



## Holistic Defense in Brief

Prepared by Emily Burtch, Venita Embry, Karima Modjadidi, and Suzanne Strong  
Division for Applied Justice Research, RTI International

Criminal legal system involvement has far-reaching, long-lasting effects that often ensnare the most vulnerable citizens with insurmountable fines, conditions, and confinement. Holistic defense aims to mitigate the harm of criminal legal system involvement by using a multidisciplinary team—often composed of social workers, housing advocates, family and immigration attorneys, and mental health providers—to address clients’ needs far beyond their criminal case.

The Sixth Amendment expressly provides every person who is accused of a crime the right to counsel. The U.S. Supreme Court has made clear that this obligation includes the state’s duty to provide each person accused of a crime access to the reasonably effective assistance of counsel:

Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. From counsel's function **as assistant to the defendant** derive the overarching duty to advocate the defendant's cause and the more particular duties **to consult with the defendant on important decisions** and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.<sup>1</sup>

Ninety percent to 95% of cases resolve in a plea,<sup>2</sup> often because of competing concerns (e.g., employment, family obligations, parental rights, immigration status). Taking a plea can be perceived as the “easy” solution.<sup>3</sup> As a result, ethical standards, emerging case law, and the core role of the Sixth Amendment all demand that defense attorneys consider the associated direct and indirect consequences of criminal legal system involvement. In doing so, defense attorneys can understand the clients’ backgrounds and circumstances that propelled them to interaction with the criminal legal system—in addition to the facts of the case—and craft a *client-centered* approach to the decision-making process.<sup>4</sup>

In addition to championing legal cases, practitioners of the holistic defense approach recognize that when most people are arrested, the criminal case is often not the only or even the primary issue with which they struggle ([Holistic Defense toolkit](#)).<sup>5</sup> People facing one or more criminal charges may have a mélange of needs and a wide array of concerns, some of which may flow from their criminal case, some of which may have contributed to their criminal system involvement, and some of which may be more

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<sup>1</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984) (citation omitted; emphasis added).

<sup>2</sup> Devers, L. (2011). *Plea and charge bargaining*. Bureau of Justice Assistance. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>

<sup>3</sup> Steinberg, R. G. (2005). Beyond lawyering: How holistic representation makes for good policy, better lawyers, and more satisfied clients. *NYU Rev. L. & Soc. Change*, 30, 625.

<sup>4</sup> Lee, C. G., Ostrom, B. J., & Kleiman, M. (2015). The measure of good lawyering: Evaluating holistic defense in practice. *Alb. L. Rev.*, 78, 1215.

<sup>5</sup> The Center for Holistic Defense. (n.d.) *Holistic defense toolkit*. <https://www.apainc.org/wp-content/uploads/2017/08/Holistic-Defense-Toolkit.pdf>

pressing than their criminal charges. Intertwined with their criminal cases may be issues relating to loss or limitation of parental rights, eviction, civil commitments, sex offender registration, and more.<sup>6</sup> Wesley Caines, chief of staff of the Bronx Defenders, the creators of holistic defense, identifies its cruciality in an [interview with Arnold Ventures](#):

One of the important reasons to have a holistic practice is that we're able to identify very quickly the likelihood that a person's involvement with the criminal legal system will trigger some other system involvement.

Holistic defense, therefore, fulfills the right to counsel with root-cause responsivity, using interdisciplinary teams to isolate and treat not just the criminal case but also the circumstances that contributed to system involvement.

### Origin and Terminology

The expansion of collateral consequences (e.g., sex offender registration, public housing ineligibility) was a core motivator for the development of the holistic defense paradigm, very similar to “problem-solving lawyering, community-oriented defense (COD), therapeutic defense, holistic advocacy or integrated service representation.”<sup>7</sup> The Bronx Defenders is heralded as the creator of holistic defense and the Brennan Center for Justice as leaders in community-oriented defense. Both organizations have enumerated pillars or principles that define and guide their representation model.

