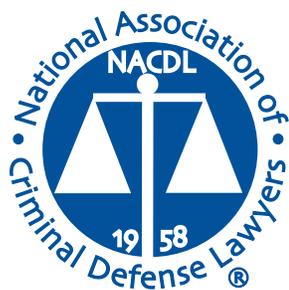


STATE OF CRISIS:

CHRONIC NEGLECT AND UNDERFUNDING FOR LOUISIANA'S PUBLIC DEFENSE SYSTEM



By
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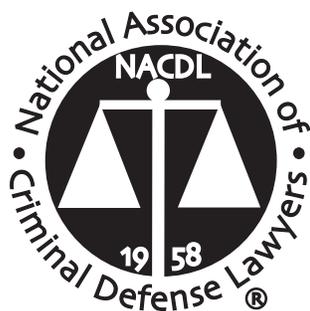


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**Report Commissioned by
NACDL Public Defense Committee**

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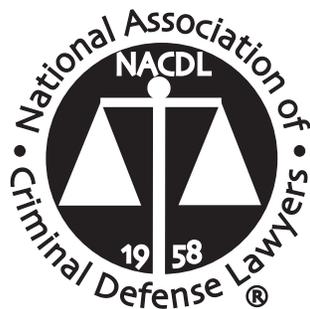
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About the National Association of Criminal Defense Lawyers and the Foundation for Criminal Justice

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing. NACDL's core mission is to: *Ensure justice and due process for persons accused of crime ... Foster the integrity, independence and expertise of the criminal defense profession ... Promote the proper and fair administration of criminal justice.*

Founded in 1958, NACDL has a rich history of promoting education and reform through steadfast support of America's criminal defense bar, *amicus curiae* advocacy, and myriad projects designed to safeguard due process rights and promote a rational and humane criminal justice system. NACDL's many thousands of direct members — and 90 state, local and international affiliate organizations totalling up to 40,000 members — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to preserving fairness in America's criminal justice system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and best practices.

The Foundation for Criminal Justice (FCJ) is a 501(c)(3) charitable non-profit organized to preserve and promote the core values of America's criminal justice system guaranteed by the Constitution — among them access to effective counsel, due process, freedom from unreasonable search and seizure, and fair sentencing. The FCJ supports NACDL's charitable efforts to improve America's public defense system, and other efforts to preserve core criminal justice values through resources, education, training, and advocacy tools for the public and the nation's criminal defense bar.



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Foreword

During that fateful week in August 2005, the world watched in horror as the rising Katrina storm waters overtook the levees and in a matter of hours destroyed lives, homes, and communities. In the ensuing weeks, decades of neglect, poverty, and racism that had long been out of sight and out of mind were exposed for all to see. More than a decade later, those same factors have led Louisiana's public defense system to a crisis of historic proportions. Already limited resources to assist those accused of criminal offenses who cannot afford an attorney have been stretched beyond the breaking point. The results do not present the same powerful images on the nightly news as the flood waters of Katrina, but are equally heartbreaking:

- ★ An innocent person jailed for nearly a month, unable to see his newborn baby, because his case had been transferred to a public defender who simply did not have time to review his file. [**Tina Peng, Opinion, I'm a Public Defender. It's Impossible for Me to Do a Good Job Representing My Clients, WASH. POST \(Sept. 3, 2015\).**](#)
- ★ The shortage of trained criminal defense attorneys caused courts to appoint tax and real estate attorneys to defend serious criminal cases and a prosecutor working as a part-time public defender. [**Oliver Laughland, When the Money Runs Out for Public Defense, What Happens Next?, MARSHALL PROJECT \(Sept. 7, 2016\).**](#)
- ★ A public defender who lacked funds to hire a translator for her Spanish-speaking clients and instead had to rely on a police officer to translate for her. [**Eli Hager, When There's Only One Public Defender in Town, MARSHALL PROJECT \(Sept. 9, 2016\).**](#)
- ★ Groups of up to 50 mostly black, poor defendants being convicted and sentenced at the same time with only one public defender to represent all of them simultaneously. [**Campbell Robertson, In Louisiana, the Poor Lack Legal Defense, N.Y. TIMES \(Mar. 19, 2016\).**](#)
- ★ Poor, unrepresented defendants held in pretrial detention on unaffordable bonds after one or two minute bond hearings. [**Campbell Robertson, In Louisiana, the Poor Lack Legal Defense, N.Y. TIMES \(Mar. 19, 2016\).**](#)

NACDL commissioned this report to assess the root causes of perhaps the most prolonged and severe public defense crisis in the nation. While Louisiana is hardly the only state with a public defense crisis, the gravity of the situation there will require a concerted, sustained national effort to alleviate it. The widespread injustice faced by poor people in Louisiana's courts, a disproportionate number of them people of color, demands the attention of everyone concerned about human dignity and fundamental rights. Importantly, the report does not just identify the myriad problems that presently exist in Louisiana's public defense system, but also concludes with a series of recommendations — short-term and long-term, incremental and more far-reaching — for addressing the many challenges. NACDL intends to be a national leader in helping to resolve the public defense crisis in Louisiana. The United States Constitution guarantees anyone facing a criminal charge the right to the assistance of a trained, prepared, and adequately-resourced attorney. NACDL calls upon citizens, activists, foundations, policymakers, and the legal profession across the country to join NACDL in pursuing reform efforts to ensure that this right is realized in Louisiana.


Barry J. Pollack
President

Introduction

Louisiana's public defense system has been in the spotlight since 2015, when a series of press articles called national attention to a system in crisis.¹ Public defender budget shortfalls,² overwhelmed defense lawyers who are responsible for hundreds of cases,³ the involuntary appointment of lawyers with no criminal law experience to represent individuals charged with serious felony offenses,⁴ and the indefinite detention in Louisiana jails of indigent defendants without access to counsel⁵ continue to be in the news and have become the target of litigation in state⁶ and federal⁷ courts.

The extensive coverage of Louisiana's public defense crisis has highlighted the dramatic fallout from the state's failure to fulfill its constitutional obligation to provide effective defense representation to individuals accused of criminal offenses who cannot afford to hire a lawyer.⁸

This failure occurs in a state in which the stakes are particularly high for accused individuals who are deprived of counsel, or who are provided counsel who lack the

Louisiana has the highest incarceration rate in the nation.

skills, time, or resources required to prepare and present a meaningful defense. Louisiana has the highest incarceration rate in the nation⁹ and strict repeat offender laws that can result in decades-long sentences for individuals convicted of even minor offenses.¹⁰

While Louisiana may be extreme in its failure to deliver on the right to counsel, it is not unique. The problems exposed there persist more quietly in many other parts of the country,¹¹ where they receive attention primarily from low-income communities,¹² public defense attorneys,¹³ civil rights litigators,¹⁴ and reform advocates.¹⁵ When these public defense failures have appeared in the news, they frequently have been covered by local media as matters of exclusively local concern.¹⁶

Louisiana's public defense crisis has penetrated broadly into the public conversation to a degree that has little precedent.¹⁷ The national, and even international,¹⁸ focus on Louisiana's public defense system has elevated the profile of this particular manifestation of our national public defense crisis to a level that corresponds to what it in fact is: a constitutional emergency of national significance. The sustained attention to Louisiana's public defense system also likely played a role in preventing large reductions to state funding for indigent defense services in the 2016 legislative session, during which many other state agencies and programs experienced deep cuts amid a \$2 billion state budget shortfall.¹⁹

However, while it has been effective in many ways, popular coverage of Louisiana’s public defense crisis has devoted more attention to the consequences of the crisis than to its causes, and has not examined potential improvements to the system beyond the clear need for additional funding for public defense services in the state.²⁰ The Louisiana Legislature recently mandated a new formula for distributing state public defense funds that has temporarily stabilized the budgets of local defender programs, albeit only at expenditure levels that reflect years of cost-saving measures that have compromised the quality of public defense services.²¹ The legislature did not respond to the crisis by making any additional changes to how those programs provide, or fail to provide, constitutionally-mandated defense services.²²

Popular coverage of Louisiana’s public defense crisis has devoted more attention to the consequences of the crisis than to its causes.

The National Association of Criminal Defense Lawyers (NACDL) commissioned this report to contribute to efforts to protect the right to counsel in Louisiana. Beginning in July 2016, NACDL interviewed over 20 individuals

about Louisiana’s public defense system, including former members of the Louisiana Public Defender Board (LPDB),²³ LPDB staff members, district defenders,²⁴ line defenders, state-funded capital defense lawyers, private criminal defense lawyers, bar leaders, and civil rights advocates. NACDL also reviewed government public defense standards, records, and reports; court opinions and litigation documents concerning public defense; and historical reports on Louisiana’s public defense system.

The goal of the report is to provide context for Louisiana’s public defense crisis, and from that foundation to offer specific recommendations for reform. While the report is based on significant research and identifies serious concerns, it is not a comprehensive review of Louisiana’s public defense system. In particular, the report identifies structural issues that make it impossible for Louisiana’s public defense system to provide constitutionally adequate representation to every accused individual who cannot afford to hire a lawyer, but it does not address the full extent to which the structural issues it highlights result both in the outright and the constructive²⁵ denial of indigent defendants’ right to counsel in Louisiana state courts. ■

Summary of Findings and Recommendations for Louisiana's Public Defense System

Funding

Finding 1: The total amount of funding available for public defense in Louisiana is inadequate.

Finding 2: The local revenue stream, which provides the majority of district funding, provides an unstable and inequitable foundation for Louisiana's public defense system.

Finding 3: There is gross disparity in the resources available to the defense function and to the prosecution in Louisiana.

Independence

Finding 4: During restriction of services, some judges in Louisiana have infringed on the independence of the defense function.

Quality of Representation

Finding 5: Even in the face of persistent underfunding, the Louisiana public defense system has improved overall under the Public Defender Act and LPDB.

Finding 6: There are many places in Louisiana where the quality of representation provided to accused individuals has not improved significantly since 2007 and likely does not meet constitutional standards.

Finding 7: As implemented, restriction of services was not an effective safeguard against further deterioration of the quality of representation provided to indigent defendants in Louisiana.

Recommendations

Recommendation 1: The Louisiana Legislature should fully fund the provision of public defense services in Louisiana from general revenue.

Recommendation 2: The Louisiana Legislature should repeal the public defender fee on convictions and public defender application fee, and replace local revenue for public defense with state general revenue. If local revenue is a necessary transitional measure before sufficient state revenue is available to fully fund public defense, changes to local revenue streams that will make them more stable and equitable should be adopted.

Recommendation 3: Louisiana should establish parity between the defense function and the prosecution.

Recommendation 4: Louisiana judges should respect the independent professional judgment of lawyers who provide public defense services, including their determinations that a conflict prevents them from accepting or maintaining representation of a case.

Recommendation 5: Louisiana judges should release from detention accused individuals for whom the state cannot provide counsel due to its underfunding of the public defense system.

Recommendation 6: LPDB and the defender community should re-focus on improving the quality of representation rather than merely surviving the next crisis.■

Historical Overview of Louisiana's Public Defense System

Louisiana's current public defense crisis did not materialize without warning. The LPDB predicted as early as 2009 that the public defense system would become insolvent in 2014 or 2015,²⁶ for reasons very similar to those that produced an earlier crisis that resulted in LPDB's own creation.²⁷

Louisiana's public defense system has existed in a state of almost perpetual crisis at least since the U.S. Supreme Court recognized the Sixth Amendment right to appointed counsel in state criminal

Many of the barriers to effective representation that persist today have existed for decades and survived repeated attempts at reform.

proceedings in *Gideon v. Wainwright*.²⁸ Many of the barriers to effective representation that persist today have existed for decades and survived repeated attempts at reform.

Gideon's First Thirty Years

Louisiana had no formal system for the delivery of legal services to indigent criminal defendants before *Gideon* established the right to counsel in 1963. Although some Louisiana judges provided counsel to indigent defendants prior to *Gideon*, the extent of the practice is unknown, no structure existed for the compensation of appointed counsel, and when counsel was provided it was through ad hoc judicial appointment.²⁹

In response to *Gideon*, the Louisiana Legislature in 1966 created local indigent defense boards (IDBs) in each judicial district that were responsible for the provision of public defense services in the district and whose members were appointed by local district judges.³⁰ The 1966 legislation also imposed a new fee on criminal convictions. Revenue from the fee went to the IDB in the district in which it was collected for the reimbursement of appointed attorneys.³¹

By the beginning of the 1990s, each IDB had the authority to provide public defense services using a public defender office, contract attorneys, assigned counsel, or a combination of those delivery models.³² Local public defense systems varied widely across the state, despite a state constitutional provision requiring the Legislature "to provide for a uniform system for securing and compensating qualified counsel for indigent defendants."³³

Almost all funding for public defense continued to come from the IDB-dedicated fee on convictions.³⁴ Although the fee had been increased over time and extended to traffic tickets, the Louisiana public defense system existed in a state of "chronic underfunding."³⁵ Funding was unstable as well as inadequate; local funding from fees on conviction varied widely, "both between different IDB's [sic] and within the same IDB over time."³⁶

Although the fee had been increased over time and extended to traffic tickets, the Louisiana public defense system existed in a state of “chronic underfunding.”

Thirty years after *Gideon* was decided, Louisiana still had not developed an adequately funded public defense system capable of consistently providing effective representation to indigent defendants. The Louisiana Supreme Court declined to find the state’s

decentralized structure for providing public defense services unconstitutional in 1993,³⁷ but at the same time stated that the state “faced a crisis in its indigent defense system.”³⁸ The Supreme Court invited the Legislature to address the crisis, and threatened to take more intrusive measures on its own if legislative action was not forthcoming.³⁹

LIDB through LIDAB

When the Legislature did not respond quickly to this ultimatum, the Louisiana Supreme Court established the Louisiana Indigent Defense Board (LIDB) by court rule in 1994.⁴⁰ In 1998, the Legislature moved LIDB to the executive branch and renamed it the Louisiana Indigent Defense Assistance Board (LIDAB).⁴¹

LIDB and then LIDAB were responsible for adopting uniform quality and performance standards for local public defense programs.⁴² LIDAB also was charged with administering the first-ever state appropriation for public defense services, which was \$5 million in 1998.⁴³ The Legislature later expanded LIDAB’s responsibilities to include provision of post-conviction representation in capital cases, and LIDAB eventually assumed supervision of regional conflict panels for capital trial counsel in addition to nonprofit organizations that represented defendants in capital post-conviction proceedings, capital and non-capital appeals, and some juvenile cases.⁴⁴

LIDAB distributed a portion of the state appropriation for public defense services to IDBs in the form of District Assistance Fund (DAF) grants to supplement local public defense funding generated from fees on convictions.⁴⁵ In order to receive DAF grants, IDBs had to agree to work toward achieving statewide public defense standards adopted by LIDAB.⁴⁶

Tying state funding to the districts’ promise to pursue state standards did not translate to the delivery of high quality public defense services through standards-based practice in local districts across Louisiana. LIDAB was not created as a regulatory agency and did not have authority to enforce its standards in local jurisdictions.⁴⁷ Many IDBs and district defenders wanted to maintain unimpaired local control over their public defense systems and resisted efforts to achieve greater uniformity in service delivery statewide.⁴⁸

Even if there had been no local resistance to LIDAB’s statewide public defense standards, IDBs did not have sufficient funding to implement those standards. Local funding from court costs continued to be unreliable, uneven across judicial districts, and unrelated to the cost of providing defense services.⁴⁹

DAF grants did not solve this funding problem. In 1998, when it was estimated that \$20 million was needed to adequately fund public defense in Louisiana, the Legislature appropriated \$5 million.⁵⁰ The state appropriation increased to \$7.5 million in 1999 and remained stable for seven years thereafter.⁵¹ Despite this stability in total state funding, the amount of funding available for DAF grants to districts nevertheless decreased over time, because the expansion of LIDAB's responsibilities to include capital post-conviction representation and appeals was not accompanied by additional funding.⁵² The amount of state funding distributed through DAF grants decreased by 16 percent between 1999 and 2003.⁵³ DAF funding also fluctuated from year to year, in a manner that mirrored the unpredictability of local revenue for public defense. For example, DAF grants plunged from \$3.5 million in 1999 to just over \$1 million in 2000.⁵⁴

By 2002, combined state and local funding for public defense services proved inadequate to cover the cost of providing defense services in half of Louisiana's judicial districts.⁵⁵ IDBs stayed afloat by cutting expenditures through measures such as replacing public defender offices with flat-fee contracts,⁵⁶ and by depleting local reserve funds to cover deficit spending.⁵⁷

By 2002, combined state and local funding for public defense services proved inadequate to cover the cost of providing defense services in half of Louisiana's judicial districts.

