

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KAHJEY WARREN, KHALID :
BROCKMAN JR., DAVID :
MCCAULEY, ASHLEY SCALI, : No. _____
JUDSON RIDEOUT, FAITH PEPE, : Class Action
DARRYL SHADLE, ALLEN : Original Jurisdiction
WEYANT, ZACHERY SELLERS, :
JESSICA SCHMIDT, ANDREW : **PETITION FOR REVIEW**
CULLEY, JASON HICE, DUSTIN : **IN THE NATURE OF AN**
GALASSO, ROBBY ROBERTSON, : **ACTION IN EQUITY**
SHANNON SORD, HEATHER HICE, : **AND FOR DECLARATORY**
and SCOTT WELSH on behalf of : **JUDGMENT**
themselves and all persons similarly :
situated, :

Petitioners,

v.

COMMONWEALTH OF :
PENNSYLVANIA; JOSH D. :
SHAPIRO, in his official capacity as :
Governor of the Commonwealth of :
Pennsylvania; KIM L. WARD, in her :
official capacity as President Pro :
Tempore of the Pennsylvania Senate; :
JOANNA E. MCCLINTON, in her :
official capacity as the Speaker of the :
Pennsylvania House of :
Representatives, :

Respondents.

Witold J. Walczak (No. 62976)
Stephen Loney (No. 202535)
Veronica Miller (No. 314525)
Ariel Shapell (No. 330409)
Solomon Furious Worlds (No.
333677)

AMERICAN CIVIL
LIBERTIES UNION OF
PENNSYLVANIA

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NOTICE TO PLEAD

To the Commonwealth of Pennsylvania, Josh D. Shapiro, in his official capacity as Governor of the Commonwealth of Pennsylvania, Kim L. Ward, in her official capacity as President Pro Tempore of the Pennsylvania Senate, and Joanna E. McClinton, in her official capacity as the Speaker of the Pennsylvania House of Representatives: You are hereby notified to file a written response to the enclosed Class Action Petition for Review within twenty (30) days from service hereof, or such other time as the Court prescribes, or judgment may be entered against you.

Dated: June 13, 2024

/s/ Ariel Shapell _____

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (30) days after this complaint and notice are served, in accordance with Pennsylvania Rule of Appellate Procedure 1516(b), by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the petitioners. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THE BELOW OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Lawyer Referral Service
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

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Respondents.

CLASS ACTION PETITION FOR REVIEW ADDRESSED TO
THE COURT’S ORIGINAL JURISDICTION

INTRODUCTION

1. This class action seeks to protect the rights to counsel, due process, and equal protection of the laws for indigent people charged with crimes in the Commonwealth of Pennsylvania (the “Commonwealth”). These rights, which are enshrined in the United States and Pennsylvania Constitutions, obligate the Commonwealth to provide effective representation to people charged with crimes who are unable to afford to hire their own attorneys, no matter the county in which they are charged. The Commonwealth has failed to meet this constitutional obligation, and instead has delegated nearly all funding and oversight responsibilities for indigent defense services to the counties. This approach to indigent defense funding has failed. Many—too many—counties have shown that they lack either the capacity or the political will to adequately fund or supervise these services. As a result, indigent Pennsylvanians regularly face criminal prosecution without effective assistance of counsel at each stage of their criminal proceedings.

2. Named Petitioners Kahjey Warren, Khalid Brockman Jr., David McCauley, Ashley Scali, Judson Rideout, Faith Pepe, Darryl Shadle, Allen Weyant, Zachery Sellers, Jessica Schmidt, Andrew Culley, Jason Hice, Dustin Galasso, Robby Robertson, Shannon Sord, Heather Hice, and Scott Welsh are among the tens of thousands of indigent people across the Commonwealth who face the likelihood

of substantial and immediate irreparable injury—the effective denial of their right to counsel—and have no adequate remedy at law.

3. Petitioners have already been harmed—and face continued harm and deprivation of their rights—by the systemic failure of the Commonwealth to provide for indigent defense, as three examples (among many) illustrate.

