strategies to support the recruitment and retention of attorneys providing counsel to indigent defendants
- the role of commissions, including independent oversight commissions and access to justice commissions
- effective approaches to coordination among defense counsel and law enforcement, prosecutors, and other stakeholders in public safety and criminal legal systems
- quality standards and accountability approaches for stakeholders across the public safety and criminal legal systems, including public defenders, prosecutors, law enforcement, and investigative bodies
- resources to support effective investigation and defense strategies related to emerging evidence types and litigation approaches (e.g., digital evidence, forensic science techniques)
- challenges specific to the provision of indigent defense for juveniles or other clients with specific needs
- strategies to address the pre- and post-litigation needs of indigent defendants
- the potential impact of holistic and other defense strategies on the administration of justice and public safety.

RTI researchers then worked with NIJ representatives to develop a list of key stakeholders, including researchers, practitioners, and policymakers working in indigent defense who would be able to speak to the diverse contexts and jurisdictions across the United States; many of these stakeholders were also identified through the literature review. Individual interviews were held with each stakeholder to gather direct input on what they saw as the most-pressing research and other priorities to support quality indigent defense.

Once the team identified an initial set of research priorities, a group of stakeholders met virtually to narrow the list of priorities and discuss potential solutions or strategies to address those priorities. Finally, acknowledging that the stakeholders represented only a small percentage of practitioners in the indigent defense community, RTI researchers reached out to additional stakeholders to review the initial list of research priority needs and elicit further input on the most-pressing needs of the field.

RESULTS

The IDES was conducted to develop a set of information gaps or research priorities that, if addressed, could advance knowledge around effective indigent defense strategies. Using the literature review and feedback of participating stakeholders, RTI researchers sorted these research priorities into one of three categories based on the broad type of issue or challenge they were intended to address (see Table 1).

Ten of the 17 research priorities relate to the jurisdictional context in which indigent defense is provided. These jurisdictional context research priorities address the type of indigent defense required by state and local statute (i.e., public defender, assigned counsel, contract attorney, or hybrid approaches); the characteristics of that indigent defense delivery system, such as caseload level; and the characteristics of the jurisdiction itself, such as its location.

Three of the 17 research priorities relate to the capabilities and needs of indigent defense counsel. These defense counsel research priorities include the recruitment and retention of qualified attorneys who reflect priorities around equity and fairness, as well as training and other resources to support qualified and engaged defense counsel.

The remaining four research priorities relate to understanding pertinent outcomes for indigent defendants. These defendant outcome research priorities include the impact of defense counsel and the judicial process on defendants' perceptions of fairness and justice, as well as outcomes for the criminal case specifically and the collateral or co-occurring factors surrounding that case.

Table 1. Research Priorities Identified Through the Indigent Defense Environmental Scan

Category	Research Priority
Jurisdictional context	<ul style="list-style-type: none"> • There is a lack of basic descriptive data about indigent defendants, including which defendants have lawyers representing them and which are deprived of lawyers, whether defendants are in custody, and how long it takes to get a lawyer, as well as related metrics around case processing. • Despite compelling evidence that suggests that earlier involvement of counsel can improve indigent defendant outcomes, many places are not equipped to provide pre-court or pre-charge representation. Research is needed to understand and address obstacles to providing representation at these earlier stages of case processing. • There is a need to more meaningfully describe the negative circumstances created by excessive caseloads and the impact of such caseloads on the quality of representation, the ability to adhere to professional practice standards, client-attorney relationships, and other outcomes. • There are places in the United States where there is limited or no access to attorneys with the qualifications, experience, and desire needed to represent people in criminal cases who are unable to afford counsel, which results in delays in assignment of counsel, the assignment of counsel who are not geographically close to their clients, or both. Research is needed to identify strategies to recruit and retain indigent defense attorneys in these areas. • In many jurisdictions, particularly rural communities, there is limited access to the nonattorney case support (e.g., paralegals, investigators, mitigation specialists, other experts) needed to provide quality indigent defense representation. Research is needed to identify resources to provide these case support services. • There is inconsistent access to and understanding of the variety of attorneys, paraprofessionals, and experts needed to provide quality representation. • Over the past several years, much of the focus on improving quality has been on institutional providers and less has been on assigned counsel systems, although such systems will always be necessary. More research is needed to explore the relationship between representation provided through assigned counsel systems and case processing and outcome measures. • All systems and all jurisdictions must make decisions about indigent defense policy that implicitly expand or restrict the availability of counsel to defendants. In some jurisdictions, such access may be restricted beyond what is stipulated in legislation. Research is needed to understand the prevalence, characteristics, and context associated with such jurisdictions. • Indigent defense attorneys are often excluded from discussions around legislative and policy changes that will affect their ability to provide representation. Research is needed to understand the context surrounding these policy discussions and the importance of including input from indigent defense providers. • More attention should be devoted to understanding the true level of funding needed to provide for effective indigent defense and developing funding strategies that are informed by more than basic caseload counts.
Defense counsel	<ul style="list-style-type: none"> • There is limited information available on how to retain and cultivate good defense lawyers. Research is needed to identify strategies to recruit, develop, and retain qualified and diverse indigent defense attorneys. • As case complexity, responsibilities, expectations of indigent defense attorneys, and pressures on attorneys increase, research is needed to accurately describe their workload and explore strategies to support the indigent defense bar. • More research is needed to understand what makes a quality public defense attorney, in terms of being able to relate to clients and provide client-centered representation.