Ten years after the Louisiana Supreme Court created the LIDB, Louisiana's public defense system remained in crisis. A report commissioned by NACDL and issued by the National Legal Aid & Defender Association in 2004 found that Louisiana had a "disparate [public defense] system that fosters systemic ineffective assistance of counsel due primarily to inadequate funding and a lack of independence from undue political interference."⁵⁸ The Legislature initiated another attempt to reform the state's public defense system by creating the Louisiana Task Force on Indigent Defense Services and directing the task force to deliver recommendations for legislative consideration by the spring of 2005.⁵⁹ In April 2005, the Louisiana Supreme Court again recognized the underfunding of public defense services and called for legislative action.⁶⁰

Although pressure for another round of reform was building, it remained unclear whether there existed the political will to impose greater state oversight and provide increased state funding for public defense. Then Hurricane Katrina hit south Louisiana in August 2005.

The Louisiana Public Defender Act of 2007

The collapse of the public defense system in Orleans Parish⁶¹ after Hurricane Katrina provided the final impetus for Louisiana's next attempt to create a public defense system that could consistently provide constitutionally adequate representation in judicial districts across the state.⁶²

The Public Defender Act, and the compromise through which it was forged, continue to determine the structure of Louisiana’s public defense system today.

The state and national attention⁶³ to Louisiana’s public defense crisis that followed Katrina produced broad support for reform.⁶⁴ It did not resolve all tensions between advocates for greater state oversight and advocates for maintaining local autonomy, but it pushed the two camps to reach a

compromise, which is contained in the Louisiana Public Defender Act of 2007.⁶⁵ The Public Defender Act, and the compromise through which it was forged, continue to determine the structure of Louisiana’s public defense system today.

The Public Defender Act created the LPDB, which replaced LIDAB.⁶⁶ Although LPDB’s 15 members were to be selected using appointment guidelines that largely mirrored LIDAB’s appointment provisions,⁶⁷ and many of LIDAB’s public defense standards also carried over to LPDB,⁶⁸ there are significant differences between the two agencies.

LPDB is charged with providing for “the supervision, administration, and delivery of a statewide public defender system, which must deliver uniform public defender services in all courts” in Louisiana.⁶⁹

Unlike LIDAB, LPDB replaced the local IDBs, eliminating judges’ direct supervision of local public defense systems.⁷⁰ LPDB was created as a regulatory agency with full authority “over all aspects of the delivery of public defender services throughout the courts of the State of Louisiana.”⁷¹ It was charged with developing mandatory standards and guidelines for defense representation, establishing mandatory qualification standards for public defenders, creating methods for monitoring and evaluating district defender programs, enacting policies for consistent reporting of budget and workload data, setting minimum compensation standards for attorneys and support staff in district defender programs, and making information technology available to local programs.⁷² LPDB also was responsible for hiring district defenders⁷³ and approving strategic plans and budgets submitted by district defenders.⁷⁴ It was authorized to hire an executive staff that includes training and compliance officers.⁷⁵

Despite this broad authority, the Public Defender Act constrained LPDB in significant ways through statutory provisions that protected local control and the autonomy of district defenders. Significantly, district defenders retained the discretion to select their own methods for delivering indigent defense services, and LPDB must approve those choices to the extent a local method is meeting or able to meet LPDB’s performance standards and guidelines.⁷⁶ Local public defense procedures in place when the Public Defender Act passed in 2007 are presumed to meet performance standards and guidelines unless LPDB proves they do not.⁷⁷ District defenders who were in office in 2007 also retained their positions without going through LPDB hiring procedures and enjoyed significant job protections by virtue of their “grandfathered” status.⁷⁸

Finally, under the Public Defender Act, district defenders retained control of revenue generated by fees on local convictions and local public defender application fees.⁷⁹ This local revenue does not pass through LPDB and cannot be directed to any other district.⁸⁰ Although local funding continued to be supplemented by DAF grants, now administered by LPDB, and state appropriations for public defense increased significantly to \$20 million in 2007 and \$28 million in 2008, revenue derived from fees on convictions continued to provide the majority of funding for district defender programs.⁸¹ The Public Defender Act thus started on the same shaky fiscal foundation that had doomed previous efforts at reform.

The LPDB Era

LPDB began its work in August 2007 with no staff,⁸² limited statewide data about the public defense system,⁸³ and eight judicial districts that lacked a district defender to manage local public defense programs.⁸⁴

Within a little more than two years, LPDB was fully staffed, had filled seven district defender positions, and promulgated performance standards for non-capital trial court representation.⁸⁵ It also regularly collected public defense data from each of the judicial districts, and annually reported that information to the Legislature and made it available to the public.⁸⁶

By 2010, LPDB appeared to be moving forward on a path to address some of the chronic problems that had plagued Louisiana's public defense system for decades. It adopted a strategic plan that focused on securing adequate funding, cultivating a technologically proficient defender community, creating a statewide training program, establishing an effective communications system that reached all stakeholders across the state, and developing and supporting leaders in each district defender office.⁸⁷

LPDB continued to develop and adopt performance standards in 2010, including for capital representation⁸⁸ and child in need of care (CINC)⁸⁹ cases. It created a new certification program for defense attorneys seeking to represent individuals accused of capital offenses.⁹⁰ The trial compliance officer conducted site visits to 15 of the state's 42 district defender offices.⁹¹ LPDB's new training staff put on the state's first annual training institute for new defenders, the state's first investigator workshop, two capital trainings, a juvenile training, training sessions on *Padilla*⁹² and *Daubert*,⁹³ and a number of local skills trainings.⁹⁴

LPDB also funded eight contract programs that supplemented the services provided by district defenders.⁹⁵ These programs included the capital post-conviction and capital and non-capital appeals programs created under LIDAB, as well as capital trial programs that relieved a number of districts of the significant expense involved in defending capital cases.⁹⁶

By 2010, LPDB appeared to be moving forward on a path to address some of the chronic problems that had plagued Louisiana's public defense system for decades.

However, while LPDB was taking many positive steps in 2010 and projecting optimism, the round of public defense reform that began in 2007 already was beginning to falter. The Louisiana Legislature never funded LPDB at a level commensurate with its responsibilities, regulatory authority, or ambitions. Local revenue from conviction fees and public defender application fees provided the majority of the funding for district defender offices,⁹⁷ but was far from sufficient to make up for inadequate state funding. In the 18-month period from January 1, 2009 to June 30, 2010—during the height of reform efforts and immediately after a significant increase in state funding⁹⁸—28 of Louisiana’s 42 district defender programs had expenditures that exceeded revenues and were able to cover that deficit spending and avoid insolvency only by depleting their reserve

The Louisiana Legislature never funded LPDB at a level commensurate with its responsibilities, regulatory authority, or ambitions.

funds.⁹⁹ In terms of fiscal stability, the system already was back to where it started before the Public Defender Act was adopted.¹⁰⁰

By 2013, LPDB’s apparent optimism had faded. In its annual

report to the Legislature for calendar year 2012, LPDB lamented that “despite great authority and regulatory power, the continued funding shortfall makes it impossible for LPDB to realize the vision for public defense that was so overwhelmingly endorsed by the Legislature five years ago. . . . Without sufficient funding, the constitutional mandate to provide a ‘uniform system of qualified counsel’ for every eligible defendant is simply unattainable.”¹⁰¹

LPDB attempted to make up part of the funding shortfall by asking the Legislature to increase the conviction fee allocated to public defense by \$20, a request that was granted in part when a \$10 increase was approved during the 2012 session.¹⁰² LPDB joined with the Orleans Public Defenders (OPD) in suing the New Orleans Traffic Court for non-payment of fees of conviction due to OPD.¹⁰³ LPDB also adopted a Restriction of Services Protocol in preparation for some districts’ anticipated need to decline cases due to looming insolvency, excessive workloads, or both.¹⁰⁴ OPD and Calcasieu Parish Public Defender’s Office both were forced to restrict services in 2012.¹⁰⁵

OPD and Calcasieu came out of restriction of services in 2013, and several other districts projected to enter restriction were able to avoid it, but not because the funding situation had improved.¹⁰⁶ Instead, LPDB worked with districts to cut expenses in order to avoid restriction of services, “the option of last resort.”¹⁰⁷ Cost saving measures implemented by the districts to avoid entering restriction of services included staff layoffs, pay reductions, benefit cuts, increased caseloads, and eliminating funds for expert witnesses.¹⁰⁸ These cost saving measures and further depletions of district reserve funds allowed many districts to avoid insolvency for a time, but did so by driving up caseloads and limiting the capacity of district defender programs to provide standards-based representation.¹⁰⁹ LPDB also adjusted the DAF formula to direct more money toward districts that were facing insolvency despite cost-cutting efforts and issued emergency grants to forestall insolvency in some districts.¹¹⁰

LPDB's inability to fulfill its legislative mandate, and the diversion of its energies toward maintaining district solvency instead of improving the quality of representation, appears to have taken a toll on LPDB's staff, which experienced 42 percent turnover in 2013.¹¹¹ Staff turnover and reductions to funding for LPDB operations¹¹² further reduced LPDB's capacity to meet its legislative responsibilities. The trial compliance officer position became vacant in 2013 and remained vacant until 2016.¹¹³ The training officer position remained open for over a year, and the trainings offered by LPDB—especially non-capital trial trainings that supported district defender programs—decreased significantly.¹¹⁴

By 2014, cost-cutting measures had been exhausted, and the \$10 increase in conviction fees passed in 2012 had failed to increase local revenue due to a significant drop in ticket filings.¹¹⁵ LPDB warned the Legislature that widespread restriction of services was imminent. It projected that 14 districts would have to restrict services by the end of fiscal year 2015, and that 25 districts would be insolvent by the end of fiscal year 2016.¹¹⁶ LPDB reminded the Legislature that "LPDB has never had adequate funding to support a properly functioning defense system."¹¹⁷

As fiscal pressures on district defender programs intensified, LPDB's relationship with many district defenders deteriorated. LPDB dropped the goal of maintaining a system for communicating with all stakeholders from its revised strategic plan in 2013,¹¹⁸ and many district defenders complained about poor communication from LPDB and its staff.¹¹⁹ Specific complaints from some district defenders related to a perceived lack of transparency about funding decisions, failure to distribute to the capital programs some of the financial pain resulting from the funding shortfall, and lack of clarity about the "end game" for restriction of services if additional funding was not forthcoming.¹²⁰ ■

Cost saving measures implemented by the districts to avoid entering restriction of services included staff layoffs, pay reductions, benefit cuts, increased caseloads, and eliminating funds for expert witnesses.

The Current Crisis and 2016 Legislative Session

Louisiana's public defense system entered 2015 on the precipice of collapse. District defender programs collectively received just under \$50 million in combined state and local revenue in 2014 to provide representation in 240,189 cases.¹²¹ District expenditures in those cases totaled almost \$53 million, but due to variations in local funding the shortfall was not distributed evenly over all districts.¹²²

This deficit spending funded operations only at a level that produced a statewide average attorney caseload that by 2015 was 2.36 times the maximum caseload limit adopted by LIDB,¹²³ which is 450 misdemeanor cases or 200 felony cases per year per attorney.¹²⁴ Cost-cutting measures that helped delay insolvency had driven up caseloads and undermined efforts to improve the quality of representation.¹²⁵ Local reserve funds that also played a large role in delaying insolvency finally had been fully depleted in many districts, leaving no cushion for another year of deficit spending.¹²⁶

Cost-cutting measures that helped delay insolvency had driven up caseloads and undermined efforts to improve the quality of representation.

As districts could no longer defer insolvency, a growing number of them fell under LPDB's Restriction of Services Protocol.¹²⁷ LPDB contacted districts when it saw that the district would become insolvent within the next year.¹²⁸ Once

contacted, a district had to develop a plan to restrict services, and the plan was submitted to LPDB for approval.¹²⁹ The plan could involve terminating contracts with conflict counsel or laying off staff, as well as identifying other economies.¹³⁰ As district defenders cut their contract counsel, or remaining public defender staff became more overloaded than they already were after years of cost-cutting¹³¹ and reached a point deemed to involve too much overload, defender programs declared themselves unavailable to take new cases.¹³²

By the spring of 2016, 33 out of 42 public defender districts were in restriction of services.¹³³ Every instance of restriction of services but one was triggered by looming insolvency, not by a finding that the district had an excessive caseload.¹³⁴ In addition to those districts under restriction of services, a number of other districts struggled under caseloads three to four times LIDB's caseload standards, but did not enter into restriction of services because they could maintain solvency at those caseload levels.¹³⁵ The state was in its own budget crisis, and a legislative bailout was not forthcoming.¹³⁶ In fact, LPDB, along with all other state agencies, was asked to submit a reduced budget to the Legislature.¹³⁷

Defenders in districts with restricted services often received significant criticism from local judges and prosecutors, and faced considerable pressure to continue providing representation in all cases involving indigent defendants.¹³⁸ Some judges refused to let attorneys withdraw from cases after their public defense contracts were terminated.¹³⁹ Other judges appointed public defenders to cases that had previously been handled by terminated conflict attorneys, and refused to recognize when public defenders had a conflict that precluded the appointment.¹⁴⁰ In some districts, judges encouraged defenders to provide brief service to defendants the office could not represent, to see if it was possible to facilitate a quick plea of guilty that would move the case off the docket.¹⁴¹

Judges in other districts attempted different tactics to deal with cases affected by restriction of services. In at least one parish, it was common for judges to appoint lawyers who had no criminal law experience, even in serious cases.¹⁴² In other districts, judges involuntarily appointed criminal lawyers to provide representation without compensation.¹⁴³ Although those lawyers were legally entitled to funding to cover expenses necessary to prepare and present a defense—or to be removed from the case if such funding was not available—developing the evidence courts required to support a request for funding itself was very time-consuming and expensive for counsel.¹⁴⁴

Perhaps worst of all, in some districts, judges did nothing in response to restriction of services. When a defender program in these districts declined an appointment due to restriction of services, the individual who had been accused of a crime simply was placed on a wait list.¹⁴⁵ If the accused individual could not afford to post bail, the individual remained in jail without counsel, sometimes for many months.¹⁴⁶ Local judges refused requests to release wait-listed individuals while they were waiting for appointment of counsel, and several courts of appeal approved the indefinite detention of indigent defendants without counsel.¹⁴⁷

The widespread restriction of services also put a political target on LPDB. The district attorneys' association had complained for years that LPDB spent too much on capital defense at the expense of

If the accused individual could not afford to post bail, the individual remained in jail without counsel, sometimes for many months.

district defenders,¹⁴⁸ and now some judges with stalled dockets weighed in as well.¹⁴⁹ When simmering conflict between some district defenders and LPDB caused those defenders to line up with the district attorneys,¹⁵⁰ that alliance produced 2016 legislation that was perceived by many as a direct attack on LPDB.¹⁵¹

The Louisiana Bar Association, the Louisiana Association of Criminal Defense Lawyers, and many advocacy groups opposed the 2016 legislation, viewing it as undermining LPDB's independence.¹⁵² However, the legislation eventually passed, was signed by Governor John Bel Edwards, and became effective on August 1, 2016.¹⁵³

The legislation includes two major components. First, it requires LPDB to allocate 65 percent of state public defense funding to DAF grants to the districts.¹⁵⁴ Historically, LPDB has allocated approximately 50 percent of state funding to DAF grants.¹⁵⁵ Increasing the fund allocation to DAF grants will necessitate a reduction in the amount of funding available for the state-funded capital programs and a cut to the state office budget.¹⁵⁶

Second, the legislation changed the membership of LPDB, reducing the number of members from 15 to 11 and replacing university and community appointments with an increased number of appointments by the Governor and Supreme Court.¹⁵⁷ The Governor must select his five appointees from nominees provided by the district defenders in each of the state's five regions.¹⁵⁸

While the legislation that reorganized LPDB was viewed as an attack on the organization, the Legislature simultaneously took action in support of public defense.