- a. Petitioner Kahjey Warren has never spoken to his public defender attorney, despite being detained at the Lebanon County Correctional Facility since February 7, 2024. Mr. Warren’s only communication from his attorney came in the form of a letter informing Mr. Warren that his attorney had continued his trial until September 2024, purportedly on Mr. Warren’s request, despite Mr. Warren having never spoken to his attorney.
- b. Confined in the Clearfield County Corrections Facility for nearly three months without any contact from his public defender attorney, Petitioner Brockman filed a *pro se* motion to dismiss his charges after his numerous attempts at outreach to his public defender attorney went ignored. When Petitioner Brockman appeared in court for a hearing on his motion, his public defender attorney withdrew from his cases without first consulting with him.

c. Petitioner McCauley’s part-time public defender attorney attempted to solicit \$3,500 from Mr. McCauley to represent him, before revealing at a later hearing that he worked with the Clearfield County Office of the Public Defender and had subsequently been appointed to represent Mr. McCauley for free.

4. The other fourteen Petitioners, from Bedford, Blair, Clearfield, Fayette, Lancaster, Luzerne, Northampton, and Schuylkill counties, have experienced similar harms from underfunded and under-supervised indigent defense attorneys who have failed to communicate with them, investigate their cases, or effectively advocate for them.

5. The right to counsel is a bedrock of our nation’s, and Pennsylvania’s, criminal justice systems. The Supreme Court of Pennsylvania has emphasized that “[t]he right to counsel ‘is one of the safeguards of the Sixth Amendment deemed necessary to [e]nsure fundamental human rights of life and liberty,’ and serves as one of the ‘essential barriers against arbitrary or unjust deprivation of human rights.’” *Kuren v. Luzerne County*, 146 A.3d 715, 733 (Pa. 2016) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 462 (1938)). “No other guarantee in the Bill of Rights that affects the criminal justice system,” the Court stressed, “parallels the right to counsel in its universality.” *Id.* at 736.

6. Until recently, the Commonwealth has provided no funding for its indigent defense system.¹ Nor has the Commonwealth provided any substantive oversight of indigent defense services.² Instead, under the Public Defender Act of 1968, 16 P.S. § 9960.1, *et seq.*, the Commonwealth has delegated its responsibility for funding and supervising indigent defense services almost entirely to the counties. The Commonwealth has, thus, despite decades of evidence of systemic failures by the counties to provide constitutionally adequate representation for indigent defendants, failed to ensure that county-based indigent defense services meet constitutional standards.

7. Without the necessary financial support and oversight from the Commonwealth, nearly all of Pennsylvania’s 67 counties fail to provide consistently effective representation to the indigent through each phase of their criminal proceedings. In addition, both the resources for and the quality of representation for indigent defendants varies drastically from county to county.

¹ For the first time, in the 2023-24 budget, the legislature appropriated and Governor Josh D. Shapiro approved \$7.5 million for indigent defense services. That appropriation, while a welcome start, is not nearly enough to significantly address Pennsylvania’s massively underfunded indigent defense system. See *infra*, Section II.

² On December 13, 2023, the General Assembly passed H.B. 1300, creating the Indigent Defense Advisory Committee (“IADC” or the “Committee”). PL 2441, Act No. 34 of 2023. The Committee was established to propose, for the first time, statewide minimum standards for indigent defense services, provide training for appointed counsel, and collect data, among other responsibilities. After receiving two proposed standards from the IADC, the Supreme Court adopted two general preliminary standards governing the provision of indigent defense services. See *supra* note 86.

8. Excluding the Defender Association of Philadelphia, which is exempted from the Public Defender Act, Pennsylvania is tied with Mississippi for the lowest funded state indigent defense system on a per capita basis.³

9. A lack of funding and oversight has left the many skilled and dedicated attorneys working in Pennsylvania’s public defender offices and as conflict counsel (together, “indigent defense attorneys”) with caseloads that far exceed national workload standards.

10. As a result, most indigent persons accused of crimes are systematically subjected to prosecution without counsel; are appointed token “standby” counsel minutes before they plead guilty; or are constructively denied counsel because their appointed lawyers do not have the time and resources to provide effective assistance at all critical stages in their assigned cases.