The Bronx Defenders' four pillars (see sidebar) are a way to address clients' needs by providing an interdisciplinary, communicative team and access to services. The [Ten Principles of Community Oriented Defense](#), created by the Brennan Center for Justice, overlaps in many respects with the Bronx Defenders' pillars: a call to meet the needs of a client beyond the legal, to engage and educate the community, and address the clients' needs through a multidisciplinary team. But the Brennan Center's model also specifies the need to address systemic issues, collaborate with other system stakeholders, and engage with other community-oriented defense members. The overarching strategies throughout the principles are whole-client representation, community engagement, and systemic reform.<sup>8</sup> Steinberg<sup>9</sup> notes that both the Bronx Defenders' pillars and community-oriented defense principles are designed to be implemented within a public defender's office. Holistic models include two critical components: advocacy through interdisciplinary teams and presence in the community.<sup>10</sup>

#### The Four Pillars of the Bronx Defenders

1. Seamless access to services that meet clients' legal and social support needs
2. Dynamic, interdisciplinary communication
3. Advocates with an interdisciplinary skill set
4. A robust understanding of, and connection to, the community served

—[Holistic Defense toolkit](#)<sup>5</sup>

<sup>6</sup> Smyth, M. (2011). Collateral no more: The practical imperative for holistic defense in a post-Padilla world—Or, how to achieve consistently better results for clients. *Louis U. Pub. L. Rev.*, 31, 139.

<sup>7</sup> Lee et al., 2015.

<sup>8</sup> Clark, M., & Savner, E. (2010). *Community oriented defense: Stronger public defenders*. Brennan Center for Justice at New York University School of Law.

<sup>9</sup> Steinberg, R. (2013). Heeding Gideon's call in the twenty-first century: Holistic defense and the new public defense paradigm. *Wash. & Lee L. Rev.*, 70, 961.

<sup>10</sup> Steinberg, R. G., 2005.

## Core Elements

The crux of holistic defense is to meet the client at this critical juncture—interaction with the criminal legal system—and use it as an opportunity to meet the needs and address the issues that brought them in touch with system in the first place. This often means that an interdisciplinary team will work with a client to meet needs far beyond their legal case; social workers, housing advocates, immigration attorneys, family attorneys, and mental health providers are all part of a team advocating for a client. Civil attorneys take on housing, immigration, and child welfare issues, whereas social workers and advocates find housing and treatment placements.<sup>11</sup> In this way, the underlying circumstances that drove a client into the criminal nexus—such as drug addiction, family or housing instability, mental illness—can also be addressed.<sup>12</sup>

### Core Elements of Holistic Defense

An interdisciplinary team works with clients to address their...

- Legal cases
- Housing
- Immigration status
- Mental health
- Substance use/addiction
- Family, child welfare, or civil needs

## Research on Effectiveness

RAND and the University of Pennsylvania conducted a rigorous evaluation over a 10-year period and half a million cases randomly assigned to either the Bronx Defenders or the Legal Aid Society for indigent defense counsel. They found that, compared with the traditional defense option of the Legal Aid Society, the Bronx Defenders' unique model significantly reduced incarceration rates, sentence length, and pretrial detention. Although the Legal Aid Society includes social workers and civil attorneys in its framework, the Bronx Defenders' interdisciplinary team structure creates more "robust collaboration," in addition to having a larger proportion of social workers to make referrals and gather potentially mitigating information.<sup>12</sup> In total, the Bronx Defenders saved taxpayers \$160 million on incarceration housing costs alone without harming public safety. An estimated 1.1 million days of incarceration were avoided, incarceration rates were reduced by 16%, pretrial detention was cut by 9%, and sentences were shortened by 24%.<sup>12</sup>

### Success of the Bronx Defenders:

- ✓ \$160 million taxpayer dollars saved on housing costs alone, without harming public safety
- ✓ 1.1 million days of incarceration avoided
- ✓ Incarceration rates reduced by 16%
- ✓ Pretrial detention cut by 9%
- ✓ Sentences shortened by 24%

In a pilot evaluation of the Santa Barbara, California, holistic defense model, the researcher used propensity score-matching<sup>13</sup> to compare the outcomes of holistic defense clients (n = 82) with the outcomes of people who received traditional defense (n = 284). People who received holistic defense representation received more favorable case outcomes than those who received traditional case-only representation. Compared to the control group clients, holistic defense clients had statistically more charges dismissed at

<sup>11</sup> Lee et al., 2015.

<sup>12</sup> Anderson, J. M., Buenaventura, M., & Heaton, P. (2019). The effects of holistic defense on criminal justice outcomes. *Harv. L. Rev.*, 132, 819.

<sup>13</sup> The statistical method of propensity score matching involves matching treated and untreated subjects with similar propensity scores (probability of treatment assignment dependent on observed baseline covariates). Austin, P. C. (2011). An introduction to propensity score methods for reducing the effects of confounding in observational studies. *Multivariate Behavioral Research*, 46(3), 399–424.

arraignment, and they pled guilty to a smaller percentage of arraignment charges. In incarceration costs, the researcher estimated that holistic defense saved Santa Barbara County \$250,000.<sup>14</sup> Notably, there was no difference in recidivism between the two groups.