Table 1—Continued

Category	Research Priority
Defendant outcome	<ul style="list-style-type: none"> • Access to an attorney is constitutionally guaranteed for defendants who face the prospect of any jail or detention time. However, because of the differing systems for assigning counsel across the United States, there is a large number of defendants who face bail determinations or are accused of misdemeanor or other lower-level crimes who do not receive the assistance of counsel when facing pretrial detention or fines, fees, or other penalties associated with a guilty plea. More research is needed on the outcomes and collateral consequences associated with not having representation at bail hearings and throughout case processing for misdemeanor or lower-level offenses. • There is a lack of understanding about the extent to which the racial, cultural, and socioeconomic backgrounds of indigent defense attorneys affect the experiences of the clients they serve. • There is no shared agreement about the outcomes on which to focus in evaluating the quality of representation. • More research is needed to understand what makes for a positive attorney-client relationship in which there is positive communication and the client feels heard and valued.

DISCUSSION

In this section, we provide further context from selected stakeholders about strategies to address the research priorities described earlier. Statements in this section are derived from stakeholder input during individual interviews, interactive discussions, and follow-up review and input on the research priorities identified. Stakeholder input focused primarily on outstanding research questions and topics to be explored further, but it also reflected the need among all topics discussed for rigorous evaluation designs that minimize selection bias and establish causality between representation and outcomes. Such evaluations are critical to fill these information gaps.

Jurisdictional Context Research Priorities

Jurisdictional context research priorities addressed the type of indigent defense required by state and local statute (i.e., public defender, assigned counsel, contract attorney, or hybrid approaches); the characteristics of that indigent defense delivery system, such as the caseload level; and the characteristics of the jurisdiction itself, such as its location.

Characteristics of Indigent Defense Clients

Participants noted a lack of basic descriptive data about indigent defendants, including which defendants have lawyers representing them and which are deprived of lawyers, whether the defendants are in custody, and how long it takes to get a lawyer, as well as related case processing metrics. Although court clerks and administrative offices of the courts record this information in case files, it is not documented consistently or in a manner that would support ready classification of large numbers of

cases for research purposes. One means to address the lack of basic data is for courts to add (and use) a checklist to identify which defendants have representation, what type of representation, and when the attorney was appointed or first appeared with their client. Research studies could tie this information to basic descriptive data about clients and cases to answer questions, such as the following:

- How long are people incarcerated before an attorney is appointed?
- How many people are waitlisted and what are the characteristics of those waitlisted?
- For cases that prosecutors ultimately decline to prosecute or in cases in which all charges are dismissed, how many defendants were detained prior to their case disposition?
- How many people accept a plea without having the opportunity to talk to a defender or to waive counsel?
- How many people are eligible for counsel and do not receive it (e.g., for misdemeanors)?
- How many people elect to waive counsel?
- How many people appear at critical stages without counsel?

As an initial step in answering some of these questions, research could focus on an individual or a selected set of jurisdictions that would pilot such data collection and then examine the different process or decision points using these data to look at the correlations with outcomes.