While the legislation that reorganized LPDB was viewed as an attack on the organization, the Legislature simultaneously took action in support of public defense. In a legislative session during which almost every state agency's budget was slashed, LPDB's budget

remained stable.¹⁵⁹ In the context of Louisiana's budget crisis, this was a victory for public defense, though a victory that only maintained funding at a level that already had proved inadequate.

Due to the increased allocation of state funds to DAF grants to the districts starting in mid-2016, most district defender budgets temporarily stabilized and many wait lists were eliminated.¹⁶⁰ However, it is widely believed that the increased allocation will provide only a short-term patch for district defenders and that many districts will face insolvency again in a year or less.¹⁶¹

Final appointments to the new iteration of LPDB were not made until the end of September 2016, after two months during which LPDB lacked sufficient members to establish a quorum.¹⁶² The new Board had no time to get its bearings before it was confronted with the ongoing crisis. At its December 2016 meeting, the new Board determined that LPDB would face a shortfall of over half a million dollars by the end of Fiscal Year 2017 and certified "the existence of an emergency shortfall in funding for criminal defense of the poor in Louisiana."¹⁶³ ■

Findings and Recommendations for Louisiana's Public Defense System

Funding

Finding 1: The total amount of funding available for public defense in Louisiana is inadequate.

Louisiana's public defense system was chronically underfunded before passage of the Louisiana Public Defender Act. Half of Louisiana's public defender districts had expenditures that exceeded revenues in 2002, and were able to avoid insolvency only by drawing down local reserve funds.¹⁶⁴

The Public Defender Act increased state funding significantly, but in many districts the increase was insufficient to raise revenues to an amount that exceeded expenditures. The Louisiana Legislature increased the state appropriation for public defense from approximately \$10 million in 2006 to \$20 million in 2007 and \$28 million in 2008.¹⁶⁵ Nevertheless, in the 18-month period that began on January 1, 2009, 28 out of 42 districts were in deficit spending.¹⁶⁶

Total state funding has remained stable at approximately \$33 million since 2012,¹⁶⁷ which was inadequate to prevent the insolvency of many districts by 2015 and 2016.¹⁶⁸

Moreover, solvency alone is not an appropriate benchmark for the adequacy of public defense funding. Most districts cut spending in a manner that increased workloads and limited access to support services in order to delay insolvency, and thus many were unable to deliver standards-based representation well before they became insolvent.¹⁶⁹

Finding 2: The local revenue stream, which provides the majority of district funding, provides an unstable and inequitable foundation for Louisiana's public defense system.

Many reports over many decades have found that the local revenue stream for public defense in Louisiana is too unstable and too unreliable to support a constitutionally adequate public defense system.¹⁷⁰ The problems

inherent in that revenue stream have not been resolved. Those problems are in fact becoming greater and more destabilizing to district defender programs.

The biggest source of local funding is fees on traffic convictions, due to the volume of those convictions.

In 2015, local revenue streams provided a statewide total of \$33 million in funding for district defender programs.¹⁷¹ This revenue represented 64 percent of total district public defense funding before the 2016 Legislature mandated an increased allocation of state funding to DAF grants.¹⁷² This figure does not include reserve fund balance depletions, which contributed an additional 4.5 percent to total district funding.¹⁷³ Even with the increased state allocation, the majority of district funding will continue to come from local revenue streams.¹⁷⁴

The number of traffic cases filed in Louisiana, and thus the number of convictions bringing in assessed fees, has been steadily decreasing.

Local revenue derives from fees imposed on all criminal convictions and application fees for public defense services.¹⁷⁵ The biggest source of local funding is fees on traffic convictions, due to the volume of those convictions.¹⁷⁶

This source of funding is unstable because there are many reasons for variations in revenue collected from fees on traffic convictions, both within and across districts.¹⁷⁷ The number of tickets issued in a district may be limited by the presence or absence of a highway in a district,¹⁷⁸ or may vary when local law enforcement officials shift their priorities from traffic to other offenses.¹⁷⁹ The number of traffic tickets that result in convictions may decrease if the local district attorney begins to offer more pretrial diversions, which allow individuals to avoid conviction and, by extension, the public defender fee on conviction.¹⁸⁰ Variations in the doggedness with which courts pursue the collection of conviction fees also may affect local public defense revenue.¹⁸¹

These potential sources of instability in local revenue share certain common characteristics. First, none of these factors are related to the local public defense system's need for funding.¹⁸² There is no right to counsel in most traffic cases, and a decrease in the volume of tickets and traffic prosecutions does not correspond to a reduced demand for public defense services.¹⁸³ Second, these factors render local public defense funding dependent on the decisions of law enforcement officers, prosecutors, and court administrators, and not on factors within the control of the district defender or LPDB.¹⁸⁴ Third, these factors often put defenders in positions of potential conflict with individuals accused of criminal cases. A diversion that may be in the best interest of an accused individual will reduce the defender's funding,¹⁸⁵ while a defender program may financially benefit from aggressive collection efforts that lead to the arrest and unconstitutional incarceration of an indigent defendant.¹⁸⁶

In addition to these problems that drive the instability of local revenue, which have been apparent for years, local revenue from traffic convictions is an increasingly unreliable source of public defense funding. The number of traffic cases filed in Louisiana, and thus the number of convictions bringing in assessed fees, has been steadily decreasing.¹⁸⁷ From 2009 to 2014, ticket filings in Louisiana decreased by 29 percent.¹⁸⁸ As a result of this decrease, district defenders lost a combined \$16 million in local revenue from decreased traffic filings in 2014 and 2015.¹⁸⁹

Louisiana’s decrease in traffic ticket filings is consistent with national trends, which show an ongoing decrease in ticketing for traffic offenses in many parts of the country.¹⁹⁰ If this trend continues, it will result in funding shortages for all law enforcement and judicial system entities that rely on conviction fees for a portion of their revenue.¹⁹¹ In the short term, local revenue for public defense in Louisiana has remained stable despite the drop in filings, but only because the Legislature increased the amount of the public defense fee on convictions in 2012.¹⁹² That increase, which was intended to raise additional revenue and prevent restriction of services, instead only has maintained local funding at current levels.

Finding 3: There is gross disparity in the resources available to the defense function and to the prosecution in Louisiana.

Combined state and local funding for public defense in Louisiana represents only 2 percent of state criminal justice spending.¹⁹³ Total public defense expenditures, including for centralized state programs, totaled \$63 million in 2014, while district attorneys’ expenditures totaled \$122 million during the same period.¹⁹⁴

Even conceding that parity need not entail dollar for dollar budget equality,¹⁹⁵ the extreme nature of the disparity between the prosecution and defense that exists in Louisiana is made obvious by the

Many public defenders do not receive retirement, health, or other employee benefits commonly received by district attorneys.

conditions in which some defenders must work. Many public defenders do not receive retirement, health, or other employee benefits commonly received by district attorneys.¹⁹⁶ Contract public defenders frequently are not provided office space or overhead expenses, in contrast to district attorneys.¹⁹⁷ Some public defenders even must act as custodial staff for their offices because there is no funding available to cover this basic cost of operations.¹⁹⁸

Independence

Finding 4: During restriction of services, some judges in Louisiana have infringed on the independence of the defense function.

The ABA Ten Principles of a Public Defense Delivery System provide that “the public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.”¹⁹⁹

Many judges in Louisiana have not respected defenders’ independence during restriction of services. Judges have attempted to second-guess defenders’ ethical determinations, refusing to let them withdraw from cases in which they have direct conflicts and forcing them to handle cases even when defenders have a conflict resulting from excessive caseloads.²⁰⁰ An attorney has a conflict when she has represented someone else with an interest in a criminal case, such as a co-defendant or a witness,²⁰¹ as well as when she has too many cases and cannot fulfill all of her legal and ethical obligations to each of her clients.²⁰²

Judges also have undermined public defense attorneys' independent ethical and professional judgment by appointing attorneys to represent defendants knowing that appointed counsel would not have the resources necessary to fulfill the defense attorney's obligations to the client or that an appointed attorney had no criminal law experience and was not qualified to handle a criminal case.²⁰³

These judicial practices treat public defense lawyers as a formality whose mere physical presence can satisfy the right to counsel, rather than as essential partners in the criminal justice system whose role is to exercise independent judgment in the discharge of their duties to clients.²⁰⁴ Judges who engage in these practices demonstrate a lack of understanding of the tasks and resources required to provide a constitutionally adequate defense, and provide cover to the state's failure to fund the public defense system at an appropriate level.²⁰⁵

Judges' refusal to stay criminal proceedings and release individuals accused of crimes when the state fails to provide them with a defense also devalues the fundamental role of public defense counsel in the criminal justice system.²⁰⁶

Many judges in Louisiana have not respected defenders' independence during restriction of services.

This judicial interference with public defense lawyers' professional judgment is particularly troubling because it is not the only factor compromising their independence. District defender programs' reliance on

local revenue from court costs for a significant portion of their budgets leaves those programs vulnerable to political interference arising from discretionary charging, diversion, and collections decisions made by law enforcement officers, prosecutors, and court administrators.²⁰⁷

Quality of Representation

Finding 5: Even in the face of persistent underfunding, the Louisiana public defense system has improved overall under the Public Defender Act and LPDB.

The state never provided adequate funding to LPDB or the districts, even after the Public Defender Act and subsequent legislative appropriations increased total state funding for public defense significantly relative to its pre-2007 levels.²⁰⁸ Nevertheless, even in the context of persistent funding shortfalls, LPDB and a number of districts made important improvements to state and local public defense systems.

LPDB acted quickly on its statutory mandate to develop performance standards for defense representation that were designed to improve the quality and uniformity of public defense services.²⁰⁹ LPDB's performance standards are universally praised as providing a strong foundation for standards-based practice and promoting the effective representation of indigent defendants.²¹⁰

LPDB has supported a number of statewide and other specialized programs that fill gaps in local resources and that are available to remove the burden of certain high-ticket items, such as capital trial representation, from local budgets.²¹¹ There is considerable consensus that these programs provide high-quality representation to their clients.²¹² In the capital context specifically, the number of successful capital prosecutions and the number of executions have declined significantly.²¹³ Louisiana is under an execution moratorium that recently was extended to 2018.²¹⁴

A number of district defender programs also have changed their practices significantly, some to a degree that is transformational. The most frequently cited example is OPD, which before Katrina was staffed by part-time public defenders who maintained private caseloads, were paid a flat rate for their indigent cases no matter how much or little time they spent on them, did not maintain case files, and shared one telephone.²¹⁵ OPD now employs full-time defenders who have access to training and supervision and recruits young attorneys from all over the country who are attracted by its reputation for client-focused representation.²¹⁶

LPDB and a number of districts made important improvements to state and local public defense systems.

District defender programs in Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, and St. Tammany parishes also have transitioned a portion of their district defense programs from part-time or contract defender systems to defender offices with full-time employees who are not under financial pressure to devote time to paying clients at the expense of their indigent caseloads.²¹⁷

***Finding 6:* There are many places in Louisiana where the quality of representation provided to accused individuals has not improved significantly since 2007 and likely does not meet constitutional standards.**

Although LPDB has adopted strong performance standards, several barriers have prevented those standards from being implemented consistently across the state. Despite progress in improving the quality of representation on some fronts and in some districts, there are many jurisdictions in which little has changed since 2007.

For example, organizations that work in or have observed court proceedings in multiple districts across the state of Louisiana, such as the Promise of Justice Initiative and the Southern Poverty Law Center, have observed defenders who speak to their clients only through microphones in open court or who recommend to the court that their clients' probation be revoked.²¹⁸ They also have observed mass pleas, both with²¹⁹ and without²²⁰ counsel. Similar stories of compromised representation have appeared in many of the numerous news articles that have covered Louisiana's public defense crisis.²²¹

The most obvious barrier to implementation of the performance standards is money. The amount of funding available for public defense from state and local revenue sources is inadequate to enable local districts to deliver public defense services in a manner that is consistent with LPDB’s performance standards.²²² Several of the districts in which the clearest improvements in representation have been made have had access to supplemental external funding, from sources including federal grants and Gideon’s Promise fellowships.²²³ These supplemental funding sources provide short-term assistance for program innovations, but are awarded for limited periods of time and are not a sustainable source of funding for defender programs’ core constitutional services.

In addition, many districts have retained methods for providing defense services that make implementation of the performance standards challenging for reasons independent of inadequate funding. The overwhelming majority of district defender programs in Louisiana rely exclusively on contract lawyers to provide defense services.²²⁴

The overwhelming majority of district defender programs in Louisiana rely exclusively on contract lawyers to provide defense services.

Training and supervision of contract lawyers often is more tenuous than supervision of defenders who work as full-time employees of a defender program.²²⁵ In violation of the ABA Ten Principles, these contract programs usually do not operate in

tandem with a public defender program or other institutional mechanism such as a managed appointed counsel system that can support training and supervision for private lawyers who provide public defense services.²²⁶ The lack of uniformity in attorney contract provisions in Louisiana also makes it likely that contracts vary as to whether they even refer to the standards, let alone require contract lawyers to comply with them.²²⁷

Implementation of the performance standards also has been hampered by LPDB’s own financial and political limitations. Although LPDB was created as a regulatory agency, it has not had sufficient staffing to enforce its standards consistently in local jurisdictions. LPDB has never been authorized to hire more than one trial-level compliance officer and one training officer to cover all 42 districts, and each of those positions has remained unfilled for extended periods of time during LPDB’s existence.²²⁸ Examples of LPDB enforcement actions exist, but they involve extreme cases such as a line defender who closed 6,000 cases in one year.²²⁹ This anecdotal evidence suggests that LPDB is capable of acting forcefully against defenders who engage in very serious abuses, but does not indicate that LPDB has engaged in broader enforcement of its performance standards.

As its attention turned increasingly to the public defense system’s solvency crisis, LPDB also appears to have backed away both from enforcement of its standards and from using other tools at its disposal—such as training, mentoring, and technical assistance—to support partial implementation of the standards even in the face of resource constraints. For example, LPDB’s only training programs that explicitly focused on the trial performance standards occurred in 2011.²³⁰ Non-capital trainings decreased overall in the following years.²³¹ When districts went into restriction of services, many line defenders had never received training on the performance standards, had little understanding of the standards and how compliance with the standards could necessitate case refusal, and were ill-prepared to articulate standards-based rationales for refusal to

the courts.²³² District defenders who wanted to rely on the standards to improve the quality of representation in their districts sometimes received support from LPDB, but on other occasions received the message that the standards were aspirational pending the receipt of funds.²³³

***Finding 7:* As implemented, restriction of services was not an effective safeguard against further deterioration of the quality of representation provided to indigent defendants in Louisiana.**

Lawyers who provide public defense services have an ethical obligation to refuse and withdraw from cases when their workloads are excessive to a degree that they cannot provide effective representation to their clients.²³⁴ LPDB's restriction of services protocol recognizes excessive workload as one possible justification for restriction of services.²³⁵ However, LPDB adopted the protocol in response to a legislative auditor's report documenting that a majority of Louisiana's district defender programs were engaged in deficit spending,²³⁶ and in all but one case restriction of services was triggered by looming insolvency rather than by excessive workloads.²³⁷

Districts in restriction of services were allowed to maintain workloads as high as three times over the LIDB caseload maximum,²³⁸ and districts with caseloads as high as four times the maximum were not asked to restrict services as long as they could remain fiscally solvent at those caseloads.²³⁹

Districts in restriction of services were allowed to maintain workloads as high as three times over the LIDB caseload maximum, and districts with caseloads as high as four times the maximum were not asked to restrict services as long as they could remain fiscally solvent at those caseloads.