The National Center for State Courts evaluated the implementation of holistic defense in public defense offices of Bowling Green, Kentucky; Hennepin, Minnesota; and Providence County, Rhode Island, through stakeholder interviews, client interviews, and limited administrative data.<sup>15</sup> Each site engaged in some level of holistic defense practices, with variation: all sites had at least one social worker (though their roles differed) and investigator on staff, the level of a team-based approach varied across sites, and clients' satisfaction and sense of procedural justice were greater than at indigent defense offices. A multivariate analysis showed that clients represented by the Hennepin County public defense office received a sentence, on average, 4 months shorter than that of clients represented by other counsel. The primary barrier to expanding holistic defense services in all three counties was funding. This lack of funding also prevented better data collection; all three jurisdictions lacked funding to implement a case management system that effectively collects case and client data.<sup>16</sup>

Given the interdisciplinary nature of holistic defense, future research can explore the effectiveness of holistic defense on outcomes outside of legal resolution. Housing stability, deportation, employment attainment, status of parental rights, time spent in treatment or rehabilitation, and referral to mental health treatment and its dosage would all be outcomes of value in determining the effectiveness of holistic defense—or the difference from the status quo.

## Implementation

Establishing holistic defense practices in a jurisdiction requires funding and resources, community engagement, and passionate advocates. The current models engage clients with interdisciplinary teams at the outset—offices house social workers along with civil and criminal attorneys. A small office or solo

### Jurisdictions with Holistic Defense Practices Include:


- ◆ Bay Area, CA
- ◆ Santa Barbara, CA
- ◆ Santa Cruz, CA
- ◆ New Orleans, LA
- ◆ Washetaw, MI
- ◆ Flathead Reservation, MT
- ◆ Warren County, NY
- ◆ Tulsa, OK
- ◆ Rhode Island
- ◆ Knox County, TN
- ◆ Harris County, TX

practicing defense counsel may find it impractical to hire a dedicated social worker and civil attorney. Lee suggests that in such offices, the “defense team” may need to expand to include social workers and civil attorneys from external organizations, and some of the work of the team may need to be done through referrals to outside agencies and clinics.<sup>16</sup> In other words, it is not essential that the defense team hire permanent in-house social workers, mental health providers, substance use treatment providers, or housing support personnel. Though beneficial and convenient to do so when feasible, these support personnel do not need to be incorporated into defense practices simultaneously, nor do they need to be employees of the defense practice. Defense offices may be able to make referrals to county agencies for mental health treatment, social work support, or other relevant services. Better yet, defense offices can build partnerships with local government employees who

<sup>14</sup> Harris, H. M. (2020). Building holistic defense: The design and evaluation of a social work centric model of public defense. *Criminal Justice Policy Review*, 31(6), 800–832.

<sup>15</sup> Ostrom, B. J., & Bowman, J. (2020). Examining the effectiveness of indigent defense team services: A multisite evaluation of holistic defense in practice. *Justice System Journal*, 41(2), 139–184.

<sup>16</sup> Lee et al., 2015.



spend part of their time at the defense office, sparing the client from having to do multiple intakes, keep multiple appointments, and make multiple trips to different agencies and locations. As defense offices can demonstrate the effectiveness of these partnerships, there may be justifications for hiring their own part-time or full-time employees to fill these roles.

Being part of the community and educating the community may also look different for a small office than a large public defender's office.<sup>17</sup> With that in mind, advancing holistic defense practices can still be done within the bounds of a budget by creatively integrating the four pillars (addressing clients' civil, social, and health-related needs; advocating with a client-centered and interdisciplinary skill set; engaging the community; and ensuring open communication among the team) into the representation practices. As the Holistic Defense Toolkit notes, having the social worker at the initial interview with the defense attorney can help elicit more of an understanding of the needs of a client, while limiting the number of times the client has to retell their story.

In sum, holistic defense practices can reduce sentences, improve case outcomes, and save taxpayer dollars. By meeting clients where they are, holistic defense practices provide critical services and connections—whether mental health or housing, parenting or immigration civil assistance—that aim to mitigate the harm caused by the criminal legal system. This is done while alleviating the challenges that may have brought a person into the system in the first place. Offices considering implementing holistic defense practices can scale their integration according to their budget and bandwidth, starting with partnerships and expanding to in-house service providers.

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<sup>17</sup> Lee et al., 2015.