11. Across Pennsylvania’s indigent defense system, the traditional markers of effective representation are absent or significantly compromised: indigent defendants are often unable to communicate consistently or confidentially with their attorneys; overwhelming caseloads prevent indigent defense attorneys from

³ *Pennsylvania Indigent Criminal Defense Services Funding and Caseloads*, Pennsylvania General Assembly Legislative Budget and Finance Committee at S-6 (Oct. 2021), <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/701.pdf> (last visited Apr. 17, 2024) (Philadelphia has a total county population of 1.6 million and a per-capita spending of \$30.20 in 2019. Removing Philadelphia’s 2019 spending and population would give Pennsylvania a \$7.20 per capita spend); David Carroll and Aditi Goel, *The State of the Nation on Gideon’s 60th Anniversary*, Sixth Amendment Center (Mar. 14, 2023), <https://6ac.org/the-state-of-the-nation-on-gideons-60th-anniversary/> (last visited Apr. 17, 2024) (calculating per capita funding by total state population).

adequately investigating the facts, researching legal issues, filing appropriate pre-trial motions, and preparing for critical-stage proceedings; expert witnesses are rarely engaged; and counsel negotiate plea deals without first learning about their clients and the circumstances of their alleged crimes. In short, public defender attorneys and conflict counsel lack the time, training, resources, and/or experience to advocate for all of their clients and provide a constitutionally-mandated level of representation.

12. Over the past three decades, all three branches of Pennsylvania’s government have recognized this constitutional crisis.

13. In 2003, the Supreme Court’s Committee on Racial and Gender Bias in the Justice System found that Pennsylvania was “generally not fulfilling its obligation to provide adequate, independent defense counsel to indigent persons” and that these constitutional deficiencies resulted, in part, from “the Commonwealth’s failure to provide sufficient funding and other resources, along with a lack of statewide professional standards and oversight.”⁴

14. Eight years later, the General Assembly’s Task Force and Advisory Committee on Services to Indigent Criminal Defendants urged “the General Assembly to perform its duties under the U.S. Constitution and as a civilized society

⁴ *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System*, Supreme Court of Pennsylvania at 164 (2003).

by finally addressing the deficiencies that undermine its indigent criminal defense system by reforming the system to comply with national standards.”⁵

15. In 2020, the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness remarked that Pennsylvania’s lack of state funding for indigent defense services “is an abdication of the state’s constitutional responsibility” and found that “county-funded public defender offices” have budgets that are “woefully inadequate to provide ... services effectively.”⁶

16. Governor Josh D. Shapiro stressed in his 2023 budget address that Pennsylvania’s “criminal justice system falls short” when it comes to indigent defense funding as public defender attorneys are often “underpaid and under resourced.”⁷ In his 2024 budget address, the Governor noted that prior to allocating \$7.5 million to indigent defense services in his 2023 budget, “Pennsylvania was only one of two states in the nation that didn’t provide any state funding for public defenders,” a “shameful distinction.”⁸

⁵ *A Constitutional Default: Services to Indigent Criminal Defendants in Pennsylvania*, The General Assembly’s Task Force and Advisory Committee on Services to Indigent Criminal Defendants at 4 (2011).

⁶ *Memorandum in Support of Reform of the Provision of Criminal Indigent Defense Services in Pennsylvania*, Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness at 1-2 (Oct. 28, 2020).

⁷ Governor Shapiro’s 2023 Budget Address as Prepared (Mar. 7, 2023), <https://www.governor.pa.gov/newsroom/governor-shapiros-2023-budget-address-as-prepared/> (last visited Apr. 17, 2024).

⁸ Governor Shapiro’s 2024-2025 Budget Address as Prepared (Feb. 6, 2024), <https://www.governor.pa.gov/newsroom/governor-shapiros-2024-25-budget-address-as-prepared/> (last visited Apr. 7, 2024).