The preeminent role solvency played in restriction of services made it difficult to communicate effectively to district and line defenders what restriction of services was about, or convince some of them it had anything to do with the quality of representation.²⁴⁰ Although some districts, most notably OPD, succeeded in communicating clearly why restriction of services was necessary to preserve the constitutional right to counsel,²⁴¹ in many other districts that message did not come through.²⁴²

Recommendations

***Recommendation 1:* The Louisiana Legislature should fully fund the provision of public defense services in Louisiana from general revenue.**

This recommendation involves replacing unstable sources of local funding that fluctuate based on the decisions of law enforcement and other court system actors with state general revenue funding, as well as additionally increasing the state appropriation for public defense to cover the full cost of providing standards-driven, constitutionally adequate public defense representation in all districts and all case types.

Full funding will enable the districts to move out of deficit spending and abandon the starvation budgets they adopted to delay insolvency. It also will enable LPDB to fulfill its statutory charge and support district defenders in the implementation of standards-based practice, provide training to new and experienced lawyers, and enforce district compliance with performance and workload standards with the knowledge that the districts have the resources they need to meet standards.

A state appropriation that provides full funding for both capital and non-capital cases also is likely to resolve tensions between district defenders and the capital defense programs arising from how past funding shortfalls have been allocated,²⁴³ and to mitigate tensions between LPDB and district defenders who felt as though LPDB's restriction of services protocol put them in an impossible position with their local officials and their client communities.²⁴⁴

District defender offices have been overloaded and underfunded for years, so their budgets do not reflect their true funding needs.

Calculating the amount of revenue that is necessary for full funding is not without complications. District defender offices have been overloaded and underfunded for years, so their budgets do not reflect their true funding needs.²⁴⁵

In many cases, their budgets also do not include retirement, health, or other employee benefits.²⁴⁶ Given that current district funding is almost \$53 million and results in defenders carrying caseloads that are 2.36 times LIDB's maximum caseload standard, full funding for district defender programs would exceed \$125 million even without necessary adjustments to existing caseload standards and benefit levels.²⁴⁷

That funding estimate is extremely conservative. In February 2017, the American Bar Association Standing Committee on Legal Aid and Indigent Defendants and the accounting company Postlethwaite & Netterville published a report on attorney workload standards for the Louisiana public defense system, which provides an important tool for calculating the amount of money that would represent full funding for public defense in Louisiana.²⁴⁸ Their study found that the Louisiana public defense system needs 1,406 additional full-time equivalent attorneys "to provide reasonably effective assistance of counsel pursuant to prevailing professional norms."²⁴⁹ In this analysis, current district defender funding levels support only 21 percent of the attorney capacity that is needed to operate a constitutional public defense system in Louisiana.²⁵⁰

Recommendation 2: The Louisiana Legislature should repeal the public defender fee on convictions and public defender application fee, and replace local revenue for public defense with state general revenue. If local revenue is a necessary transitional measure before sufficient state revenue is available to fully fund public defense, changes to local revenue streams that will make them more stable and equitable should be adopted.

The Louisiana public defense system's dependence on unstable and inequitable sources of local revenue has been a barrier to reforming Louisiana's public defense system for decades.²⁵¹ Moreover, due to declining ticket filings, this source of revenue must be replaced to maintain even stable levels of funding for district defender programs.²⁵²

Much of the instability of local revenue is inevitable, but if local revenue cannot be immediately replaced while the state at the same time increases the total public defense budget to a level that represents full funding, there are two measures that would render local revenue less unstable during a period of transition to full state funding.

All revenue from public defense fees on convictions should be directed to a dedicated state fund from which LPDB would distribute it in grants back to the districts.

First, all revenue from public defense fees on convictions should be directed to a dedicated state fund from which LPDB would distribute it in grants back to the districts. This change would smooth out disparities in local funding across districts and make each district defender program less vulnerable to year-to-year changes in local ticketing and prosecution practices.²⁵³

Second, if individuals are assessed costs when they receive a pretrial diversion, a portion of those costs should be dedicated to public defense, just as public defenders receive a portion of the costs paid on convictions.²⁵⁴ Individuals who receive pretrial diversions in Louisiana pay costs now, but district attorneys do not have to share those costs with public defenders.²⁵⁵ This practice is in contrast to procedures in some of the other states that fund public defense in part through court costs, in which the costs paid in diverted traffic cases support public defense programs in the same manner as do costs on convictions.²⁵⁶

Recommendation 3: Louisiana should establish parity between the defense function and the prosecution.

This change is necessary to bring Louisiana into compliance with the ABA Ten Principles of a Public Defense Delivery System, which provide that "[t]here should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic and other experts) between prosecution and public defense."²⁵⁷

Recommendation 4: Louisiana judges should respect the independent professional judgment of lawyers who provide public defense services, including their determinations that a conflict prevents them from accepting or maintaining representation of a case.

Judges must respect public defense attorneys' independence, and their professional judgments about whether they have a conflict in a particular case and whether they have the expertise, time, and resources necessary to ethically discharge their responsibilities to an indigent client.²⁵⁸

Judges should be prohibited from appointing non-criminal lawyers in criminal cases.

Judges should be prohibited from appointing non-criminal lawyers in criminal cases.²⁵⁹ Judges should be

prohibited from appointing qualified criminal lawyers to represent indigent defendants if they cannot compensate the lawyer at a reasonable rate and provide resources necessary to prepare and present a meaningful defense.²⁶⁰

Recommendation 5: Louisiana judges should release from detention accused individuals for whom the state cannot provide counsel due to its underfunding of the public defense system.

The prosecution cannot proceed against an indigent defendant who has been denied the right to counsel, including when that denial is a result of inadequate state funding for public defense.²⁶¹

Individuals who are detained on criminal charges are directly harmed when they must wait weeks and even months for the appointment of a lawyer who can help them obtain release pending trial, preserve evidence in their cases, and begin to prepare a defense.

Pretrial detention on criminal charges can have an immediate impact on accused individuals' employment, housing, and family relationships,²⁶² and also increases the likelihood that individuals will be convicted of charged offenses and will receive longer sentences.²⁶³ Individuals who are detained on criminal charges are directly harmed when they must wait weeks and even months for the appointment of a lawyer who can

help them obtain release pending trial, preserve evidence in their cases, and begin to prepare a defense.²⁶⁴ Individuals who are accused, but not convicted, of a crime, should not be detained on criminal charges for more than a brief, reasonable period of time if the state does not allocate sufficient funds to meet its obligation to provide appointed counsel.²⁶⁵

While indefinite detention without counsel is the most obvious harm imposed on accused individuals by Louisiana's refusal to meet its constitutional obligation to provide counsel,²⁶⁶ individuals who are released pretrial also experience personal harm and are prejudiced in their criminal cases when charges are allowed to remain pending for extended periods of time while individuals are awaiting the appointment of counsel.²⁶⁷ At some point, this delay will result in a violation of accused individuals' right to a speedy trial and warrant the outright dismissal of charges against them.²⁶⁸

Recommendation 6: LPDB and the defender community should re-focus on improving the quality of representation rather than merely surviving the next crisis.

In the face of the state's persistent underfunding of its constitutional obligation to provide counsel, LPDB and many district defender programs turned much of their attention to preserving the solvency of the local defense systems. This caused them to stop moving forward on implementation of performance standards and on making other system improvements that would improve the quality of representation in Louisiana state courts.²⁶⁹

Although achieving standards-based representation in full is difficult if not impossible in the current funding environment, abandoning that as a goal because it seems impossible has its own costs. Many public defenders in Louisiana do not have a vision of what they are working toward, and there is little sense of unified purpose in the defender community. When defenders themselves do not see or understand the relationship between restriction of services and preserving the right to counsel, they cannot explain it to their courts, their clients, or their communities. ■

Conclusion

Louisiana's public defense system has stubbornly resisted reform for decades. The funding shifts mandated by recent legislation have succeeded only in transitioning the situation from one of acute crisis back to the system's baseline of chronic underfunding and imminent catastrophe.

Significant increases in state funding and decreased dependence on, if not outright elimination of, unstable and unreliable sources of local revenue both must be part of any effort to more permanently stabilize

The state's failure to fund public defense caused this crisis; local officials should turn to the state to resolve it, rather than proceeding as if an independent defense function were an optional component of the criminal justice system.

Louisiana's public defense system and to enable the state to meet its obligation to provide counsel to low-income individuals accused of criminal offenses. Louisiana has tried repeatedly to reform the system through increased standards and oversight, but without providing enough funding to make it possible for districts to implement performance and workload standards or for a series

of state boards to effectively exercise their oversight responsibilities. Reform without fundamental shifts to the amount and structure of public defense funding has failed several times over. There can be no question at this point that the state must transform the fiscal foundation of the public defense system in order to achieve real and sustainable reform.

However, funding alone will not deliver effective representation to accused individuals. Judges must accept that the rights of indigent defendants and the ethical obligations of defenders trump the need to keep criminal cases moving efficiently. The state's failure to fund public defense caused this crisis; local officials should turn to the state to resolve it, rather than proceeding as if an independent defense function were an optional component of the criminal justice system. Judges let the state off the hook and obscure what the Sixth Amendment requires when they accept mass pleas officiated by overburdened defenders, expect pro bono lawyers to prepare a defense without any resources for investigation or the other professional obligations of defense counsel, or conscript non-criminal lawyers to represent accused individuals who are facing years in prison if they are found guilty.

LPDB and the defender community also must re-focus on improving the quality of representation, rather than merely surviving the next crisis. Replenishing the starvation budgets many district defenders adopted to delay entering into restriction of services will not be sufficient to meet defenders' constitutional and ethical obligations to their clients. Defenders do their own part to let the state off the hook when they struggle along with caseloads that are two to four times the recommended maximum. Restriction of services should be driven by excessive workloads, and not postponed until a district is facing bankruptcy even after absorbing extreme workloads, or avoided if a district can escape insolvency by accepting excessive workloads.

The new LPDB has an opportunity to shift the message away from one of merely preserving solvency and to recommit to its statutory mission and to supporting every district in the delivery of quality, standards-based representation. The fact that funding is not adequate to fully implement performance and workloads standards should not cause those standards to be put on the back burner; instead, the standards must drive every conversation about what Louisiana should and must provide to meet its constitutional obligations. Restricting services is both politically costly for local defenders and demoralizing when they see wait-listed defendants in indefinite detention or represented by unqualified or equally under-resourced conscripted counsel. Merely keeping the lights on at district defender programs is not a goal that is sufficiently motivating so as to outweigh the observed costs of service restriction. Even in a time of scarcity, LPDB's leadership is essential to establishing a shared vision of what defenders across the state should be working to achieve, and to helping them achieve it. ■

Endnotes

1. See, e.g., Tina Peng, Opinion, *I'm a Public Defender. It's Impossible for Me to Do a Good Job Representing My Clients*, WASH. POST (Sept. 3, 2015), http://www.washingtonpost.com/opinions/our-public-defender-system-isnt-just-broken—its-unconstitutional/2015/09/03/aadf2b6c-519b-11e5-9812-92d5948a40f8_story.html; Albert Samaha, *Indefensible: The Story of New Orleans' Public Defenders*, BUZZFEED (Aug. 13, 2015), http://www.buzzfeed.com/albertsamaha/indefensible-new-orleans-public-defenders-office?utm_term=.vaNYwAnBg#.xw3ynjYaZ; John Simerman, *HBO Comedy Host John Oliver Gives Orleans Parish Public Defender's Office a Crowdfunding Boost*, ADVOC. (Sept. 17, 2015), http://www.theadvocate.com/new_orleans/news/article_07bb886e-202a-592f-8c72-da425715b5d8.html.
2. See, e.g., Debbie Elliott, *Need a Public Defender in New Orleans? Get in Line*, NAT'L PUB. RADIO (Feb. 4, 2016), <http://www.npr.org/2016/02/04/465452920/in-new-orleans-court-appointed-lawyers-turning-away-suspects>; Oliver Laughland, *When the Money Runs Out for Public Defense, What Happens Next?*, MARSHALL PROJECT (Sept. 7, 2016), <http://www.themarshallproject.org/2016/09/07/when-the-money-runs-out-for-public-defense-what-happens-next#.31i81OJ0b>; Lauren Zannoli, *Louisiana's Public Defender Crisis Is Leaving Thousands Stuck in Jail with No Legal Help*, VICE NEWS (May 13, 2016), <http://news.vice.com/article/louisianas-public-defender-crisis-is-leaving-thousands-stuck-in-jail-with-no-legal-help>.
3. See, e.g., Derwyn Bunton, Opinion, *When the Public Defender Says, "I Can't Help,"* N.Y. TIMES (Feb. 19, 2016), http://www.nytimes.com/2016/02/19/opinion/when-the-public-defender-says-i-cant-help.html?_r=0; Eli Hager, *When There's Only One Public Defender in Town*, MARSHALL PROJECT (Sept. 9, 2016), <http://www.themarshallproject.org/2016/09/09/what-happens-when-there-s-only-one-public-defender#.joXFr18ZL>.
4. See, e.g., Eli Hager, *When Real Estate and Tax Lawyers Are Forced to Do a Public Defender's Job*, MARSHALL PROJECT (Sept. 8, 2016), <http://www.themarshallproject.org/2016/09/08/when-real-estate-and-tax-lawyers-are-forced-to-do-a-public-defender-s-job#.e6xdWgP8a>; This Am. Life, *Episode 595: Deep End of the Pool*, WBEZ (Aug. 26, 2016), <http://www.thisamericanlife.org/radio-archives/episode/595/deep-end-of-the-pool>.
5. See, e.g., Campbell Robertson, *In Louisiana, the Poor Lack Legal Defense*, N.Y. TIMES (Mar. 19, 2016), <http://www.nytimes.com/2016/03/20/us/in-louisiana-the-poor-lack-legal-defense.html>; Carrie Salls, *As Inmates Languish in Jail Without Public Defenders, Lawsuits Start Rolling In*, LA. REC. (May 11, 2016), <http://louisianarecord.com/stories/510723961-as-inmates-languish-in-jail-without-public-defenders-lawsuits-start-rolling-in>.
6. See, e.g., Verified Petition for Class Certification and Declaratory and Injunctive Relief, *Allen v. Edwards* (19th Jud. Dist. Ct. Feb. 6, 2017); Julie Morse, *A Public Defender Problem in New Orleans*, PAC. STANDARD (Apr. 14, 2016), <http://psmag.com/a-public-defender-problem-in-new-orleans-24d8643f2f10#.1172n439g>; Salls, *supra* note 5; John Simerman, *Legal Battle over Public Defense Funding Heats Up in Orleans Parish Courthouse*, ADVOC. (Feb. 3, 2016), http://www.theadvocate.com/new_orleans/news/article_2d883565-8cb2-5da8-9c27-ba3680de24c3.html.
7. See Class Action Complaint, *Yarls v. Bunton*, No. 3:16-cv-00031-JJB-RLB (M.D. La. Jan. 4, 2016) [hereinafter *Yarls* Complaint]. The federal district court dismissed *Yarls v. Bunton* on comity and federalism grounds a year after it was filed. See Ruling, *Yarls v. Bunton*, No. 3:16-cv-00031-JJB-RLB (M.D. La. Jan. 31, 2017). However, in dismissing the case the court stated, "It is clear that the Louisiana legislature is failing miserably at upholding its obligations under *Gideon v. Wainwright*, 372 U.S. 335 (1963)]. *Id.* at 12.
8. U.S. CONST. amend. VI; *Gideon v. Wainwright*, 372 U.S. 335 (1963). See also LA. CONST. art. I, §13.
9. LA. LEGIS. AUDITOR, EVALUATION OF STRATEGIES TO REDUCE LOUISIANA'S INCARCERATION RATE AND COST FOR NONVIOLENT OFFENDERS 1 (2016) (citing E. ANN CARSON, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., PRISONERS IN 2014 8 (2015) (816 of every 100,000 Louisiana residents are incarcerated; next highest incarceration rate is 599 out of 100,000 residents in Arkansas)).
10. See, e.g., John Simerman, *Accused New Orleans Candy Snatcher Facing 20 Years for Pocketing \$31 in Sweets*, ADVOC. (Apr. 4, 2016), http://www.theadvocate.com/new_orleans/news/article_20b459c6-9aa0-56e4-a292-a296369433dc.html (individual with five previous shoplifting convictions charged as habitual offender and as a result faced sentence of 20 years to life in prison on new shoplifting case). Over 58 percent of individuals incarcerated in Louisiana or under Department of Corrections supervision in Louisiana had nonviolent offenses only, meaning that their current charges were nonviolent offenses and they had no violent convictions in their past. LA. LEGIS. AUDITOR, *supra* note 9, at 1-2.
11. See Alan Greenblatt, *Overworked and Underfunded, Public Defenders See Some Light*, GOVERNING (Sept. 30, 2016), <http://www.governing.com/topics/public-justice-safety/gov-public-defenders-funding.html>.