Earlier Access to a Defense Attorney

Despite compelling evidence to suggest that earlier involvement of counsel can improve indigent defendant outcomes, many

places are not equipped to provide pre-court or pre-charge representation. Stakeholders recommended research to assess innovative options used in some jurisdictions to provide earlier access to a lawyer, including lawyers posted at police stations and consultation hotlines, which are used most often among juveniles but could be extended to adults as well.

Impact of Excessive Caseloads

Researchers and stakeholders need to do a better job of meaningfully describing the negative circumstances created by excessive caseloads and the impact of such caseloads on the quality of representation, the ability to adhere to professional practice standards, client-attorney relationships, and other outcomes. Studies have been conducted in law enforcement and probation contexts to demonstrate how reducing caseload size increases effectiveness (e.g., Jalbert and Rhodes, 2012); similar research should be conducted in indigent defense contexts. Research is needed to look at areas with different levels of caseloads and examine the differences between them across a broad variety of outcomes and impacts and for different types of clients and cases.

Indigent Defense in Rural Areas

There are places in the United States where there is limited or no access to attorneys with the qualifications, experience, and desire needed to represent people in criminal cases who are unable to afford counsel, resulting in delayed assignment of counsel, assignment of counsel who are not geographically close to their clients, or both. The field could benefit from research

that offers a more nuanced understanding of the administration of indigent defense in rural areas, recognizing that solutions will differ based on specific characteristics of each jurisdiction. Research is also needed to understand the effectiveness of regional public defender offices and private appointed counsel to address challenges in providing indigent defense in rural communities and to understand the comparative effects and value of regional public defender offices compared with other systems. This research priority could also be addressed through support to encourage innovation and to better understand the effectiveness of programs that provide rural public defender and appointed counsel positions with a living wage, student loan forgiveness, or other incentives. Stakeholder feedback also identified the need to conduct full assessments of the implications, impact, and viability of statewide policy changes on non-urban communities and the need to conduct research around the provision of remote indigent defense; remote defense is often considered a workaround in more-rural communities where in-person engagement is challenging. Research is also needed to understand the effectiveness of rural legal clinics staffed by law students as both a defense counsel pipeline and a mechanism to provide direct representation to indigent clients.

Nonattorney Case Support

Many jurisdictions, particularly rural communities, have limited access to the nonattorney case support—paralegals, investigators, mitigation specialists, and other experts—needed to provide quality indigent defense representation. Research

Selected Jurisdictional Context Research Needs

- Explore the feasibility of requiring courts to collect basic descriptive data on which defendants or juveniles have representation, what type, and when, and then leverage this information to answer key research questions.
- Assess whether innovative options being used in some jurisdictions to provide earlier access to a lawyer can be implemented more widely.
- Look at geographic areas with different levels of caseloads and examine the differences between them across a broad variety of outcomes and impacts and for different types of clients and cases.
- Conduct research that offers a more nuanced understanding of the administration of indigent defense in small, rural areas, recognizing that solutions will differ based on specific characteristics.
- Conduct research to identify the impacts of nonattorney case support on case outcomes.
- Explore strategies for expanding access to the variety of paraprofessional expertise.
- Study how systems other than institutional public defense providers are working to achieve various system-, case- and individual-level outcomes.
- Conduct research on the full scope of rules, practices used, and resource decisions that jurisdictions make that limit access to counsel.
- Obtain client perspectives on differences in the level and quality of representation received through public defense and noninstitutional representation systems to focus attention on reducing those differences.

is needed to identify the impacts of nonattorney case support on case outcomes and to effectively translate related research findings to educate policymakers on the importance of such support. Research also could help identify “expert deserts,” where there are limited options for representation support and opportunities to cultivate and incentivize specialists and experts in those areas.

Access to Attorneys

There is inconsistent access to and understanding of the variety of attorneys, paraprofessionals, and experts needed to provide quality representation. Relevant professional and policy organizations should revisit existing standards to ensure that they are evidence-based and that stated thresholds can be connected to changes in outcomes. Research should further explore strategies for expanding access to the variety of paraprofessional expertise.

Assigned Counsel Systems

Over the past several years, much of the focus on improving the quality of indigent defense has been on institutional providers (e.g., public defender offices), and less focus has been on assigned counsel systems, although assigned counsel likely will always be necessary to handle conflict cases, address excessive caseloads, and otherwise provide for indigent defense. Further research is needed on assigned counsel systems, particularly

- the implications of different fee structures
- strategies to improve assigned counsel systems, including Managed Assigned Counsel systems, strong administrative infrastructure, mentoring programs, training resources, and access to nonattorney professionals
- client perspectives on differences in the level and quality of representation from assigned counsel and public defenders to focus attention on reducing those differences
- the context and environment in which assigned counsel systems should operate.