17. In *Kuren v. Luzerne County*, the Supreme Court of Pennsylvania considered a class action lawsuit regarding Luzerne County’s failure to properly fund its public defender office, causing widespread constructive denials of the right to counsel. In a landmark decision, the Court held that “a cause of action exists entitling a class of indigent criminal defendants to allege prospective, systemic violations of the right to counsel due to underfunding, and to seek and obtain an injunction forcing a county to provide adequate funding to a public defender’s office.” 146 A.3d 715, 718 (Pa. 2016).

18. Looking beyond the single county defendant in that case, the Court recognized that counties across the Commonwealth were failing to adequately fund their indigent defense services. *Id.* at 749; *see also Commonwealth v. Harris*, No. 31 EAP 2022, 2024 WL 2120894, at *13 (Pa. May 13, 2024) (Wecht, J., concurring) (quoting *Commonwealth v. Ricker*, 170 A.3d 494, 518 (Pa. 2017) (Wecht, J., dissenting) (county public defender offices are “chronically (and unlawfully) underfunded”)). Emphasizing that the Commonwealth bears the ultimate responsibility to provide for the right to counsel, the Court stressed that “compliance with *Gideon* should not—cannot—depend upon the county in which a crime is alleged.” *Id.* The Court noted that “Pennsylvania holds the dubious distinction of being the only state in the nation that continues to rely exclusively upon local, rather than state-wide, funding of public defender’s offices.” *Id.* The Court recognized that

“statewide funding lies ‘at the core of nearly every reform recommendation’ pertaining to improving the quality of indigent defense.” *Id.* (quoting *Commonwealth v. McGarrell*, 87 A.3d 809, 811 n.3 (Pa. 2014) (Saylor, J., dissenting)).

19. The Court further emphasized the judiciary’s role in protecting the right to counsel, stating that the Pennsylvania courts have “inherent authority to ensure that indigent defendants receive constitutionally adequate assistance of counsel.” *Id.* (quoting *McGarrell*, 87 A.3d at 810 (Saylor, J., dissenting)).

20. Despite this near-universal acknowledgement that Pennsylvania’s indigent defense system desperately needs repair, the fundamental systemic problems persist. Petitioners ask this Court to declare that the Commonwealth has an obligation under the Pennsylvania and United States Constitutions to provide for the right to counsel, as the Supreme Court of Pennsylvania recognized in *Kuren*, so that indigent people receive effective assistance of counsel without unjustifiable discrepancies in the quality of their representation across counties. *See* 146 A.3d at 749 (recognizing “our Commonwealth’s obligation to comply meaningfully and completely with *Gideon*”). Petitioners further seek a declaration that the Commonwealth’s delegation of its constitutional responsibility to provide for the right to counsel to the counties, through the Public Defender Act, has led to widespread violations of the right to counsel, due process, and equal protection.

JURISDICTION AND VENUE

21. Respondents are officers or entities of the Commonwealth government.

This Court therefore has original jurisdiction under 42 Pa.C.S. § 761(a)(1).

22. This Court may grant declaratory relief pursuant to 42 Pa.C.S. § 7532, *et seq.*, and may grant injunctive relief pursuant to 42 Pa.C.S. § 7531, *et seq.*

PARTIES

I. The Petitioners

23. Petitioner **Kahjey Warren** has been charged in Lebanon County with a lead offense of burglary - overnight accommodations, person present, 18 Pa.C.S.A. § 3502(a)(1)(ii), a felony of the first degree.⁹ Mr. Warren qualified for representation by the Lebanon County Office of the Public Defender because he is indigent. Mr. Warren has never seen or spoken to his attorney since his arrest on February 7, 2024. On June 1, 2024, Mr. Warren received a letter from a public defender attorney informing him that his trial had been continued until September, purportedly on Mr. Warren's request. But Mr. Warren did not make any such request, as he has never spoken to his attorney. Mr. Warren remains incarcerated as he awaits a call of the list, scheduled for September 3, 2024.

