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REFRAMING PUBLIC DEFENSE

Access to Justice Initiative – U.S. Department of Justice

U.S. Department of Justice/ National Criminal Justice Association Webinar
May 15, 2014
“Let me assure you … that this is not a passing issue for the Justice Department. I have asked the entire Department to focus on indigent defense issues with a sense of urgency and a commitment to developing and implementing the solutions we need. As many of you know, we recently took an historic step to make access to justice a permanent part of the Department’s work, with a focused effort by our leadership offices to ensure that this issue gets the attention it deserves.”

- June 19, 2010, Wilmington, North Carolina
NCJA/ATJ WEBINAR SERIES

Past Webinars

- Strengthening Indigent Defense: Understanding State and Federal Resources
- Expanding Stakeholder Involvement: Promoting Inclusive System Planning
- Strengthening Court Systems: Understanding State and Federal Resources
- Defender Initiatives in Indian Country
For More Information:

Resources


• Grant Information from the Access to Justice Initiative [http://www.justice.gov/atj/grant-info.html](http://www.justice.gov/atj/grant-info.html)


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Public Value of Public Defense

Ed Monahan
KY Public Advocate

KY Department of Public Advocacy
Kentucky's statewide public defender program

Reframing Public Defense

May 15, 2014
3:00 - 4:30 PM ET
Public Defense Makes Fiscal Sense

• Protects innocent people from wrongful convictions
• Reduces the cost to counties of pretrial detention by making sure bail proceedings are proper and sensible
• Identifies defendants who are appropriate for cost-effective alternative sentencing saving the state prison costs
• Policy ideas for reducing the demand side
http://www.hks.harvard.edu/criminaljustice-backup/publications/alt_strat.pdf
To be effective as leaders of these enterprises, such people need what the private sector calls **organizational strategies**

An organizational strategy is a coherent idea that:

1) sets out the **purposes** of an enterprise and the **value** it is trying to produce;

2) identifies the **sources of support** (financial and otherwise) that it needs to sustain its operations;

3) describes how the **resources granted** to the enterprise can best be deployed to accomplish the desired goals.
Strategic Ideas
ingendering wider support for public defense

Supreme Court's mandate alone is not sufficient
to ensure high quality representation to indigent clients

1. Public Defenders as Public, Political Advocates
2. Public Defenders as Supporters of the Criminal Defense Bar
3. Representing the Whole Client
Public Defenders as Public, Political Advocates

• becoming effective advocates in the political world as well as in the courtroom
• advocacy on legislative decisions to appropriate money to indigent defense systems
• advocacy on policy decisions that affect the legal rights of those accused of crime increasing the power and authority of public defense systems
<table>
<thead>
<tr>
<th>US Total Crime Rate</th>
<th>US Violent Crime Rate</th>
<th>KY Total Crime Rate</th>
<th>KY Violent Crime Rate</th>
<th>US Incarceration Rate</th>
<th>KY Incarceration Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>-38%</td>
<td>-31%</td>
<td>-6%</td>
<td>-27%</td>
<td>139%</td>
<td>281%</td>
</tr>
</tbody>
</table>
Unsustainable Incarceration Spending
Kentucky Chamber report:
THE LEAKY BUCKET 2010

• KY has had low violent crime rates yet rising incarceration rates

• KY spends twice as much per prisoner as it does per student

• 25% of prisoners are incarcerated for a drug offense

Public Value of Public Defense
3 KY examples

1. Alternative sentencing social worker program
2. Advocating for pretrial release at first appearance
3. 10 commonsense ideas to safely reduce waste in criminal justice system
Each DPA alternative sentencing social worker saves a net of $100,000 in incarceration costs.
For every $1.00 spent on social worker alternative sentencing services there is a $4.47 to $6.80 savings

Robert Walker, M.S.W., L.C.S.W.
Assistant Professor
Department of Behavioral Science and Center on Drug and Alcohol Research
University of Kentucky

August 2013 University of Kentucky Center on Drug and Alcohol Research Report, The Kentucky Department of Public Advocacy Social Worker Alternative Sentencing Program Pilot Evaluation Study 2013
National Criminal Justice Association Outstanding Criminal Justice Program Award, 2011
In 2012 Harvard Kennedy School Ash Center for Democratic Governance and Innovation names the DPA Social Worker Program one of the “Top 25 Innovations in Government”

“As the state’s revenues continue to improve, we will have to see if we can expand this nationally recognized program’s reach even more.”