State- and Jurisdiction-Specific Limitations on Access to Counsel

All systems and jurisdictions must make decisions about indigent defense policy that implicitly expand or restrict the availability of counsel to defendants. In some jurisdictions, such policy may restrict access beyond what is stipulated in legislation. Research is needed to understand the full scope of the rules, practices used, and resource decisions that jurisdictions make that limit access to counsel. Studies are needed on the prevalence

and characteristics of jurisdictions in which defense attorneys are so overburdened that restrictions are imposed on which defendants have access to counsel and when, as well as the impact of those restrictions on the outcomes for all indigent defendants. Research could also explore indigent defense attorney waitlists, including who goes on them, the order in which people are added and removed, and the characteristics of those individuals.

Increased Engagement of Indigent Defense Attorneys with the Larger Justice Community

Indigent defense attorneys are often excluded from discussions around legislative and policy changes that will affect their ability to provide representation. State and local jurisdictions should ensure that chief defenders, counsel, and assigned counsel attorneys can participate in defender forums and summits to create networks, reduce isolation, and enable better advocacy around legal reforms. One strategy to address this need is to pilot an evaluation of a federal or state-level Defender General position that operates like an Attorney General. Policymakers could also include an impact statement as a component of any proposed legislative or policy change that would affect indigent defense. Research is needed to understand where and how defense attorneys are given a meaningful seat at the table and to better understand the limitations of indigent defense attorneys’ capacity to participate in legislative and policy decisionmaking.

Funding and Resource Allocations That Reflect the Complexity of Indigent Defense

Indigent defense relies exclusively on public funding. However, little is known about the amount of funding necessary to ensure that every indigent client gets an adequate defense. Many jurisdictional funding models rely primarily on caseloads and case types to determine and allocate funding. Similarly, much of the research that explores the funding parity between prosecution and public defense also focuses on caseload and case type. While it may be useful to update caseload recommendations and associated funding allocations, it is also important to broaden our understanding of the resources required to provide for indigent defense because such resources extend beyond basic caseload counts and case types. Such an approach would help distinguish the critical functions and responsibilities performed by public defenders that are not necessarily also functions performed by prosecutors’ offices. A deeper examination of the resources that support prosecutorial and defense functions may also identify funding resources that extend beyond public allocations—such as civil forfeitures, grant pro-

grams, or others—which may not necessarily be accessible to both prosecution and defense.

Defense Counsel Research Priorities

Defense counsel research priorities include the recruitment and retention of qualified attorneys who reflect priorities around equity and fairness, as well as training and other resources to support qualified and engaged defense counsel.

Hiring Qualified Attorneys

It is difficult to hire qualified and diverse indigent defense attorneys, including ensuring adequate representation across gender, race, socioeconomic background, and other factors that may foster the connection with clients that is a prerequisite to effective advocacy. Research is needed to systematically identify the full scope of issues surrounding these difficulties and strategies to address them. A survey of law school clinics or internship programs focused on indigent defense could provide important information about how law schools are addressing this need, how many law students practice indigent defense following graduation, and for how long. Studies could further explore strategies that make for a successful public defender pipeline and identify specific actions that public defender offices, law schools, and other entities could be taking to support that pipeline. For example, research could build on such examples as the Cornell Defender Program and Michigan's

MDefenders to develop undergraduate and law school internship programs with public defender offices and public defense training institutes. Such programs could work with law school placement offices to ensure that opportunities related to indigent defense work are known about and accurately presented. Relatedly, research is needed to help law schools better prepare and empower students for the realities of working in indigent defense and manage student expectations about the level and type of work that is needed.

Retaining Good Lawyers

There is limited information available on how to retain and cultivate good defense lawyers. Research is needed to understand why indigent defense attorneys are leaving public defense and appointed counsel lists. Research should explore what training is effective for retention and in what circumstances, as well as explore successful mentoring programs and the opportunities to expand those further. Finally, jurisdictions should invest in and study ways to support the mental health and wellness of indigent defense attorneys.