12. See, e.g., David Bornstein, Opinion, *Guiding Families to a Fair Day in Court*, N.Y. TIMES: OPINIONATOR BLOG (May 29, 2015), <http://opinionator.blogs.nytimes.com/2015/05/29/guiding-poor-families-to-a-fair-day-in-court/> (discussing “participatory defense” movement through which families and friends of criminal defendants in northern California organized to improve public defense representation).

13. See, e.g., *Pub. Def., Eleventh Jud. Cir. of Fla. v. Fla.*, 115 So. 3d 261 (Fla. 2013) (considering public defender’s claim that excessive caseloads made it impossible for office to meet legal and ethical obligations to clients).

14. See, e.g., *Heckman v. Williamson County*, 369 S.W. 3d 137, 168 (Tex. 2012) (holding that civil rights class action alleging systemic denial of counsel in state criminal cases in Texas county can proceed); *Tucker v. Idaho*, cv-DC-1610240 (4th Jud. District Idaho June 17, 2015) (class action civil rights complaint alleging widespread violations of right to counsel in Idaho state court); Victoria Bekiempis, *How New York Is Finally Helping Poor Defendants*, NEWSWEEK (Oct. 22, 2014), <http://www.newsweek.com/new-york-tktk-landmark-public-defense-case-278889> (discussing settlement of *Hurrell-Harring v. N.Y.*, class action civil rights case challenging violations of right to counsel in five New York counties).

15. See, e.g., SIXTH AMEND. CTR., *THE RIGHT TO COUNSEL IN INDIANA: EVALUATION OF TRIAL LEVEL INDIGENT DEFENSE SERVICES* (2016) (study by public policy group finding actual and constructive denial of counsel in Indiana state courts and recommending reforms); TEX. DEF. SERV., *LETHALLY DEFICIENT: DIRECT APPEALS IN TEXAS DEATH PENALTY CASES vi* (2016) (study by legal advocacy group finding “multiple and severe deficits in the provision of capital direct appeal representation” to indigent defendants sentenced to death in Texas).

16. See, e.g., Marc Benjamin, *ACLU Lawsuit Says Fresno County Public Defense Is Inadequate*, FRESNO BEE (July 15, 2015), <http://www.fresnobee.com/news/local/article27334588.html> (discussing civil rights lawsuit alleging local public defense system violates right to counsel without reference to other state or national public defense failures or reform efforts); Mike Ward, *Report: Texas Death Penalty Appeals Process Deeply Flawed*, HOUSTON CHRON. (Sept. 20, 2016), <http://www.houstonchronicle.com/news/politics/texas/article/Report-Texas-death-penalty-appeals-process-9233144.php> (discussing study of inadequate defense representation in Texas capital appeals without reference to other state or national public defense failures or reform efforts).

17. See, e.g., *supra* notes 1-6.

18. The September 2016 series on Louisiana’s public defense crisis that appeared in The Marshall Project (see Hager, *supra* note 3; Hager, *supra* note 4; Laughland, *supra* note 2) was reported in partnership with the United Kingdom’s *Guardian* newspaper and appeared in that paper under different headlines. Eli Hager, *Louisiana Public Defenders: A Lawyer with a Pulse Will Do*, GUARDIAN (Sept. 8, 2016), <https://www.theguardian.com/us-news/2016/sep/08/louisiana-public-defender-crisis>; Eli Hager, *For Louisiana’s Defenseless Poor, It’s All for One*, GUARDIAN (Sept. 9, 2016), <https://www.theguardian.com/us-news/2016/sep/09/louisiana-public-defenders-east-west-felician-parishes>; Oliver Laughland, *The Human Toll of America’s Public Defense Crisis*, GUARDIAN (Sept. 7, 2016), <https://www.theguardian.com/us-news/2016/sep/07/public-defender-us-criminal-justice-system>.

19. Louisiana faced a \$2 billion budget shortfall for the 2016-2017 budget year at the beginning of the 2016 legislative session. Julia O’Donoghue, *Louisiana’s Budget Is a Hot Mess: How We Got Here*, TIMES-PICAYUNE (Feb. 12, 2016), http://www.nola.com/politics/index.ssf/2016/02/louisiana_is_in_a_budget_mess.html. Louisiana Governor John Bel Edwards suggested that actions such as canceling public university classes and Louisiana State University football games might be necessary if legislators did not significantly raise revenue. *Id.* The Louisiana Legislature eventually approved \$1.5 million in tax increases but significant budget cuts still were necessary. Julia O’Donoghue, *Louisiana 2016 Budget Fight: Winners and Losers*, TIMES-PICAYUNE (June 24, 2016), http://www.nola.com/politics/index.ssf/2016/06/louisiana_budget_fight_winners.html. For example, public K through 12 schools received \$24.2 million less than requested, which was likely to result in teacher pay cuts and restrictions in services available to students with disabilities. *Id.* The department of corrections, local sheriffs who jail state prisoners, and juvenile offender programs also received less than requested. *Id.* An additional \$320 million needed to be cut from the budget after these initial cuts were announced. *Id.* State public defense funding was not cut steeply as projected earlier in the session, but instead remained stable for 2016-2017 at approximately \$32 million. John Simerman, *Orleans Public Defender Wins, Death Penalty Groups Lose as State Redirects Indigent Defense Money*, ADVOC. (July 4, 2016), http://www.theadvocate.com/new_orleans/news/courts/article_ca1ca9d4-42d9-11e6-b9d8-3312355fd5da.html.

20. See, e.g., Robertson, *supra* note 5 (focusing on role of funding in funding and offering solution to Louisiana’s public defense crisis); Dylan Walsh, *On the Defensive*, ATLANTIC (June 2, 2016), <http://www.theatlantic.com/politics/archive/2016/06/on-the-defensive/485165/> (same).

21. See Simerman, *supra* note 19; see also *infra* notes 106-109 and accompanying text.

22. See *infra* notes 154-158 and accompanying text.

23. The size, composition, and membership of the LPDB changed as a result of legislation passed in the 2016 legislative session that became effective on August 1, 2016. See H.B. 1137, 2016 Reg. Sess. (La. 2016). The process of appointing new Board members was not completed until the end of September 2016, see *infra* note 162, after research for this report was completed.

24. Each judicial district in Louisiana has a chief public defender whose statutory title is “district public defender.” La. Rev. Stat. Ann. § 15:143(5) (2005 & Supp.2009). The “district public defender” or chief defender in a district is commonly referred to by the short form “district defender.” Interview with James Dixon, State Public Defender, Louisiana Public Defender Board, in Baton Rouge, La., July 12, 2016. See also LA. PUB. DEF. BD., LPDB 2009 ANNUAL BOARD REPORT ii (2010) [hereinafter 2009 LPDB ANNUAL REPORT] (referring to chief defenders in the districts as “District Defenders”).

25. Constructive denial of the right to counsel in criminal cases consists of nominal representation that amounts to no representation at all. Per the U.S. Department of Justice, “constructive denial of counsel may occur in two, often linked, circumstances: (1) When, on a systemic basis, lawyers for indigent defendants operate under substantial structural limitations, such as a severe lack of resources, unreasonably high workloads, or critical understaffing of public defender offices; and/or (2) When traditional markers of representation—such as timely and confidential consultation with clients, appropriate investigation, and meaningful adversarial testing of the prosecution’s case—are absent or significantly compromised on a system-wide basis.” Statement of Interest of the U.S. at 1, *Hurrell-Harring v. N.Y.*, No. 8866-07 (N.Y. Sup. Ct. Albany Sept. 25, 2014).

26. Interview with James Dixon, *supra* note 24. See also *Foreword by LPDB Chair Frank X. Neuner* in LA. PUB. DEF. BD., LPDB 2011 BOARD REPORT (2012) [hereinafter 2011 LPDB ANNUAL REPORT] (predicting that service restrictions will occur in district public defense systems across the state if budget shortfalls continue).

27. See 2011 LPDB ANNUAL REPORT, *supra* note 26. See also *infra* notes 81, 99-100 and accompanying text.

28. 372 U.S. 335 (1963). “The failure of the system to secure justice for all should come as no surprise to policy-makers, as Louisiana’s indigent defense system has been studied over and over again and consistently has been found to be deficient in protecting the right to counsel.” NAT’L LEGAL AID & DEF. ASS’N, IN DEFENSE OF PUBLIC ACCESS TO JUSTICE: INDIGENT DEFENSE SERVICES 40 YEARS AFTER *GIDEON* 19 (2004) [hereinafter NLADA REPORT]. See also *infra* notes 30-38 and accompanying text.

29. See JOHN BURKHART, DEFENSELESS: THE FUNDING OF LOUISIANA’S PUBLIC DEFENSE SYSTEM 4-5 (2015).

30. See *id.* at 5. Judges appointed board members from a list of nominees provided by the bar association within the district. La. Rev. Stat. Ann. § 15:144 (1966).

31. See BURKHART, *supra* note 29, at 5; La. Rev. Stat. Ann. § 15:146 (2005).

32. See BURKHART, *supra* note 29, at 6; La. Rev. Stat. Ann. § 15:145 (2005).

33. LA. CONST. art. I, § 13. The Louisiana Supreme Court determined that the statutory structure that left the choice of delivery model to IDBs did not violate the constitutional uniformity requirement. See *State v. Peart*, 621 So. 2d 780, 786-7 (La. 1993) (citing *State v. Bryant*, 324 So. 2d 389 (La. 1975)). See also *infra* notes 37-39.

34. See *Peart*, 621 So. 2d at 784 n.1.

35. *Id.* at 789 (citing THE SPANGENBERG GRP., STUDY OF THE INDIGENT DEFENDER SYSTEM IN LOUISIANA 16-18, 25 (1992)). The Spangenberg Group asserted that the amount of funding available for public defense in 1992 needed to be doubled in order to adequately fund services. See *Peart*, 621 S. 2d at 789.

36. *Peart*, 621 So. 2d at 789.

37. See *id.* at 786-87.

38. *Id.* at 790.

39. See *id.* at 791.

40. See BURKHART, *supra* note 29, at 6; NLADA REPORT, *supra* note 28, at 2.

41. See BURKHART, *supra* note 29, at 6; NLADA REPORT, *supra* note 28, at 2.

42. See NLADA REPORT, *supra* note 28, at 2.

43. See BURKHART, *supra* note 29, at 6.

44. See NLADA REPORT, *supra* note 28, at 14-15.

45. See *id.* at 2-3.

46. See *id.* at 3. Chapter 1 of the Louisiana Standards on Indigent Defense provided that, “[t]he immediate attainment of these standards by a district indigent defense board is not a mandatory requirement for participation in the financial assistance programs of the Louisiana Indigent Defender Board. However, a district indigent defender board’s assent to these standards, as goals to be immediately worked toward and to be achieved over time, is a requirement for such participation.” *Id.* at 3 n.7.

47. See NLADA REPORT, *supra* note 28, at 16.

48. Telephone Interview with Stephen Singer, Associate Clinic Professor, Loyola University New Orleans College of Law (July 18, 2016); Telephone Interview with Mark Cunningham, Partner, Jones Walker (Aug. 11, 2016).

49. See NLADA REPORT, *supra* note 28, at 20-25.

50. See BURKHART, *supra* note 29, at 6.

51. See NLADA REPORT, *supra* note 28, at 59. Although the state appropriation to LIDAB remained stable, the amount of that appropriation that was available to IDBs through DAF grants decreased over time. *Id.* at 16. DAF funding decreased as LIDAB increased funding to programs including the Louisiana Appellate Project, the Capital Appeals Project, the Capital Post-Conviction Project of Louisiana, Regional Capital Conflict Panels, and the Juvenile Justice Project of Louisiana. *Id.* at 14-15.

52. See *id.* at 16, 59.

53. See *id.* at 16.

54. See *id.* at 59.

55. See *id.* at 24.

56. See *id.* at 30.

57. See *id.* at 23.

58. See *id.* at 19.

59. See *State v. Citizen*, 898 So. 2d 325, 337 (La. 2005). The Task Force originally was directed to deliver its report in 2004, but that deadline was extended to 2005. *Id.*

60. *Id.*

61. See, e.g., S. CTR. HUM. RTS., A REPORT ON PRE- AND POST-KATRINA INDIGENT DEFENSE IN NEW ORLEANS 1 (2006) (reporting that six months after Katrina, thousands of indigent defendants remained incarcerated and had not had contact with defense counsel for over a year); Vesna Jaksic, *Still Feeling the Pain*, NAT'L LAW J. (Feb. 6, 2007), <http://www.nationallawjournal.com/id=900005473258/Still-feeling-the-pain?slreturn=20161009152557> (noting most local public defenders laid off when the public defense system "went broke after Katrina" due to the loss of ticket revenue after the storm); Henry Weinstein, *Report Sees Little Justice for Poor in New Orleans*, L.A. TIMES (May 9, 2006), <http://articles.latimes.com/2006/may/09/nation/na-indigent9> (discussing DOJ report finding that justice was unavailable in New Orleans post-Katrina).

62. Interview with Denny LeBouef, Director, John Adams Project, American Civil Liberties Union, in New Orleans, La. (July 13, 2016); Telephone Interview with Stephen Singer, *supra* note 48. See also Weinstein, *supra* note 61 (citing experts on how Katrina revealed pre-existing problems in the public defense system and the necessity of rebuilding the system from the ground up).

63. See, e.g., Susan Saulny, *New Orleans Moves to Repair Its Legal System*, N.Y. TIMES (Aug. 8, 2006), <http://www.nytimes.com/2006/08/08/us/08orleans.html>; Ari Shapiro, *Lack of Public Defenders Slows Courts in New Orleans*, NAT'L PUB. RADIO (Feb. 23, 2006), <http://www.npr.org/templates/story/story.php?storyId=5229452>; Peter Whoriskey, *In New Orleans, Justice on Trial*, WASH. POST (Apr. 15, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/14/AR2006041401657.html>. See also *supra* note 61.

64. Ninety-five legislators co-authored the Louisiana Public Defender Act when it passed the Louisiana Legislature in 2007. See *Foreword by State Public Defender James T. Dixon* in LA. PUB. DEF. BD., LPDB 2014 ANNUAL BOARD REPORT 1 (2015) [hereinafter 2014 LPDB ANNUAL REPORT]. The Act passed with overwhelming majorities. BURKHART, *supra* note 29, at 7.

65. Telephone Interview with Stephen Singer, *supra* note 48; Telephone Interview with Mark Cunningham, *supra* note 48. See also BURKHART, *supra* note 29, at 7 ("Hurricane Katrina provided an opportunity to unite.").