House Speaker Greg Stumbo
Floyd County Times
After Implementation of HB 463, Pretrial Release Rates Increase 3% Statewide

Year before 463 (June 8, 2011 – June 7, 2012)  65%

July 1, 2013 - March 31, 2014  68%
2013 National Association of Pretrial Service Agencies
John C. Hendricks Pioneer Award to the Kentucky Department of Public Advocacy for Pretrial Release Advocacy
KY Defenders’ Nationally recognized

✔ Alternative Sentencing Social Workers
✔ First appearance/pretrial release initiative

Promoting evidence based policies and practices that

1) advance public safety, and
2) save counties and the state incarceration costs
10 commonsense ways to maintain public safety and reduce costs for counties and state for 2014

1. Expand DPA alternative sentencing social worker program
2. Alternative sentencing plan for flagrant nonsupport
3. Create “clear and convincing” standard for pretrial release decision
4. Reclassify minor misdemeanors to violations
5. Create “gross misdemeanor” classification for low level felonies
6. Presume parole for eligible low-risk offenders
7. Promote employment/reduce recidivism: create Class D felony expungement
8. Reduce waste by limiting capital prosecutions
9. Amend violent offender and PFO statutes to insure KY’s most costly punishments are used to protect public safety
10. Increase felony theft level
10 Commonsense ways to reduce waste in Kentucky's criminal justice system: Lasting and Unrealized Benefits of HB 463

Through the foresight of Kentucky leaders, HB 463 has brought significant savings while not adversely affecting public safety. This is what taxpayers want. However, more reforms are necessary to continue to safely reduce waste in the Kentucky criminal justice system and to fully achieve what taxpayers want. While the Kentucky crime rate declines, the Kentucky corrections population continues to be above projections at a significant and unnecessary cost to the state. There are sound measures to address the waste.

1. $3.7+ million yearly net incarceration savings to the state by creating alternatives to incarceration
2. $3.5 million by providing alternative sentencing plans for flagrant non-support instead of imprisonment for felons
3. Substantial savings from reducing days in the county jail by creating "clear and convincing" standard for the pretrial release decision
4. Substantial savings from reclassifying minor misdemeanors to violations
5. Substantial savings from creating "gross misdemeanor" classification for low level felonies
6. Substantial savings from presenting parole for eligible low-risk offenders
7. Up to $8.4 million in new revenue from promoting employment/reducing recidivism by creating Class D felony expungement
8. Substantial savings from reducing waste by limiting capital prosecutions
9. Substantial savings from modifying violent offender and PFO statutes
10. Increase the felony theft limit from $500 to $2,000

The imprisonment level is above projections no doubt for a variety of factors. One of those factors is a decline in the parole rate as indicated by the following data:

<table>
<thead>
<tr>
<th>Parole Board Grant Rates</th>
<th>FY 12-13</th>
<th>13-Oct</th>
<th>13-Nov</th>
<th>13-Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parole Recommendation Rate</td>
<td>65%</td>
<td>53%</td>
<td>55%</td>
<td>54%</td>
</tr>
<tr>
<td>All Cases Recommendation Rate</td>
<td>54%</td>
<td>39%</td>
<td>43%</td>
<td>41%</td>
</tr>
<tr>
<td>Initial Parole Rate</td>
<td>67%</td>
<td>56%</td>
<td>55%</td>
<td>56%</td>
</tr>
<tr>
<td>Deferred Parole Rate</td>
<td>63%</td>
<td>49%</td>
<td>55%</td>
<td>50%</td>
</tr>
<tr>
<td>File Review Parole Rate</td>
<td>67%</td>
<td>54%</td>
<td>56%</td>
<td>56%</td>
</tr>
<tr>
<td>Face to Face Parole Rate</td>
<td>60%</td>
<td>49%</td>
<td>48%</td>
<td>45%</td>
</tr>
</tbody>
</table>
Promoting value of public defense