There are increasing case complexities, responsibilities, expectations of indigent defense attorneys, and pressures on those attorneys. The field would benefit from better research on the complexities that public defense attorneys face and the support and resources needed to successfully manage these complexities. Resources are also needed to translate findings and information for judges and funders about the increasing case complexities and pressures on defense attorneys and the impacts of such pressures on the quality of representation and communities in general.

What Makes a Good Indigent Defense Attorney?

More research is needed to better understand what makes a quality public defense attorney; for example, being able to relate to clients and providing client-centered representation. First, engaging with impacted persons would be helpful to get their perspectives on what quality means and how it is operationalized. Research is needed to connect case outcomes with how much and what indigent defense attorneys are doing to better understand what activities or types of engagement are most effective. Specifically, research should be conducted on how time is effectively spent (e.g., on pretrial motions, bail reductions, plea negotiations). Research that provides a better understanding of what makes a good defense attorney could also inform hiring and retention efforts.

Selected Defense Counsel Research Needs

- Conduct research to systematically identify the full scope of issues that make it difficult to recruit qualified and diverse attorneys.
- Build on such examples as the Cornell Defender Program and Michigan's MDefenders to develop undergraduate and law school internship programs and defense counsel pipelines.
- Evaluate training opportunities and determine whether training is effective and under what circumstances.
- Conduct research on the complexities that public defense attorneys face and the support and resources needed to successfully manage these complexities.
- Engage with impacted persons to get their perspectives on what quality means and how it is operationalized.
- Conduct research to connect case outcomes with what and how much indigent defense attorneys are doing to better understand what activities or types of engagement are most effective.

Defendant Outcome Research Priorities

Defendant outcome research priorities include the impact of defense counsel and judicial process on defendants' perceptions of fairness and justice, as well as outcomes for the criminal case specifically and the collateral or co-occurring factors surrounding that case.

Understanding the Impact on Individuals of Not Having Representation at Certain Hearings or for Certain Types of Cases

There are swaths of the country where misdemeanor defendants never see an attorney. Research is needed to understand why misdemeanor defendants are not getting an indigent defense attorney and the factors that contribute to the lack of representation for these defendants. Additional research should focus on the outcomes of indigent defendants charged with a misdemeanor crime, comparing outcomes for those in jurisdictions with access to defense counsel with outcomes for those in jurisdictions without such access. In rural areas, research should explore the provision of remote indigent defense (both for remote court appearances and attorney-client consultations) and the consequences of remote defense; remote defense may be considered a workaround for areas with a limited number of attorneys. Research is also needed to fully understand the implications of diversion programs on indigent defense caseloads and other resource constraints.

Understanding Whether and How Defense Counsel Characteristics Can Affect Clients

There is a lack of understanding about the extent to which the racial, cultural, and socioeconomic backgrounds of indigent defense attorneys affect the experiences of the clients they serve. Foremost, diverse voices need to be represented in all research, discussion, and decisions, and the people most affected by policies and decisions must be engaged and involved. Research is needed to better understand the impact of differences in demographics and backgrounds between attorneys and clients. More training is needed to ensure that indigent defense attorneys are equipped to serve clients with a broad variety of backgrounds and experiences. Jurisdictions could also develop pilot programs that give clients more choice over who represents them and use such programs to better understand the factors that clients consider to be most important, beyond the quality of representation.

Selected Defendant Outcome Research Needs

- Ensure that diverse voices are represented in all research, discussion, and decisions and that the people most affected by policies and decisions are engaged and involved.
- Engage with impacted persons to get their perspectives on what constitutes a positive client-attorney relationship.
- Conduct research on the outcomes of indigent defendants charged with a misdemeanor crime, comparing outcomes for those in jurisdictions with access to defense counsel with outcomes for those in jurisdictions without such access.
- Any research related to indigent defense needs to start by being clear about how success is defined, being clear about the specific outcome measured, and justifying the rationale.

Defining Measures to Assess the Quality of Representation

As of this writing, there is no consensus around the outcomes that should be the focus in evaluating the quality of representation. Any research related to indigent defense needs to clearly define what success looks like, define the specific outcome being measured, and justify the rationale for that metric. The field should better articulate and study what is valued and why from the indigent defense perspective and develop a common operational definition of different metrics and outcomes for success.

