

NAPD



NATIONAL ASSOCIATION FOR PUBLIC DEFENSE

The unwavering voice for public defense throughout the nation

Tim Young
Chairman, Steering Committee

Ernie Lewis
Executive Director

Howard Snyder, Ph.D.
Deputy Director, Bureau of Justice Statistics
810 Seventh Street, NW
Washington, DC 20531

July 30, 2014

Dear Dr. Snyder

As the only national legal membership organization dedicated to the needs and concerns of public defenders and their clients, NAPD members were gratified to note the attention that your agency has recently shown to the levels of resources available to defenders across the nation (your reports numbered NCJ 246683 and NCJ 246684). Our members report to us frequently their dire resource needs, and we regard the careful documentation of those needs to be a crucial first step toward tackling this problem nationwide. We thank you for your attention to this subject, therefore, and we recognize that your studies represent some of the first, serious Federal attention to be given to this issue for many years. We are writing, however, to voice certain concerns our members have raised regarding the accuracy of the information in these reports, and also offer several suggestions they had regarding ways to make the information more reliable and useful in the future. We pass these comments on to you now in the hope they can be the beginning of a constructive conversation about the acute need in our field for sound data on which to base future evaluation and reform.

The National Association for Public Defense engages all public defense professionals into a clear and focused voice to address the grave systemic failure to provide the constitutional right to counsel, and to collaborate for solutions that bring meaningful access to justice for poor people. NAPD formed in 2013, and as it approaches its first anniversary it has united 7,000 members in 49 organizations and hundreds of individual members into a cohesive, unwavering, irreplaceable community capable of bringing justice to a broken system.

NAPD is an association of practitioners. Its leadership and membership are the real experts, working on behalf of their clients in criminal justice systems throughout the country. With no full-time staff, NAPD members are the heart and substance of the Association, and perhaps the most qualified to lead the movement to finally deliver the access to justice for poor people, as well as overcome the flawed policies that disenfranchise huge populations across specific communities – particularly communities of color. NAPD includes every professional who is critical to delivering the right to counsel: lawyers, social workers, case managers, investigators, sentencing advocates, paralegals, civil legal aid providers, education advocates, expert support, information technology gurus, financial professionals, researchers, legislative advocates, communications personnel, and administrative personnel. Our collective expertise

represents state, county and local systems through full-time, contract, and assigned counsel delivery mechanisms; dedicated juvenile, capital and appellate offices; and through a diversity of traditional and holistic practice models.

Based on feedback from our members, we have specific concerns regarding the accuracy of both the financial data and the narrative descriptions related to public defense in at least twelve states (Alaska, Colorado, Florida, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, Ohio, South Carolina and Texas). Members in Michigan and Minnesota, for example, reported to us that the state spending data were inaccurate, while one Texas member told us the totals appeared to reflect state funding for just three of the state's 254 counties. Members in New York and Colorado reported that the trend data for their respective states were misleading, one Colorado member reporting the indication that his budget increased by 100% between 2007 and 2008 was unequivocally incorrect. Our members in Alaska, Louisiana, Mississippi and elsewhere reported inaccuracies in the narrative descriptions of the public defender systems in those states, including in the ways conflict cases are handled, the different institutional auspices under which defense is administered, and the ways non-for-profit providers are used, among other issues. We would be happy to communicate more of the specific details of the issues raised, and to facilitate communication with affected states.

More broadly, our members were struck by several other issues which merit raising here as a way to begin a conversation about other research priorities for the future. First and foremost, the report addressed local spending in only a few states. The omission of local spending on defense is unfortunate not only because it represents such a large proportion of indigent defense funding in certain places, but also because the very fact of local control over spending introduces serious and often-overlooked political forces into spending decisions. One member in Louisiana, where defenders are partly funded by surcharges on traffic tickets, commented the omission of local spending "missed the point of local funding" – that it is dependent on police activity, and can also therefore be sensitive to political interference and economic pressures resulting in inconsistent revenue streams. A member in New York, where local spending is contingent on the decisions of local governments, noted "our analysis shows that local wealth, politics and demographics all affect public defense funding at the local level after caseloads are controlled." A member in Michigan, meanwhile, reflected that the true total of local funding remained "very difficult to determine" as a result of the devolution of responsibility for trial-level criminal defense services to counties in that state.

Second, while research on funding levels is valuable, its value would be enhanced if the range of services being provided in each state was clearer. In Alaska, our members report that funding of conflict defender services is hard to determine because the offices tasked with those services also provide a variety of other legal services (e.g. serving as public guardians for adults who cannot handle their own finances). Additionally, defenders in several states also provide representation to parents facing the loss of their children in civil proceedings alongside their criminal defense work, while others do not. More broadly, several of our members felt the numbers were difficult to interpret without any other data to place them in context – on the mechanisms by which services were provided (public defender, contract defenders or assigned counsel), the split between capital and non-capital representation, and defender caseloads.

It is our conclusion that the collation of reliable spending data on defense by state will require detailed state-by-state study, and a commitment to speaking with people in the field to understand the diverse methods and mechanisms by which defense is actually funded. Please be assured that many of our members stand ready to help in this effort, and would be grateful of the opportunity to communicate with you about the data and narrative information for specific states in the hope that information can be perfected in future. We would also be more than willing to communicate with you more generally about

data collection and analysis in the field of public defense in the future, which we regard as a critically under-researched area with great promise to yield important insights.

We thank you again for your attention, and look forward to communicating more in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Young', written in a cursive style.

Tim Young, Ohio State Public Defender
Chairman, NAPD

A handwritten signature in black ink, appearing to read 'Heather H. Hall', written in a cursive style.

Heather H. Hall
Development Director, NAPD