66. See 2007 La. Acts 307 (codified as amended at La. Rev. Stat. Ann. §§ 15:141-184 (2005 & Supp. 2009)) (amending and recodifying La. Rev. Stat. Ann. § 15:151, which established LIDAB, as La. Rev. Stat. Ann. § 15:146, creating LPDB). See also BURKHART, *supra* note 29, at 7-8.

67. Compare La. Rev. Stat. Ann. § 15:151(3) (2005) (specifying membership of LIDAB) with La. Rev. Stat. Ann. § 15:146(3) (2005 & Supp. 2009) (specifying membership of LPDB). Individuals who were members of LIDAB as of August 15, 2007, continued to serve as members of LPDB without limitation of their terms. La. Rev. Stat. Ann. § 15:146(A)(4) (2005 & Supp. 2009).

68. See, e.g., La. Rev. Stat. Ann. § 15:148(B)(1)(f) (2005 & Supp. 2009) (specifying that the mandatory statewide public defender standards and guidelines to be developed by LPDB "shall be based upon the performance standards originally adopted by the Louisiana Indigent Defense Assistance Board (LIDAB) in 2006 and any subsequent amendments to those standards adopted by the board."). LPDB also continues to use the caseload guidelines adopted by LIDB. See *infra* note 124 and accompanying text.

69. La. Rev. Stat. Ann. § 15:146(A)(1) (2005 & Supp. 2009).

70. See BURKHART, *supra* note 29, at 8; 2009 LPDB ANNUAL REPORT, *supra* note 24, at i.

71. La. Rev. Stat. Ann. § 15:147(A) (2005 & Supp. 2009). The only limit on LPDB's authority over Louisiana's public defense system is the inherent regulatory authority of the Louisiana Supreme Court. *Id.*

72. See La. Rev. Stat. Ann. § 15:148(B) (2005 & Supp. 2009).

73. See La. Rev. Stat. Ann. § 15:161(A) (2005 & Supp. 2009). LPDB hires district defenders from a list of at least three nominees provided by a selection committee formed in the relevant district. See La. Rev. Stat. Ann. § 15:162 (2005 & Supp. 2009).

74. See La. Rev. Stat. Ann. § 15:147(B)(3) (2005 & Supp. 2009).

75. See La. Rev. Stat. Ann. § 15:150 (2005 & Supp. 2009). The Public Defender Act specifies the title and job description of each member of the executive staff that LPDB is authorized to hire. See La. Rev. Stat. Ann. §§ 15:150(A), 15:152-158 (2005 & Supp. 2009).

76. See La. Rev. Stat. Ann. § 15:165(A) (2005 & Supp. 2009). See also La. Rev. Stat. Ann. § 15:142.F (2005 & Supp. 2009) (“It is the express intention of the legislature that the Louisiana Public Defender Board respect local differences in practice and custom regarding the delivery of public defender services. The provisions of this Act are to be construed to preserve the operation of district public defender programs which provide effective assistance of counsel and meet performance standards in whatever form of delivery that local district has adopted, provided that method of delivery is consistent with standards and guidelines adopted by the board pursuant to rules and as required by statute.”).

77. See La. Rev. Stat. Ann. § 15:164(C) (2005 & Supp. 2009).

78. See La. Rev. Stat. Ann. § 15:161(H) (2005 & Supp. 2009). See also La. Rev. Stat. Ann. § 15:147(C)(1) (2005 & Supp. 2009) (providing that Board may not use its power to contract to terminate personnel without cause); La. Rev. Stat. Ann. § 15:147(C)(5) (2005 & Supp. 2009) (similar).

79. In 2003, the Louisiana Legislature created an additional source of revenue for local public defense programs in the form of \$40 application fee to be paid by applicants for public defense services. Like the public defense fee on convictions, collected application fees remained in the judicial district and provided a source of local revenue for public defense. NLADA REPORT, *supra* note 28, at 14.

80. See La. Rev. Stat. Ann. § 15:168 (2005 & Supp. 2009).

81. See BURKHART, *supra* note 29, at 8.

82. Jean Faria, the first person named to the new State Public Defender position and the first LPDB employee, did not start work until June 1, 2008. See LA. PUB. DEF. BD., LPDB 2010 ANNUAL BOARD REPORT 13 (2011) [hereinafter 2010 LPDB ANNUAL REPORT].

83. See 2009 LPDB ANNUAL REPORT, *supra* note 24, at i, iii.

84. See *id.* at ii.

85. See *id.* at ii, iv. See also LA. ADMIN. CODE tit. 22, pt. 15, §§ 701-769 (LPDB trial court performance standards).

86. See *id.* at iii.

87. See 2010 LPDB ANNUAL REPORT, *supra* note 82, at 2-5.

88. See *Foreword by State Public Defender Jean M. Faria* in 2010 LPDB ANNUAL REPORT, *supra* note 82, at i. See also La. Admin. Code tit. 22, pt. 15, §§ 901-927 (LPDB capital defense guidelines).

89. See 2010 LPDB ANNUAL REPORT, *supra* note 82, at 31, 47. See also La. Admin. Code tit. 22, pt. 15, §§ 1101-1159 (LPDB trial court performance standards for attorneys representing parents in child in need of care cases).

90. See *Foreword by State Public Defender Jean M. Faria* in 2010 LPDB ANNUAL REPORT, *supra* note 82, at i.

91. See 2010 LPDB Annual Report, *supra* note 82, at 27.

92. *Padilla v. Kentucky*, 559 U.S. 356 (2010). *Padilla* holds that criminal defense attorneys must advise noncitizen clients about the potential immigration consequences of a guilty plea. *Id.* at 369.

93. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). *Daubert* establishes a standard for the admissibility of scientific evidence in court. *Id.* at 589-595.

94. See 2010 LPDB ANNUAL REPORT, *supra* note 82, at 33-34.

95. See *id.* at 23-25.

96. See *id.* See also Interview with Cecelia Bonin, District Defender, 16th Judicial District, in New Iberia, La. (Jul 12, 2016) (commenting that the nonprofit programs’ representation in capital cases spares her district from the expense of providing representation in those cases); Telephone Interview with James Boren, Partner, Jones Walker (Aug, 30, 2016) (similar).

97. In 2010, 64.4 percent of funding for district-level public defense services was derived from local revenue sources. 2010 LPDB ANNUAL REPORT, *supra* note 82, at 51.

98. See *supra* note 81 and accompanying text.

99. LA. LEGIS. AUDITOR, LOUISIANA DISTRICT PUBLIC DEFENDERS COMPLIANCE WITH REPORT REQUIREMENTS 6 (2011); see also LA. ADMIN. CODE tit. 22, pt. 15, § 1701 (citing the legislative auditor’s report as impetus for LPDB’s adoption of its service restriction protocol).

100. In comparison to 2010, in 2002 half, or 21, of the district defender programs had expenditures that exceeded revenue. See *supra* note 55 and accompanying text.

101. *Foreword by LPDB Chair Frank X. Neuner 1* in LA. PUB. DEF. BD., LPDB 2012 BOARD REPORT (2013) [hereinafter 2012 LPDB ANNUAL REPORT].

102. See *id.* at 1; LPDB 2012 ANNUAL REPORT, *supra* note 101, at 5; *Foreword by State Public Defender James T. Dixon 3* in LA. PUB. DEF. BD., LPDB 2015 BOARD REPORT (2016) [hereinafter 2015 LPDB ANNUAL REPORT].

103. See *Foreword by LPDB Chair Frank X. Neuner*, 2012 LPDB ANNUAL REPORT, *supra* note 101, at 2; 2012 LPDB ANNUAL REPORT, *supra* note 101, at 6.

104. See 2012 LPDB ANNUAL REPORT, *supra* note 101, at 6. See also LA. ADMIN. CODE tit. 22, pt. 15, §§ 1701-1719 (LPDB Service Restriction Protocol).

105. See *Foreword by LPDB Chair Frank X. Neuner*, 2012 LPDB ANNUAL REPORT, *supra* note 101, at 1.

106. See *Foreword by State Public Defender James T. Dixon* 1 in LA. PUB. DEF. BD., LPDB 2013 BOARD REPORT (2014) [hereinafter 2013 LPDB ANNUAL REPORT]. In 2012, a total of \$50,695,887 in state and local funds was available for district public defense programs. See 2012 LPDB ANNUAL REPORT, *supra* note 101, at 51. In 2013, a total of \$51,192,746 was available for district public defense programs. See 2013 LPDB ANNUAL REPORT at 51.

107. See *Foreword by LPDB Chair Frank X. Neuner*, 2012 LPDB ANNUAL REPORT, *supra* note 101, at 2.

108. *Id.*

109. *Id.*

110. See 2014 LPDB ANNUAL REPORT, *supra* note 64, at 24; Interview with James Dixon, *supra* note 26.

111. See *Foreword by State Public Defender James T. Dixon* in 2013 LPDB ANNUAL REPORT, *supra* note 106, at 3.

112. Total LPDB personnel and operations expenditures decreased from \$2,253,361 in 2012 to \$1,990,090 in 2014. Compare 2012 LPDB ANNUAL REPORT, *supra* note 101, at 50 with 2014 LPDB ANNUAL REPORT, *supra* note 64, at 50. LPDB's 2015 operating budget was cut by \$500,000. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 28. "This has hampered our ability to adequately perform our statutory supervisory and training functions under the Louisiana Public Defender Act." *Id.*

113. See 2013 LPDB ANNUAL REPORT, *supra* note 106, at 29; Interview with Jean Faria, Capital Case Coordinator, Louisiana Public Defender Board, in Baton Rouge, La. (July 12, 2016).

114. Julie Ferris served as LPDB Deputy Public Defender – Director of Training from 2009 to February 2013, when she assumed the position of Interim State Public Defender. The training director position remained vacant from the time of her interim appointment through the end of the year. See LPDB 2013 ANNUAL REPORT, *supra* note 106, at 18. William Boggs served as training director for several months in 2014. See LPDB 2014 ANNUAL REPORT, *supra* note 64, at 13. The position then remained vacant into 2016. See *Staff Listings*, LA. PUB. DEF. BD., at <http://www.lpdb.la.gov/Board%20&%20Staff/Staff.php> (last visited Nov. 10, 2016).

115. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 28. Louisiana experienced a 28.2% decrease in court filings from 2009 to 2014. *Id.*

116. See 2014 LPDB ANNUAL REPORT, *supra* note 64, at 23.

117. *Id.* at 22.

118. Compare 2012 LPDB ANNUAL REPORT, *supra* note 101, at 5-10 with 2013 LPDB ANNUAL REPORT, *supra* note 102, at 5-10.

119. Telephone Interview with Mark Cunningham, *supra* note 48. Cunningham helped lead an informal mediation process between the district defenders and LPDB that started in 2015 and continued into early 2016. Most of the issues identified by district defenders involved LPDB communications. *Id.*

120. Interview with Cecelia Bonin, *supra* note 96; Interview with Derwyn Bunton, Chief Defender, Orleans Public Defender, in New Orleans, La. (July 14, 2016); Interview with G. Paul Marx, District Defender, 15th Judicial District, in Lafayette, La. (July 12, 2016).

121. See 2014 LPDB ANNUAL REPORT, *supra* note 64, at 53.

122. See *id.*

123. LPDB publishes the statewide average attorney caseload as a multiple of the LIDB maximum caseload standard in charts analyzing caseload data for each of the 42 judicial districts. See, e.g., 2015 LPDB ANNUAL REPORT, *supra* note 102, at 62 (2015 caseload chart for 1st Judicial District). In 2015, the statewide average attorney caseload was 2.36 times the LIDB maximum caseload standard. See *id.*

124. See LA. PUB. DEF. BD, EXECUTIVE SUMMARY, THE LOUISIANA PUBLIC DEFENDER BOARD AT THE CROSSROADS: ETHICS AND LAW IN PUBLIC DEFENSE 2 (2015). In developing Louisiana's maximum caseload standard, LIDB started with the caseload standards established by the National Advisory Commission on Criminal Advisory Standards and Goals in 1973 (the "NAC Standards"), which are 400 misdemeanors or 150 felonies per attorney per year. *Id.* LIDB then added 50 cases to each case category, producing maximum caseload standards of 450 misdemeanors or 200 felonies per attorney per year. *Id.* Louisiana's maximum caseload standard is higher than "every known caseload standard in the United States." *Id.* The NAC Standards themselves, though lower than LIDB's maximum caseload standard, have been criticized as being too high, see NORMAN LEFSTEIN, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE 44-48 (2011), and are not based on empirical study, *id.* at 44-45. Workload standards—"i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties"—generally are considered to be a better indicator of whether attorneys have sufficient capacity to provide constitutionally adequate representation. AM. BAR ASS'N, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM 2 cmt.5 (2002) [hereinafter ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM]; accord Statement of Interest of the U.S. at 7, *Wilbur v. City of Mt. Vernon*, 2:11-cv-01100-RSL (W.D. Wash. Aug. 14, 2013).

125. See *supra* notes 107-109 and accompanying text.

126. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 28; Interview with James Dixon, *supra* note 26.

127. See *supra* note 104 and accompanying text (discussing LPDB's Restriction of Services Protocol). By the end of 2015, 12 districts had restricted services. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 27.

128. Interview with James Dixon, *supra* note 26. See also LA. ADMIN. CODE tit. 22, pt. 15, § 1707(A) (Notice of Impending Fiscal Crisis, Caseload, or Both).