More research is needed to better understand what makes for a positive client-attorney relationship in which there is positive communication and the client feels heard and valued. This research may be especially needed to understand how to improve the attorney-client relationship in cases in which defendants are suffering from significant mental impairments, which can exacerbate the challenge of forming a positive relationship. Researchers and practitioners should engage with impacted persons to get their perspectives on what classifies as a positive client-attorney relationship, which could include a survey focused on experiences of indigent criminal defendants and their perceptions of the attorney-client relationship or investments in technologies and methodologies to systematically capture real-time client perspectives. Research is needed to connect a variety of case outcomes with information on how much and what indigent defense attorneys are doing to better understand what activities or types of engagement are most effective for that outcome.

CONCLUSION

The Priority Criminal Justice Needs Initiative IDES identified several research priorities that can help advance justice and create positive outcomes for indigent defendants, court systems, and communities. The IDES findings reiterate the notion that basic information is lacking about which indigent defendants can access defense counsel, when that counsel is assigned, and what outcomes are associated with the case and the individual. Furthermore, more research and resources are needed to recruit, retain, and train quality indigent defense counsel. Challenges

related to the provision of indigent defense in rural communities were repeatedly raised as a critical research and innovation priority. Such challenges include limitations in access to counsel and the impact that lack of access can have on individuals and on the judicial system, and participants identified promising strategies to address accessibility. Finally, client engagement and holistic defense strategies that address co-occurring and collateral factors associated with criminal cases are important to advance justice and improve outcomes for individuals and communities.

References

- Altman, Bryan, “Improving the Indigent Defense Crisis Through Decriminalization,” *Arkansas Law Review*, Vol. 70, No. 3, 2017.
- American Bar Association, *Effective Assistance of Council Resolution*, Policy 2005 AM 107, August 2005.
- Anderson, James M., Maya Buenaventura, and Paul Heaton, “The Effects of Holistic Defense on Criminal Justice Outcomes,” *Harvard Law Review*, Vol. 132, No. 3, January 2019.
- Anderson, James M., and Paul Heaton, “How Much Difference Does the Lawyer Make: The Effect of Defense Counsel on Murder Case Outcomes,” *Yale Law Journal*, Vol. 122, No. 1, 2012.
- Anwar, Shamena, Shawn D. Bushway, and John Engberg, “The Impact of Defense Counsel at Bail Hearings,” *Science Advances*, Vol. 9, No. 18, May 2023.
- Argersinger v. Hamlin*, 407 U.S. 25, 1972.
- Beskin, Kelly V., and Lisa R. Pruitt, “A Survey of Policy Responses to the Rural Attorney Shortage in the United States,” in Daniel Newman and Faith Gordon, eds., *Access to Justice in Rural Communities: Global Perspectives*, 2023.
- BlumShapiro, American Bar Association Standing Committee on Legal Aid and Indigent Defendants, and National Association of Criminal Defense Lawyers, *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards*, 2017.
- Campbell, Christopher M., and Kelsey S. Henderson, “Bridging the Gap Between Clients and Public Defenders: Introducing a Structured Shadow Method to Examine Attorney Communication,” *Justice System Journal*, Vol. 43, No. 1, 2022.
- Carroll, David, “Why Our Misdemeanor Courts Are Filled with Uncounselled Defendants,” Sixth Amendment Center, May 12, 2015.
- Center for Holistic Defense, *The Holistic Defense Toolkit*, undated.
- Clark, Alyssa M., Andrew L. B. Davies, and Karise M. Curtis, “Access to Counsel for Defendants in Lower Criminal Courts,” *Justice System Journal*, Vol. 43, No. 1, 2022.
- Cohen, Thomas H., “Who Is Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes?” *Criminal Justice Policy Review*, Vol. 25, No. 1, 2014.
- Colbert, Douglas L., “Prosecution Without Representation,” *Buffalo Law Review*, Vol. 59, No. 2, April 2011.
- Colbert, Douglas L., Ray Paternoster, and Shawn D. Bushway, “Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail,” *Cardozo Law Review*, Vol. 23, No. 5, January 2002.
- Daftary-Kapur, Tarika, Kelsey S. Henderson, and Tina M. Zottoli, “COVID-19 Exacerbates Existing System Factors That Disadvantage Defendants: Findings from a National Survey of Defense Attorneys,” *Law and Human Behavior*, Vol. 45, No. 2, April 2021.
- Davidson, Kimberly M., Brian J. Ostrom, and Matthew Kleiman, “Client Perspectives of Holistic Defense: Strengthening Procedural Justice Through Enhanced Client Trust,” *Justice System Journal*, Vol. 43, No. 1, 2022.
- Duhart Clarke, Sarah Elizabeth, *Indigent Injustice? A Systematic Review and Meta-Analysis of Defendants’ Criminal Justice-Related Outcomes*, dissertation, North Carolina State University, 2021.
- Freeman, Kelly Roberts, Bryce Peterson, and Richard Hartley, *Counsel Type in Federal Criminal Court Cases, 2015–18*, Urban Institute, May 2022.
- Gideon v. Wainwright*, 372 U.S. 335, 1963.
- Gross, John P., “The Right to Counsel but Not the Presence of Counsel: A Survey of State Criminal Procedures for Pre-Trial Release,” *Florida Law Review*, Vol. 69, No. 3, 2017.
- Hartley, Richard D., Holly Ventura Miller, and Cassia Spohn, “Do You Get What You Pay For? Type of Counsel and Its Effect on Criminal Court Outcomes,” *Journal of Criminal Justice*, Vol. 38, No. 5, September–October 2010.
- Heaton, Paul, “Enhanced Public Defense Improves Pretrial Outcomes and Reduces Racial Disparities,” *Indiana Law Journal*, Vol. 96, No. 3, 2021.
- In re Gault*, 387 U.S. 1, 1967.
- Institute for Social Research, University of Michigan, “Survey of Inmates in Local Jails, 2002 [United States] (ICPSR 4359),” Bureau of Justice Statistics, U.S. Department of Justice, 2002. As of June 9, 2023: <http://www.icpsr.umich.edu/cocoon/NACJD/STUDY/04359.xml>
- Iyengar, Radha, *An Analysis of the Performance of Federal Indigent Defense Counsel*, National Bureau of Economic Research, Working Paper No. 13187, June 2007.
- Jaffe, Samantha, “‘It’s Not You, It’s Your Caseload’: Using *Cronic* to Solve Indigent Defense Underfunding,” *Michigan Law Review*, Vol. 116, No. 8, 2018.
- Jalbert, Sarah Kuck, and William Rhodes, “Reduced Caseloads Improve Probation Outcomes,” *Journal of Crime and Justice*, Vol. 35, No. 2, 2012.
- Leasure, Peter, John Burrow, Gary Zhang, and Hunter M. Boehme, “Collateral Consequences of Conviction in South Carolina Courts: A Study of South Carolina Defense Lawyers,” *Justice System Journal*, Vol. 43, No. 1, 2022.