• Testimony with independent evaluator to legislature with video of social workers program, independent evaluator, public endorsements from judges, prosecutors, Justice Cabinet, KY Chamber of Commerce, seeking award recognition

• Individual visits to key legislators

• Statewide newsletters to judges and legislators

• Speaking to county judge executive conference with independent evaluator
2015-16 progress

DPA provided funding from the KY General Assembly for 15 additional alternative sentencing social workers

More info (PP’s, Studies, Endorsements) at: http://dpa.ky.gov/
COLLABORATION:
Two or more people working together towards shared goals
THREE BASIC MODELS

- **Start-up Collaboration:** Start with a small grant and one or two partners, then grow.

- **Progressive Collaboration:** Start with a collaborative group of partners who will each bring a part of what is needed to the table. Then add additional partners as the need arrives and the vision expands.

- **Major Collaboration:** Develop a comprehensive collaboration of all agencies, organizations, individuals necessary to achieve and implement the overarching goal or mission.
START UP COLLABORATION
START UP COLLABORATION

CHILDREN OF INCARCEATED PARENTS PROGRAM
• Zellerbach Family Foundation
• San Francisco Children of Incarcerated Parents Partnership (http://www.sfcipp.org/)
• SF Police Department
• Child Protective Services
• Initial Funding Level: $60,000 per yr
PROGRESSIVE COLLABORATION
PROGRESSIVE COLLABORATION

MAGIC PROGRAMS
MAGIC PROGRAM COLLABORATORS

- United Way
- SF Public Defender’s Office
- One dozen non-Profit Organizations and Neighborhood Groups
- Initial Funding Level: $45,000 per yr

(http://www.bayviewmagic.org/)
(http://www.momagic.org/)
MAJOR COLLABORATION

SF REENTRY COUNCIL
The Reentry Council is composed of 23 members. The membership includes 16 representatives of the following entities:

- Office of the Mayor
- Public Defender’s Office
- District Attorney’s Office
- Sheriff’s Department
- Adult Probation Department
- Board of Supervisors
- Police Department
- Juvenile Probation Department
- Department of Economic and Workforce Development
- Human Services Agency
- Department of Public Health
- Department of Children, Youth, and Their Families
- Department of Child Support Services
- San Francisco Superior Court
- California Department of Corrections and Rehabilitation Division of Adult Parole Operations
- United States Probation and Pretrial Services System
KEYS TO EFFECTIVE COLLABORATION

- CHOOSE YOUR PARTNERS BASED ON NEED CRITERIA
- CLEARLY DEFINE WHAT IS REQUIRED OF EACH PARTNER
- INVITE EXPERTS TO PARTICIPATE AND STUDY LITERATURE AND BEST PRACTICES
- FOCUS ON RESULTS, NOT PERSONALITIES
- BRING IN A PROFESSIONAL GRANTWRITER IF POSSIBLE, PARTICULARLY FOR LARGE GRANTS
Simin Shamji

*Director of Specialty Courts & Reentry Programs*
## Snapshot of SF Public Defender Initiatives