129. See LA. ADMIN. CODE tit. 22, pt. 15, §§ 1709-1717.

130. *E.g.*, Interview with Cecelia Bonin, *supra* note 96 (discussing her district's restriction of services plan); Interview with Derwyn Bunton, *supra* note 120 (same); Interview with G. Paul Marx, *supra* note 120 (same).
131. See *supra* notes 107-109 and accompanying text.
132. See *supra* notes 2-3, 5 and accompanying text. See also LA. ADMIN. CODE tit. 22, pt. 15, § 1715 (discussing declination of new appointments as a component of service restriction).
133. Della Hasselle, *A Public Defense Crisis in Louisiana: 33 of 42 Public Defenders' Offices Restricting Client Services Due to Funding Shortfalls*, GAMBIT (May 25, 2016), <http://www.bestofneworleans.com/blogofneworleans/archives/2016/05/25/a-public-defense-crisis-in-louisiana-33-of-42-public-defenders-offices-refusing-clients-due-to-funding-shortfalls>.
134. Interview with James Dixon, *supra* note 24. Outside of the Restriction of Services Protocol, LPDB has intervened when an individual public defender had a caseload of 6,000 closed misdemeanor cases per year. *Id.* That attorney's caseload was more than 13 times higher than the LIDB maximum caseload limit. See *supra* note 124 and accompanying text. As a general rule, LPDB would intervene if an attorney's caseload were four to five times over the LIDB standard. Interview with James Dixon, *supra* note 26.
135. At the end of 2015, seven district public defenders' offices that were not in restriction of services had caseloads more than three times greater than LIDB's maximum caseload limit: District 7 (average attorney caseload of 3.50 times LIDB limit), District 9 (4.11), District 11 (5.56), District 14 (3.13), District 17 (3.93), District 22 (3.60), and District 37 (3.46). See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 27, 168, 202, 237, 288, 344, 434, 703.
136. Telephone Interview with Stephen Singer, *supra* note 48. See also *supra* note 19 and accompanying text (discussing Louisiana's budget crisis).
137. Interview with James Dixon, *supra* note 26.
138. Interview with Cecelia Bonin, *supra* note 96; Interview with Derwyn Bunton, *supra* note 120; Interview with James Craig, Co-Director, Roderick and Solange MacArthur Justice Center, in New Orleans, La. (July 14, 2016); Telephone Interview with Mark Cunningham, *supra* note 48; Interview with G. Paul Marx, *supra* note 120.
139. Interview with James Craig, *supra* note 138; Interview with G. Paul Marx, *supra* note 120.
140. Interview with Cecelia Bonin, *supra* note 96; Interview with James Craig, *supra* note 138.
141. Interview with Kevin Donnelly, Acadia Parish Office Chief, 15th Judicial District Public Defender's Office, in Lafayette, La. (July 12, 2016). See also Hager, *supra* note 3 (describing mass plea docket in the 16th judicial district).
142. See *supra* note 4 and accompanying text.
143. Telephone Interview with James Boren, *supra* note 96; Interview with James Craig, *supra* note 138; Telephone Interview with Mark Cunningham, *supra* note 48.
144. In contrast to capital cases, private attorneys who are involuntarily appointed to represent indigent defendants in non-capital cases are not entitled to a presumption that they will require "substantial additional resources to represent the defendant adequately at trial." *State v. Kyle*, 117 So. 3d 498, 498 (La. 2013) (per curiam). Instead, they must invest time and resources into making a particularized showing that funds are necessary for investigators and/or experts. *Id.* at 498-99. If a lawyer makes that showing, only then may a trial court consider a stay of the proceedings until funding is made available. *Id.* at 499.
145. See *supra* note 5 and accompanying text.
146. *Id.*
147. Interview with James Craig, *supra* note 138.
148. See, e.g., Joe Gyan, *District Attorneys Take Aim at Louisiana Public Defender Board Spending on Death Penalty Cases*, ADVOC. (Apr. 28, 2016), http://www.theadvocate.com/baton_rouge/news/article_48e80c7f-fc9a-525c-9037-d8d63b8b7f92.html.
149. See, e.g., Julia O'Donoghue, *Inadequate Representation: No More Money Expected for Public Defenders*, TIMES-PICAYUNE (Apr. 18, 2016), http://www.nola.com/politics/index.ssf/2016/04/public_defender_funding.html.
150. See, e.g., Gyan, *supra* note 148.
151. *E.g.*, Telephone Interview with James Boren, *supra* note 96; Interview with Derwyn Bunton, *supra* note 120; Telephone Interview with Mark Cunningham, *supra* note 138; Interview with Robert Toale, Law Office of Robert Toale, in New Orleans, La. (July 13, 2016).
152. Telephone Interview with Mark Cunningham, *supra* note 138; Interview with Robert Toale, *supra* note 151.
153. See 2016 La. Acts 571 (amending and re-enacting La. Rev. Stat. Ann. § 15:146 and enacting La. Rev. Stat. Ann. §§ 15:162(I), 15:166, 15:167(E)).
154. *Id.* See also Simerman, *supra* note 19 (discussing bill provisions).
155. Interview with James Dixon, *supra* note 26.
156. *Id.*; Simerman, *supra* note 19. The reduced funding available for state-funded capital programs resulted in a waiting list for capital trial representation soon after the new allocation of state grant funds was implemented. Foreword by State Public Defender James T. Dixon 2 in LA. PUB. DEF. BD., LPDB 2016 BOARD REPORT (2017) [hereinafter 2016 LPDB ANNUAL REPORT].

157. See 2016 La. Acts 571 (amending and re-enacting La. Rev. Stat. Ann. § 15:146 and enacting La. Rev. Stat. Ann. §§ 15:162(I), 15:166, 15:167(E)).
158. See *id.*
159. See *supra* note 19 and accompanying text.
160. *E.g.*, Interview with Cecelia Bonin, *supra* note 96; Interview with John Burkhart, Campaign Manager, Louisiana Campaign for Equal Justice, in New Orleans, La. (July 11, 2016); Interview with James Dixon, *supra* note 26. Some districts still have wait lists, however, and continue to operate under service restriction plans even with the new allocation of state public defense funding required by the 2016 legislation. *E.g.*, Interview with G. Paul Marx, *supra* note 120.
161. *E.g.*, Foreword by State Public Defender James T. Dixon 2-3 in 2016 LPDB ANNUAL REPORT, *supra* note 156; Interview with Cecelia Bonin, *supra* note 96; Interview with John Burkhart, *supra* note 160; Interview with James Craig, *supra* note 138; Telephone Interview with Mark Cunningham, *supra* note 48; Interview with James Dixon, *supra* note 26.
162. See *Gov. Edwards Announces Boards and Commissions Appointments*, OFFICE OF LA. GOVERNOR JOHN BEL EDWARDS (Sept. 30, 2016), <http://gov.louisiana.gov/news/edwards-announces-boards-and-commissions-appointments-9-30-16>. The 2016 legislation terminated the service of most of the board members that served on the 15-member configuration of LPDB, effective August 1, 2016. See 2016 La. Acts 571 (amending and re-enacting La. Rev. Stat. Ann. § 15:146 and enacting La. Rev. Stat. Ann. §§ 15:162(I), 15:166, 15:167(E)). Extensive flooding in Louisiana in August 2016, and recovery efforts after the flooding, may have delayed Governor Edwards' appointments. See Holly Yan & Rosa Flores, *Louisiana Flood: Worst U.S. Disaster since Hurricane Sandy, Red Cross Says*, CNN (Aug. 19, 2006), <http://www.cnn.com/2016/08/18/us/louisiana-flooding/>.
163. See Letter from Bernette J. Johnson, Chief Justice, Supreme Court of Louisiana, to Jay Dardenne, Commissioner, Louisiana Division of Administration (Dec. 27, 2016). Chief Justice Bernette approved LPDB's certification of an emergency funding shortfall. *Id.*
164. See *supra* notes 55-57.
165. See 2009 LPDB ANNUAL REPORT, *supra* note 24, at ii; BURKHART, *supra* note 29, at 8.
166. See *supra* note 99 and accompanying text.
167. See BURKHART, *supra* note 29, at 10.
168. See *supra* notes 127-133 and accompanying text.
169. See *supra* notes 107-109, 123-125 and accompanying text.
170. See NLADA REPORT, *supra* note 28, at 2 n.4 (citing reports from 1972 through 2002 that criticize the fee-based funding structure for public defense in Louisiana); *Id.* at 20-27 (finding that Louisiana fails to adequately fund public defense services and highlighting problems created by the state's fee-based funding structure); BURKHART, *supra* note 29, at 10-15 (finding that the fee-based funding structure is unstable, unreliable, and inadequate).
171. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 57.
172. See *id.* Because total district public defense expenditures exceeded total revenue in 2015, the \$33 million in local funding covered less than 64 percent of total district expenditures. See *id.*
173. See *id.*
174. The 2016 legislation will increase the amount of state funding allocated through the DAF by almost \$5 million. See Simerman, *supra* note 19. A \$5 million increase in 2015 DAF funds would increase the total amount of state money allocated through the DAF to approximately \$23 million. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 57. That amount is less than both the \$33 million in local revenue collected in 2015 and the amount required to cover half of districts' 2015 expenditures. See *id.*
175. See BURKHART, *supra* note 29, at 10.
176. See *id.*
177. See *supra* note 36 and accompanying text. See generally John Simerman & Chad Calder, *Louisiana at a Crossroad on Providing Poor with Access to Public Defenders in Criminal Cases, Funding the Program*, ADVOC. (Mar. 1, 2016), http://www.theadvocate.com/baton_rouge/news/crime_police/article_70441639-c7b0-5c26-b97c-e47feb08f6b5.html.
178. See BURKHART, *supra* note 29, and accompanying text. The 29th Judicial District Public Defender's office (St. Charles Parish) frequently is cited as an example of a district that has consistently robust local funding due to the presence of an interstate highway in the district. *E.g.*, Interview with James Dixon, *supra* note 26; Simerman & Calder, *supra* note 177. In 2015, the 29th District did not receive any DAF funding from the state because its local resources (local revenue plus reserve fund) were adequate to cover all of the district's public defense expenditures. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 57.
179. See, *e.g.*, BURKHART, *supra* note 29, at 11-12 ("A change in sheriffs in Jefferson Parish has seen a precipitous decline in traffic tickets, greatly affecting public defense funding."); Stephen Hemelt, *Pulled Over: Leaders Spar Over Citations*, L'OBSERVATEUR (Sept. 21, 2016), <http://m.lobserveur.com/2016/09/21/pulled-over-leaders-spar-over-citations/> (citing dispute between local officials in St. John the Baptist Parish over impact of sheriff's suspension of traffic enforcement program on public defense funding).

180. See BURKHART, *supra* note 29, at 13-14; Interview with James Dixon, *supra* note 26. In at least some cases, the fees on pretrial diversions exceed the court costs that would be imposed on conviction, though none of the diversion fees go to the local district defender. See BURKHART, *supra* note 29, at 13-14.

181. See BURKHART, *supra* note 29, at 13. At least one district defender has had to sue the local courts to force them to remit the public defender fee on convictions. *Id.*; *supra* note 103 and accompanying text. Public defender programs also vary in how aggressively they act to collect the statutory public defender application fee from their clients. Interview with James Dixon, *supra* note 26.

182. See BURKHART, *supra* note 29, at 13 (“No relationship exists between a jurisdiction’s traffic fees and its indigent defense needs.”); NLADA REPORT, *supra* note 28, at 22-24 (similar).

183. See BURKHART, *supra* note 29, at 13. The constitutional right to counsel extends only to misdemeanor cases that result in imprisonment. See *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972).

184. See *Foreword of State Public Defender James T. Dixon* at 2 in 2015 LPDB ANNUAL REPORT, *supra* note 102. See also *supra* notes 179-181 and accompanying text.

185. Interview with Jean Faria, *supra* note 113; Interview with M. Richard Schroeder, Partner, Jones Walker, in New Orleans, La. (July 14, 2016). Although the fees for pretrial diversions can be high in some cases and therefore preclude indigent defendants from taking advantage of the benefits of diversion, see *supra* note 180, in some cases a defendant who cannot afford to hire a lawyer can afford to pay a diversion fee, therefore creating a direct financial conflict between a public defender and her own client. Interview with M. Richard Schroeder.

186. At least one Louisiana jurisdiction has been sued for allegedly jailing individuals for non-payment of monetary penalties for minor traffic and misdemeanor cases without inquiring into the reasons for non-payment, in violation of the U.S. Constitution. See *Class Action Complaint, Roberts v. Black*, 2:16-cv-11024 (E.D. La. June 21, 2016). See also AM. C. L. UNION OF LA., *LOUISIANA’S DEBTORS PRISONS: AN APPEAL TO JUSTICE* (2015) (providing case studies of debtors’ prisons across state).

187. See *supra* note 115 and accompanying text.

188. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 28.

189. See *Foreword by State Public Defender James T. Dixon* 2-3 in 2016 LPDB ANNUAL REPORT, *supra* note 156.

190. Traffic cases have declined 10 percent nationally since the 2008 recession. See TEXAS OFFICE OF COURT ADMINISTRATION, *REPORT ON STATISTICAL TRENDS: CASES RELATED TO MOTOR VEHICLES* (2016), <http://www.txcourts.gov/media/1382651/caseload-trends-cases-related-to-motor-vehicles.pdf>. Louisiana is not the only state in which traffic cases have declined at a rate greater than the national rate. For example, the number of traffic and parking tickets filed in Texas has declined by 35 percent since 2008. *Id.*

191. See *Foreword by State Public Defender James T. Dixon* at 1 in 2014 LPDB ANNUAL REPORT, *supra* note 64.

192. Interview with James Dixon, *supra* note 26. Even with the \$10 increase on the public defense fee on convictions, some districts receive less local funding from the fee due to the reduction in ticketing. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 28.

193. See LA. CAMPAIGN FOR EQUAL JUST., *TOO POOR FOR JUSTICE: LOUISIANA’S USER-PAY PUBLIC DEFENSE SYSTEM, A BLUEPRINT FOR REFORM* 2, 15 (2015).

194. See *id.*

195. The American Bar Association’s Ten Principles for a Public Defense Delivery System call for “parity between defense counsel and the prosecution with respect to resources.” ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, *supra* note 124, at 1, 3. In the commentary to the Ten Principles, the ABA specifies that “[t]here should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. *Id.* at 3 cmt. 8. Because of differences in the operations and responsibilities of prosecutors and public defenders, parity of workload, salaries, and other resources between prosecution and public defense may not necessarily mean that the two actors have budgets that are exactly the same. See PHYLLIS MANN, NAT’L LEGAL AID & DEF. ASS’N, *UNDERSTANDING THE COMPARISON OF BUDGETS FOR PROSECUTORS AND BUDGETS FOR PUBLIC DEFENSE*, http://www.nlada.net/library/article/na_understandingbudgetsforprosanddefs.

196. Public defenders do not receive government retirement benefits. Interview with Jean Faria, *supra* note 113. District public defender offices vary in whether they provide health and other benefits to the attorneys who work for them. *Id.*; Interview with Cecelia Bonin, *supra* note 96. District attorneys are routinely provided retirement benefits and health insurance. Interview with Jean Faria, *supra* note 113.

197. Interview with James Boren, *supra* note 96.

198. See, e.g., Hager, *supra* note 3.

199. ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, *supra* note 124, at 2 cmt. 1.

200. See *supra* notes 138-141 and accompanying text.

201. See LA. R. PROF’L CONDUCT R. 1.7(a) (A conflict exists if “the representation of one client will be directly adverse to another client” or “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”).

202. See *id.* at R. 1.7(a)(2). See also LA. ADMIN. CODE tit. 22, pt. 15, § 1701(C) (cataloging other state ethical rules relevant to excessive caseloads, in the context of LPDB’s Restriction of Services Protocol); AM. BAR ASS’N, FORMAL OPINION 06-441: ETHICAL OBLIGATIONS OF LAWYERS WHO REPRESENT INDIGENT CRIMINAL DEFENDANTS WHEN EXCESSIVE CASELOADS INTERFERE WITH COMPETENT AND DILIGENT REPRESENTATION 1 (2006) (“If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments. Once the lawyer is representing the client, the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation.”).

203. See *supra* notes 142-144 and accompanying text.

204. The ABA Ten Principles recognize that defense counsel should be “included as equal partners in the criminal justice system.” ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, *supra* note 124, at 1. “*Gideon* [v. *Wainwright*]’s clear command to state courts would be a dead letter if states—or the counties that comprise them—need only go through the motions. The Court’s eloquent descriptions in *Johnson* [v. *Zerbst*, 304 U.S. 458 (1938)] and *Gideon* of the essential nature of the right to a lawyer would ring hollow, and would amount to empty rhetoric, if appointment of counsel for indigent defendants is but a mere formality. . . . It is the defense itself, not the lawyers as such, that animates *Gideon*’s mandate. If the latter cannot provide the former, the promise of the Sixth Amendment is broken.” *Kuren v. Luzerne County*, __ A.3d __, 2016 WL 5466302 at *16 (Pa. Sept. 28, 2016).

205. See Editorial, *Some Louisiana Indigent Defendants Get Lawyers Who Can’t Be Much Help*, TIMES-PICAYUNE (Oct. 2, 2016), http://www.nola.com/opinions/index.ssf/2016/10/louisiana_indigent_defense.html; Jarvis DeBerry, Opinion, *Louisiana: Not Even Pretending to Provide Real Indigent Defense*, TIMES-PICAYUNE (Sept. 19, 2016), http://www.nola.com/crime/index.ssf/2016/09/louisiana_public_defender.html.

206. See *infra* notes 261-268 and accompanying text.

207. See *supra* notes 184-186 and accompanying text.

208. See *supra* notes 81, 97-100 and accompanying text.

209. See *supra* notes 85, 88-89 and accompanying text.

210. *E.g.*, Interview with Denny LeBoeuf, *supra* note 62; Interview with Chris Murell, Executive Director, Promise of Justice Initiative, in New Orleans, La. (Jul 15, 2016); Interview with Stephen Singer, *supra* note 48.

211. See *supra* notes 95-96 and accompanying text. The following contract programs received funding from LPDB in 2015: Louisiana Center for Children’s Rights, Louisiana Appellate Project; Baton Rouge Capital Conflict Office, Louisiana Capital Assistance Center, Capital Defense Project of Southeast Louisiana, Capital Post-Conviction Project of Louisiana, Capital Appeals Project, and the Innocence Project of New Orleans. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 23-26.