- Lee, Andrew J., “Flat Fee Compensation, Lawyer Incentives, and Case Outcomes in Indigent Criminal Defense,” paper presented at the Association for Public Policy Analysis and Management 2022 Fall Conference, Washington, D.C., November 19, 2022.
- Lee, Cynthia G., Lydia E. Hamblin, and Brittney Via, *North Carolina Office of Indigent Defense Services Workload Assessment*, Research Division, National Center for State Courts, February 2019.
- Liang, Bin, Michael A. Long, and Wendy Brame, “Is It Legal Representation or Clients?: An Empirical Testing of Clients’ Performance and Their Legal Representation in Tulsa County Drug and DUI Programs,” *American Journal of Criminal Justice*, Vol. 37, No. 4, 2012.
- Metzger, Pamela R., “Rural Criminal Justice Reform,” in Jon B. Gould and Pamela R. Metzger, eds., *Transforming Criminal Justice: An Evidence-Based Agenda for Reform*, New York University Press, 2022.
- Ostrom, Brian J., and Jordan Bowman, “The Evolving Character of Public Defense: Comparing Criminal Case Processing Effectiveness and Outcomes Across Holistic Public Defense, Traditional Public Defense, and Privately Retained Counsel,” *Southern California Interdisciplinary Law Journal*, Vol. 30, No. 3, 2021.
- Pace, Nicholas M., Dulani Woods, Roberto Guevara, Chau Pham, and Shamena Anwar, *Provisional Caseload Standards for the Indigent Defense of Adult Criminal and Juvenile Delinquency Cases in Utah: Report for the Utah Indigent Defense Commission*, RAND Corporation, RR-A1241-1, 2021. As of June 9, 2023: https://www.rand.org/pubs/research_reports/RRA1241-1.html
- Padilla v. Kentucky*, 559 U.S. 356, 2010.
- Posner, Richard A., and Albert Yoon, “What Judges Think of the Quality of Legal Representation,” *Stanford Law Review*, Vol. 63, No. 2, January 2011.
- Primus, Eve Brensike, “Defense Counsel and Public Defence,” in E. Luna, ed., *Reforming Criminal Justice Pretrial and Trial Processes*, Academy for Justice, 2017.
- Pruss, Heather, M. Sandys, and S. M. Walsh, “‘Listen, Hear My Side, Back Me Up’: What Clients Want from Public Defenders,” *Justice System Journal*, Vol. 43, No. 1, 2022.
- Reimer, Normal L., “Inside NACDL: NACDL’s Report on Misdemeanor Courts: Overcriminalization Gone Mad,” *The Champion*, May 2009.
- Rothgery v. Gillespie County*, 554 U.S. 191, 213, 2008.
- RubinBrown, *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards—With a National Blueprint*, June 2014.
- Sharma, Madhuri, Lisa Stolzenberg, and Stewart J. D’Alessio, “Evaluating the Cumulative Impact of Indigent Defense Attorneys on Criminal Justice Outcomes,” *Journal of Criminal Justice*, Vol. 81, July–August 2022.
- Shinall, Jennifer B., “Slipping Away from Justice: The Effect of Attorney Skill on Trial Outcomes,” *Vanderbilt Law Review*, Vol. 63, No. 1, 2010.
- Spohn, Cassia, and David Holleran, “The Imprisonment Penalty Paid by Young, Unemployed Black and Hispanic Male Offenders,” *Criminology*, Vol. 38, No. 1, February 2000.
- Taylor, Kate, *System Overload: The Costs of Under-Resourcing Public Defense*, Justice Policy Institute, July 2011.
- Worden, Alissa Pollitz, Kirstin A. Morgan, Reveka V. Shteynberg, and Andrew L. B. Davies, “What Difference Does a Lawyer Make? Impacts of Early Counsel on Misdemeanor Bail Decisions and Outcomes in Rural and Small Town Courts,” *Criminal Justice Policy Review*, Vol. 29, No. 6-7, 2018.
- Worden, Alissa Pollitz, Reveka V. Shteynberg, Kirstin A. Morgan, and Andrew L. B. Davies, “The Impact of Counsel at First Appearance on Pretrial Release in Felony Arraignments: The Case of Rural Jurisdictions,” *Criminal Justice Policy Review*, Vol. 31, No. 6, 2020.