<table>
<thead>
<tr>
<th>Program</th>
<th>Funds</th>
<th>Funding Source</th>
<th>Partners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clean Slate Program</td>
<td>1 Attorney</td>
<td>Office general funds</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 Legal Assistant</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 Criminal Justice Specialist</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children of Incarcerated Parents Program (CIP)</td>
<td>1 FTE Social Worker</td>
<td>Initial funding source: Zellerbach Family Foundation</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Presently: Office general funds</td>
<td></td>
</tr>
<tr>
<td>Reentry Unit Social Worker</td>
<td>1 FTE Social Worker</td>
<td>Byrne JAG funds</td>
<td>Adult Probation, District Attorney, Police, Office of the Mayor, Sheriff</td>
</tr>
<tr>
<td>Employment Specialist</td>
<td>1 FTE Social Worker</td>
<td>Private: META Fund</td>
<td>None</td>
</tr>
<tr>
<td>Checklists For Defense: A Training Strategy for Public Defenders</td>
<td>.50 FTE Attorney .50 FTE Legal Assistant</td>
<td>BJA: Encouraging Innovation</td>
<td>Center for Court Innovation, NY Alameda Public Defender</td>
</tr>
<tr>
<td>Legal Education Advocacy Project (LEAP)</td>
<td>1 FTE Attorney 1 FTE Youth Advocate</td>
<td>Board of State and Community Corrections</td>
<td>None</td>
</tr>
</tbody>
</table>
Federal Funding Available to Indigent Defense Providers

- Indigent Defense
- Procedural Justice, Reducing Bias and Supporting Racial Reconciliation
- Technical Assistance
- Civil Legal Remedies
- Reducing Unnecessary Confinement
- Bail Reform & Diversion Strategies
- Sentinel Events Initiative: Criminal Justice System Errors
- Innovative Initiatives
Demystifying the Grant Process

- **An idea**
  - Local needs with widespread (in some cases, national) applicability
    - cost savings; impact on recidivism; evidence based; strengthen criminal justice system as a whole; addresses an issue in your jurisdiction; innovative;
  - What have other jurisdictions done?
  - Look at previous grant applications
  - What has already been funded?

- **Support from Leadership**
  - Return on investment
  - Overall benefit to the criminal justice system:
    - Brings meaning to constitutional guarantees:
      - right to counsel
      - quality representation
      - accountability
    - Improves legal outcomes for our clients
Demystifying the Grant Process, continued

- **Planning**
  - The grant process is very time consuming
  - Identify grant sources (federal, state, local, private, foundations)
  - Needs assessment.
  - Identifying strong (research) partners
  - Requirements of the grant can be onerous (letters of support; MOAs; local approval)
  - Develop contacts

- **Collaboration**
  - Identify stakeholders/partners: criminal justice agencies other governmental agencies
  - Non profit organizations
  - Research Partners
  - Philanthropy arm of private corporations
Demystifying the Grant Process, continued

- **Independent Evaluation**
  - Strengthen future applications & renewals
  - Program credibility with funders, criminal justice partners.
  - Identify cost savings; impact on recidivism;
  - Sustainability

- **Grant Writer**
  - Ideal but not necessary
  - Identify staff in the office who may already have grant writing experience and/or public policy background
  - Research & training department
Demystifying the Grant Process, continued

- Think outside the box
  - Be innovative & bold
  - Look for funding sources inside and outside government
    - Network
    - Small working groups
  - Partner with other agencies
    E.g., Civil Legal Remedies:
    - Dept. of Labor grant in partnership with SF Sheriff
    - BJA grant in partnership with Adult Probation Department

- Apply

- Reapply
  - Peer review comments
    - Valuable insight; hidden gems for future applications
More Information

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THANK YOU FOR JOINING US

Please Join Us For Our Next Webinar

The Evidence Behind Pretrial: Enhancing the Use of Data-Driven Decision-Making
May 15, 2014 - 3:00-4:30PM ET

Today’s slides and a recording of this webinar will be available at:

www.ncja.org/webinars-events/ncjabja-webinar-series/webinar-archives

This webinar series is supported by Grant No. 2010-DB-BX-K086 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions are those of the speakers. - See more at: http://www.ncja.org/webinars-events/ncjabja-webinar-series/webinar-archives#sthash.k2bHIlvs.dpuf