212. *E.g.*, Telephone Interview with Mark Cunningham, *supra* note 48; Interview with Denny LeBoeuf, *supra* note 62.

213. Interview with Richard Bourke, Executive Director, and Christine Lehmann, Senior Capital Attorney, Louisiana Capital Assistance Center, in New Orleans, La. (July 14, 2016); Interview with Jean Faria, *supra* note 113. Even as total capital caseload numbers have been decreasing, the caseloads of the capital trial programs have remained stable because they are taking an increasing percentage of capital cases from the districts. Interview with Richard Bourke and Christine Lehmann. Many of the capital post-conviction program’s cases arise from trials that occurred prior to passage of the Public Defender Act and prior to the more recent decline in capital case filings. Interview with Jean Faria.

214. See Della Hasselle, *Executions in Louisiana on Hold until at Least January 2018*, THE LENS (June 1, 2016), <http://thelensnola.org/2016/06/01/executions-in-louisiana-on-hold-until-at-least-january-2018/>.

215. See S. CTR. HUM. RTS., *supra* note 61.

216. Interview with Derwyn Bunton, *supra* note 120. Even though the OPD has improved significantly relative to its pre-Katrina state, ongoing funding shortfalls have produced staff furloughs, hiring freezes, and excessive caseloads that make it impossible for public defenders in the office to provide effective representation to all indigent defendants in Orleans Parish. See *id.*; Peng, *supra* note 1; Bunton, *supra* note 3. The office has placed some potential clients on a wait list, see Elliott, *supra* note 2, and the American Civil Liberties Union has sued the office, alleging that placing clients on a wait list violates the Sixth Amendment, see Yarls Complaint, *supra* note 7.

217. See BURKHART, *supra* note 29, at 9; LA. PUB. DEF. BD., THE STATE WE’RE IN 4 (2016).

218. Interview with Chris Murell, *supra* note 210.

219. *Id.*; see also Hager, *supra* note 3 (describing mass plea hearing observed in the 16th judicial district).

220. Telephone Interview with Lisa Graybill, Deputy Legal Director, Criminal Justice Reform, & Meredith Angelson, Staff Attorney, Criminal Justice Reform, Southern Poverty Law Center (Sept. 2, 2016).

221. See, *e.g.*, *supra* notes 1-6 and accompanying text.

222. See *supra* notes 97-109 and accompanying text.

223. Interview with Derwyn Bunton, *supra* note 120; Interview with G. Paul Marx, *supra* note 120. Even where they have been available, these supplemental external funding sources do not provide a long-term solution to Louisiana’s public defense funding crisis. Most federal grants to public defense in Louisiana were directed to New Orleans and dried up a few years after Hurricane Katrina. Interview with Derwyn Bunton. Gideon’s Promise fellowships make it possible for public defender offices to bring on entry-level lawyers at no salary cost for the first year, but do not provide funding for fellows’ long-term employment. See *Law School Partnership Project, GIDEON’S PROMISE* at <http://www.gideonspromise.org/programs/lsp> (last visited Nov. 13, 2016) (fellows moved to full-time employment with host office within one year). Two of the programs that have used supplemental funding to make program improvements have been particularly impacted by funding shortages. The Orleans Public Defender is one of the first offices that was forced to restrict services. See *supra* note 105 and accompanying text. The 15th Judicial District Public Defender’s Office in Lafayette has the largest waitlist in the state. Interview with G. Paul Marx.

224. See La. Pub. Def. Bd., *supra* note 217, at 4.

225. District defenders do not have the same degree of supervision over contract defense lawyers as they do public defenders who are their full-time employees. Interview with James Boren, *supra* note 96. Louisiana does not have mandatory or model language for public defense contracts, including any terms relative to training and supervision of contract defenders. Interview with Cecelia Bonin, *supra* note 96.

226. “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. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.” ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, *supra* note 124, at 2 cmt. 2.

227. See *supra* note 225.

228. See *supra* notes 111-114 and accompanying text.

229. See *supra* note 134.

230. Every LPDB Annual Report contains a report listing that year’s training activities. LPDB offered “an interactive one-day training focused on LPDB Trial Court Performance Standards (promulgated in April 2009) . . . in four locations across the state in January and April 2011.” 2011 LPDB ANNUAL REPORT, *supra* note 26 (unpaginated). The 2011 LPDB Annual Report is the only annual report that lists training activities specifically focused on the trial performance standards. See 2009 LPDB ANNUAL REPORT, *supra* note 24, at xxx-xxxii; 2010 LPDB ANNUAL REPORT, *supra* note 82, at 33-34; 2012 LPDB ANNUAL REPORT, *supra* note 101, at 33-35; 2013 LPDB ANNUAL REPORT, *supra* note 106, at 34-36; 2014 LPDB ANNUAL REPORT, *supra* note 64, at 32-34; 2015 LPDB ANNUAL REPORT, *supra* note 102, at 41-43.

231. See 2012 LPDB ANNUAL REPORT, *supra* note 101, at 33-35; 2013 LPDB ANNUAL REPORT, *supra* note 106, at 34-36; 2014 LPDB ANNUAL REPORT, *supra* note 64, at 32-34; 2015 LPDB ANNUAL REPORT, *supra* note 102, at 41-43.

232. *E.g.*, Interview with Cecelia Bonin, *supra* note 96; Interview with G. Paul Marx, *supra* note 120. Public defenders hired after the spring of 2011 never would have had an opportunity to attend a training focused on the trial performance standards. See *supra* note 230 and accompanying text.

233. Interview with Derwyn Bunton, *supra* note 120. For example, Bunton’s contract with LPDB includes monthly, quarterly, semi-annual, and annual caseload variances, *e.g.*, maximum percentages by which the OPD can exceed the LIDB maximum caseload limit “[p]rovided that District Defender may do so without diminishing the quality of Representational Services being delivered to Eligible Clients in the District[.]” FY 17 Contract for Public Defender Services by and between the Louisiana Public Defender Board and Derwyn D. Bunton, District Defender, 41st Judicial District (July 2016). Per the contract, Orleans’ caseload variance should not exceed 20 percent in a month or 5 percent in a year. *Id.* When Bunton has asked LPDB staff about relying on the caseload variance as a basis for case refusal, staff has responded that the contractual caseload variance provision is “aspirational.” Interview with Derwyn Bunton.

234. See *supra* notes 201-202 and accompanying text.

235. See LA. ADMIN. CODE tit. 22, pt. 15, § 1705.

236. See LA. ADMIN. CODE tit. 22, pt. 15, § 1701(A).

237. See *supra* note 134 and accompanying text.

238. For example, at the end of 2015, three districts that were in restriction of services had caseloads more than three times higher than the LIDB maximum caseload limit: District 26 (average attorney caseload of 4.41 times LIDB limit), District 28 (3.05), and District 34 (3.46). See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 508, 545, 651.

239. See *supra* note 135 and accompanying text.

240. Interview with Cecelia Bonin, *supra* note 96; Interview with Derwyn Bunton, *supra* note 120; Interview with G. Paul Marx, *supra* note 120.

241. See, *e.g.*, *State v. Wroten*, Criminal District Court No. 520-385, Div. H (New Orleans, La. 2015).

242. Interview with Cecelia Bonin, *supra* note 96; Interview with G. Paul Marx, *supra* note 120.

243. See *supra* note 120 and accompanying text.

244. See *supra* notes 120, 230-233.

245. See *supra* notes 107-109 and accompanying text.

246. See *supra* note 196 and accompanying text.

247. See 2015 LPDB ANNUAL REPORT, *supra* note 102, at 56, 62. This figure is a simple calculation of the level of funding required to staff district public defender programs that will bring their caseloads down to the LIDB maximum caseload limit. This is a **minimum** estimate of the revenue required to fully fund district defender programs. The actual amount of revenue required for full funding likely is higher than the figure provided here, because the LIDB caseload limit exceeds the NAC caseload standards, which have been criticized as being too high. See *supra* note 124 and accompanying text. When it is complete, the ABA/LPDB workload study will provide a more solid foundation for determining the level of revenue that is required to support standards-based representation across Louisiana's district defender programs.

248. See POSTLETHWAITE & NETTERVILLE & STANDING COMM. LEGAL AID & INDIGENT DEFENDANTS, AM. BAR ASS'N, THE LOUISIANA PROJECT: A STUDY OF THE LOUISIANA DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS (2017).

249. *Id.* at 2.

250. *Id.*

251. See *supra* notes 34-36, 49, 55-58, 97-114 and accompanying text.

252. See *supra* notes 115, 187-192 and accompanying text.

253. Texas is an example of a state where court costs partially fund public defense, and those funds are pooled at the state level and distributed back to county public defender programs according to a formula. See *infra* note 256. See also NLADA REPORT, *supra* note 28, at 20-21 (describing Alabama public defense funding system, which pools dedicated fees on criminal convictions at the state level).

254. NACDL does not endorse the practice of imposing fees on pretrial diversions, as such fees can exclude indigent defendants from pretrial diversion programs for no reason other than their inability to pay program fees. Louisiana does impose fees on pretrial diversions. See *infra* notes 255-256 and accompanying text.

255. See *supra* notes 180, 185 and accompanying text.

256. For example, in Texas over 8 percent of the consolidated fee paid on a "conviction" for a criminal offense is allocated to the fair defense account. See TEX. LOC. GOV'T CODE § 133.102(e)(14). For purposes of collecting this court fee, a "conviction" includes diversions that involve deferred dispositions, such as driver's education diversions in traffic cases. See TEX. LOC. GOV'T CODE § 133.101(2). The fair defense account is controlled by the Texas Indigent Defense Commission (TIDC), and provides the primary source of state funding for public defense in Texas. See Texas Indigent Defense Commission, Annual and Expenditure Report Fiscal Year 2015 26 (2015). In sharp contrast to Louisiana, court costs allocated to public defense provide only 12 percent of total funding for public defense in Texas. See *id.* at 3. TIDC awards most of the money received in the fair defense account to counties in the form of formula grants (paid to every county that meets certain requirements according to a formula) and discretionary grants (competitive grants for pilot and other innovative projects, such as new public defender offices that replace wheel systems for appointment of private counsel). See *id.* at 8-9, 27. Alabama is another state in which public defense is funded in part through a "fair trial tax" imposed in "each and every criminal case imposed in any municipal court." AL. CODE § 12-19-250 (2015). The fair trial tax is assessed in cases that are resolved through diversions such as deferred dispositions. Telephone Interview with Ellen Eggers, Accounting Manager, Office of Indigent Defense Services, Alabama Department of Finance (Feb. 16, 2017).

257. ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, *supra* note 124, at 3 cmt. 8.

258. See *supra* notes 138-141, 200-202 and accompanying text.

259. See *supra* notes 142, 203 and accompanying text.

260. See *supra* notes 143-144 and accompanying text.

261. A conviction that is obtained in the absence of counsel is subject to automatic reversal, without any showing of prejudice. See *U.S. v. Cronin*, 466 U.S. 648, 667 (1984). State high courts have allowed indigent defendants to seek class-based relief prior to trial when they face systemic deprivation of the right to counsel in state criminal courts. See, e.g., *Heckman*, 369 S.W. 3rd at 168. When the state failed to provide counsel to a large number of defendants due to inadequate funding for public defense, at least one state high court has ordered that defendants in custody without counsel must be released and that charges against defendants, whether in or out of custody, must be dismissed. See *Lavallee v. Justices in the Hampden Superior Ct.*, 812 N.E. 2d 895, 911 (2004). As in many other states, Louisiana courts can consider violations of the right to counsel prior to trial and conviction. See *Peart*, 621 So. 2d at 787. Louisiana courts also may prohibit the state from going forward with prosecutions of indigent defendants if funding is not available. See *State v. Citizen*, 898 So. 2d 325, 338-339 (La. 2005).

262. See ALEXANDER M. HOLSINGER, CRIME & JUST. INST., ANALYZING BOND SUPERVISION SURVEY DATA: THE EFFECTS OF PRETRIAL DETENTION ON SELF-REPORTED OUTCOMES 5-12 (2016); PRETRIAL JUSTICE INSTITUTE, THREE DAYS COUNT: COMMONSENSE PRETRIAL 1 (2015); TEXAS FAIR DEFENSE PROJECT, DEPENALIZING POVERTY: A PROPOSAL FOR IMPROVING HARRIS COUNTY BAIL POLICIES 4 (2014).

263. CHRISTOPHER T. LOWENKAMP, MARIE VANNOSTRAND & ALEXANDAR HOLSINGER, THE LAURA AND JOHN ARNOLD FOUNDATION, INVESTIGATING THE IMPACT OF PRETRIAL DETENTION ON SENTENCING OUTCOMES 3 (2013); TEXAS FAIR DEFENSE PROJECT, *supra* note 262, at 5-6; Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes* 3-4 (2016), <https://ssrn.com/abstract=2777615>.

264. See *Lavallee*, 812 N.E. 2d at 903-905.

265. See *id.* at 903-905, 911-912.

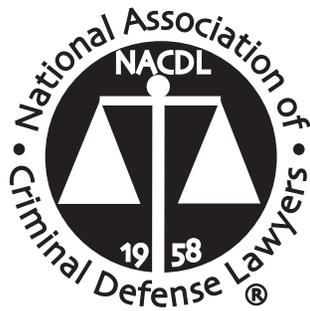
266. See *supra* notes 145-147 and accompanying text.

267. See *Lavallee*, 812 N.E. 2d, at 903-905, 911-912.

268. The Sixth Amendment to the U.S. Constitution guarantees that “[i]n all criminal prosecutions the accused shall enjoy the right to a speedy . . . trial.” U.S. CONST. amend. VI. Courts apply a multi-factor balancing test to determine whether delays in an individual’s criminal case have violated his or her constitutional speedy trial right, and one of the questions courts consider is “whether the government or the defendant is more to blame for the delay.” *Vermont v. Brillon*, 556 U.S. 81, 90 (2009) (quoting *Doggett v. United States*, 505 U.S. 647, 651 (1992)). “Delay resulting from a systemic breakdown in the public defender system could be charged to the state” for speedy trial purposes. *Id.* at 94 (internal quotations and citations omitted); see also *Boyer v. Louisiana*, 569 U.S. ___, 133 S. Ct. 1702, 1704, 1706-07 (2013) (Sotomayor, dissenting from dismissal of writ of certiorari as improvidently granted) (“delay caused by a State’s failure to fund counsel for an indigent’s defense” should weigh in favor of finding that an accused’s constitutional right to a speedy trial has been violated.) If a court finds that an accused individual’s constitutional right to a speedy trial has been violated, the remedy for that violation is dismissal of criminal charges against the individual. *Barker v. Wingo*, 407 U.S. 514, 522 (1972). At least one state high court has conditionally ordered the dismissal of criminal charges against accused individuals whose rights were violated due to a breakdown of the public defense system, though it did so under a different provision of the Sixth Amendment. See *Lavallee*, 802 N.E. 2d at 912. While the Massachusetts Supreme Judicial Court recognized that this remedy involved potential public safety risks, it found those risks were warranted under the circumstances of the constitutional violation. See *id.* at 910. (“Ensuring the public’s safety is of the first order of government, a duty underlying all government action. All involved must seek to remedy the constitutional violations we address today without unduly increasing the risk to public safety. Public safety, however, comes with a cost. One of the components of that cost is the level of compensation at which counsel for indigent defendants will provide the representation require by our Constitution.”). The most obvious way in which Louisiana could minimize the potential public safety impact of releases and case dismissals resulting from speedy trial violations, as well as from this report’s recommendations, is by prioritizing the assignment of available public defense lawyers to cases involving the most serious offenses, subject to the availability of counsel qualified to handle that class of cases. Much of Louisiana’s current case volume involves nonviolent offenses and other less serious cases. See *supra* note 10 and accompanying text.

269. See *supra* notes 230-233. ■

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