⁹ In connection with the same case, Mr. Warren has also been charged with criminal mischief - intentionally damages property, 18 Pa.C.S.A. § 3304(a)(5), a misdemeanor of the third degree, theft by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), a misdemeanor of the third degree, and harassment - subject others to physical contact, 18 Pa.C.S.A. § 2709(a)(1), a summary offense.

24. Petitioner **Khalid Brockman Jr.** has been charged in Clearfield County with a lead offense of burglary - overnight accommodations, person present, commits, attempts or threatens to commit a bodily injury crime, 18 Pa.C.S.A. § 3502(a)(1)(i), a felony of the first degree.¹⁰ Mr. Brockman qualified for representation by the Clearfield County Office of the Public Defender because he is indigent. Mr. Brockman's attorneys failed to meet with him, despite his numerous attempts at outreach. When his attorneys ignored his request to file a motion to dismiss his charges, Mr. Brockman filed his own motion. Without consulting with Mr. Brockman, his attorneys withdrew from his cases, leaving him unrepresented. On June 6, 2024, Mr. Brockman was appointed stand-by counsel in one of his cases. Mr. Brockman remains incarcerated while he awaits a currently-unscheduled trial.

25. Petitioner **David McCauley** has been charged in Clearfield County with a lead offense of fleeing or attempting to elude an officer, 75 Pa.C.S.A. § 3733(a), a felony of the third degree.¹¹ Mr. McCauley qualified for representation

¹⁰ In connection with the same case, docketed at CP-17-CR-0000171-2024, Mr. Brockman has also been charged with two counts of criminal trespass - breaking into a structure, 18 Pa.C.S.A. § 3503(a)(1)(ii), a felony of the second degree, terroristic threats with intent to terrorize another, 18 Pa.C.S.A. § 2706(a)(1), a misdemeanor of the first degree, simple assault, 18 Pa.C.S.A. § 2701(a)(1), a misdemeanor of the first degree, evading arrest or detention on foot, 18 Pa.C.S.A. § 5104.2(a), a misdemeanor of the second degree, criminal mischief - intentionally damages property, 18 Pa.C.S.A. § 3304(a)(5), a misdemeanor of the third degree, and harassment - subject others to physical contact, 18 Pa.C.S.A. § 2709(a)(1), a summary offense. Additionally, he has been charged with intimidating witnesses - elude, evade or ignore request, 18 Pa.C.S.A. § 4952(a)(5), a felony of the third degree, on a case docketed at CP-17-CR-0000365-2024.

¹¹ In connection with the same case, docketed at CP-17-CR-0000344-2024, Mr. McCauley has also been charged with DUI: controlled substance - schedule 2 or schedule 3 - 1st offense, 75 Pa.C.S.A. § 3802(d)(1)(ii), an ungraded misdemeanor, DUI: controlled substance - metabolite - 1st offense, 75 Pa.C.S.A. § 3802(d)(1)(iii), an ungraded misdemeanor, DUI: controlled substance - impaired ability - 1st offense, 75 Pa.C.S.A. § 3802(d)(2), an ungraded misdemeanor, driving while operating privileges were suspended or revoked, 75 Pa.C.S.A. § 1543(a), a summary offense, driving an unregistered vehicle, 75 Pa.C.S.A. § 1301(a), a summary offense, operating a vehicle without

by the Clearfield County Office of the Public Defender because he is indigent. Mr. McCauley has been held in pretrial detention since March 25, 2024. Mr. McCauley remained in pretrial detention from May 8, 2024, when the judge stated that he would sign an order releasing Mr. McCauley to a homeless shelter until (at least) June 12, 2024, because his public defender attorney had not presented a proposed release order for the judge to sign. Mr. McCauley is awaiting a currently-unscheduled trial.