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Justice Policy Program

RAND Social and Economic Well-Being is a division of the RAND Corporation that seeks to actively improve the health and social and economic well-being of populations and communities throughout the world. This research was conducted in the Justice Policy Program within RAND Social and Economic Well-Being. The program focuses on such topics as access to justice, policing, corrections, drug policy, and court system reform, as well as other policy concerns pertaining to public safety and criminal and civil justice. For more information, email justicepolicy@rand.org.

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About This Report

On behalf of the U.S. Department of Justice, National Institute of Justice (NIJ), the RAND Corporation, in partnership with the Police Executive Research Forum, RTI International, and the University of Denver, is carrying out a research effort to assess and prioritize technology and related needs across the criminal justice community. This research effort, called the Priority Criminal Justice Needs Initiative (PCJNI), is a component of the Criminal Justice Requirements and Resources Consortium (RRC) and is intended to support innovation within the criminal justice enterprise. For more information about the RRC and the PCJNI, please see www.rand.org/well-being/justice-policy/projects/priority-criminal-justice-needs.

This report is one product of that effort. Researchers from RTI International and RAND conducted an environmental scan on needs related to indigent defense in the United States. This report presents the proceedings of that effort, discussing the topics considered, the priorities that participants developed, and overarching themes that emerged from their discussions. This report should be of interest to public and private defenders, court administrators, judges, and criminal justice policymakers.

Other RAND research reports from the PCJNI that might be of interest are

- Brian A. Jackson et al., *Promising Practices from the Court System's COVID-19 Response: Ensuring Access to Justice While Protecting Public Health*, RAND Corporation, RB-A108-2, 2021
- Amanda R. Witwer et al., *Online Dispute Resolution: Perspectives to Support Successful Implementation and Outcomes in Court Proceedings*, RAND Corporation, RR-A108-9, 2021
- Camille Gourdet et al., *Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology*, RAND Corporation, RR-3222-NIJ, 2020.

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