26. Petitioner **Ashley Scali** has been charged in Luzerne County with a lead offense of manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered, 35 P.S. § 780-113(a)(30), an ungraded felony.¹² Luzerne County Adult Probation & Parole is also seeking to revoke her probation in a separate case. Ms. Scali qualified for representation by the Luzerne County Office of the Public Defender because she is indigent. But no attorney from the Luzerne County Office of the Public Defender represented Ms. Scali at her preliminary hearing, which she waived on the advice of a jail employee. As of June 12, 2024, Ms. Scali had yet to speak with an attorney about her open case,

valid inspection, 75 Pa.C.S.A. § 4703(a), a summary offense, operating a vehicle without required financial responsibility, 75 Pa.C.S.A. § 1786(f), a summary offense, duties at stop sign, 75 Pa.C.S.A. § 3323(b), a summary offense, careless driving, 75 Pa.C.S.A. § 3714(a), a summary offense, and failure to use safety belt - driver and front seat occupant, 75 Pa.C.S.A. § 4581(a)(2)(ii), a summary offense. Mr. McCauley has also been charged with theft by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), a felony of the third degree, and receiving stolen property, 18 Pa.C.S.A. § 3925(a), a misdemeanor of the third degree on a case docketed at CP-17-CR-0000343-2024.

¹² In connection with the same case, Ms. Scali has also been charged with intentionally possessing a controlled or counterfeit substance by a person not registered, 35 P.S. § 780-113(a)(16), an ungraded misdemeanor, five counts of use or possession of drug paraphernalia, 35 P.S. § 780-113(a)(32), an ungraded misdemeanor, and public drunkenness and similar misconduct, 18 Pa.C.S.A. § 5505, a summary offense.

despite being held in the Luzerne County Prison since February 18, 2024. She has her next scheduled court date on July 1, 2024, for a dispositional hearing.

27. Petitioner **Judson Rideout** has been charged in Northampton County with a lead offense of burglary - not adapted for overnight accommodations and no person present, 18 Pa.C.S.A. § 3502(a)(4), a felony of the second degree.¹³ Mr. Rideout qualified for representation by court-appointed counsel because he is indigent. Following his arrest on November 17, 2023, he was appointed an attorney whom he first met on February 6, 2024. As of June 7, 2024, Mr. Rideout had not spoken with his attorney since that first meeting in February. Mr. Rideout remains incarcerated pending his next hearing.

28. Petitioner **Faith Pepe** has been charged in Schuylkill County with a lead offense of criminal trespass - breaking into a structure, 18 Pa.C.S.A. §

¹³ In connection with the same case, docketed at CP-48-CR-0003209-2023, Mr. Rideout has also been charged with three additional counts of burglary - not adapted for overnight accommodations and no person present, 18 Pa.C.S.A. § 3502(a)(4), a felony of the second degree, conspiracy to commit burglary, 18 Pa.C.S.A. § 903, a felony of the second degree, three counts of theft by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), a felony of the third degree, receiving stolen property, 18 Pa.C.S.A. § 3925(a), a felony of the third degree, and two counts of theft of secondary metal, 18 Pa.C.S.A. § 3935.1(a), a felony of the third degree. Mr. Rideout has also been charged with two counts of intentionally possessing a controlled or counterfeit substance by a person not registered, 35 P.S. § 780-113(a)(16), an ungraded misdemeanor, two counts of use or possession of drug paraphernalia, 35 P.S. § 780-113(a)(32), an ungraded misdemeanor, and driving while operating privileges were suspended or revoked, 75 Pa.C.S.A. § 1543(a), a summary offense, on a case docketed at CP-48-CR-0001140-2023. Additionally, Mr. Rideout has been charged with two counts of criminal trespass - enter structure, 18 Pa.C.S.A. § 3503(a)(1)(i), a felony of the third degree, theft by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), a misdemeanor of the first degree, and receiving stolen property, 18 Pa.C.S.A. § 3925(a), a misdemeanor of the first degree, on a case docketed at CP-48-CR-0000325-2024. Finally, Mr. Rideout has been charged with evading arrest, 18 Pa.C.S.A. § 5104.2(a), a felony of the third degree, two counts of resisting arrest, 18 Pa.C.S.A. § 5104, a misdemeanor of the second degree, and use or possession of drug paraphernalia, 35 P.S. § 780-113(a)(32), an ungraded misdemeanor, on a case docketed at CP-48-CR-0000326-2024.

3503(a)(1)(ii), a felony of the second degree.¹⁴ Ms. Pepe qualified for representation by the Schuylkill County Office of the Public Defender because she is indigent. Ms. Pepe has had her preliminary hearing continued four times since she was arrested and jailed on or before August 20, 2023. Ms. Pepe's attorney has never visited her in person, despite successfully petitioning to have her involuntarily committed. Ms. Pepe remains incarcerated pending her preliminary hearing, currently scheduled for July 11, 2024.

29. Petitioner **Darryl Shadle** has been charged in Schuylkill County with a lead offense of use or possession of drug paraphernalia, 35 P.S. § 780-113(a)(32), an ungraded misdemeanor.¹⁵ Mr. Shadle qualified for representation by the Schuylkill County Office of the Public Defender because he is indigent. Mr. Shadle has been unable to meet with his attorney other than for one brief conversation prior to his preliminary hearing, when his attorney dismissed his questions by saying

¹⁴ In connection with the same case, Ms. Pepe has also been charged with terroristic threats with intent to terrorize another, 18 Pa.C.S.A. § 2706(a)(1), a misdemeanor of the first degree, resisting arrest, 18 Pa.C.S.A. § 5104, a misdemeanor of the second degree, possession of an instrument of crime with intent to employ it criminally, 18 Pa.C.S.A. § 907(a), a misdemeanor of the first degree, and criminal mischief - tampering with property, 18 Pa.C.S.A. § 3304(a)(2), a summary offense.

¹⁵ In connection with the same case, Mr. Shadle has also been charged with driving while one's license is suspended or revoked pursuant to Section 3802/1547(b)(1), 75 Pa.C.S.A. § 1543(b)(1)(i), a summary offense, DUI: controlled substance - impaired ability - 1st offense, 75 Pa.C.S.A. § 3802(d)(2), an ungraded misdemeanor, intentionally possessing a controlled or counterfeit substance by a person not registered, 35 P.S. § 780-113(a)(16), an ungraded misdemeanor, possession of a small amount of marijuana, 35 P.S. § 780-113(a)(31), an ungraded misdemeanor, driving an unregistered vehicle, 75 Pa.C.S.A. § 1301(a), a summary offense, and operating a vehicle without required financial responsibility, 75 Pa.C.S.A. § 1786(f), a summary offense.

“you’ve been at a preliminary hearing before.” Mr. Shadle remains incarcerated while awaiting a currently-unscheduled ARD Hearing.

30. Petitioner **Allen Weyant** has been charged in Bedford County with a lead offense of theft by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), a felony of the third degree.¹⁶ Mr. Weyant qualified for representation by court-appointed counsel because he is indigent. Mr. Weyant met his appointed attorney in the hallway before his preliminary hearing, which occurred more than three months after Mr. Weyant was initially detained in Bedford. Although Mr. Weyant tried to explain the facts underlying his charges to the attorney, the attorney did not have time to absorb what Mr. Weyant had to tell him before the hearing. Mr. Weyant is still incarcerated while awaiting a currently-unscheduled Formal Arraignment.

31. Petitioner **Zachery Sellers** has been charged in Bedford County with a lead offense of aggravated arson - bodily injury, 18 Pa.C.S.A. § 3301(a.1)(i), a felony of the first degree.¹⁷ Mr. Sellers qualified for representation by court-

¹⁶ In connection with the same case, Mr. Weyant has also been charged with receiving stolen property, 18 Pa.C.S.A. § 3925(a), a felony of the third degree, and criminal mischief - intentionally damages property, 18 Pa.C.S.A. § 3304(a)(5), a felony of the third degree.

¹⁷ In connection with the same case, Mr. Sellers has also been charged with five additional counts of counts of aggravated arson - bodily injury, 18 Pa.C.S.A. § 3301(a.1)(i), a felony of the first degree, six counts of aggravated arson - person present inside property, 18 Pa.C.S.A. § 3301(a.1)(ii), a felony of the first degree, six counts of arson - inhabited building or structure, 18 Pa.C.S.A. § 3301(a)(1)(ii), a felony of the first degree, criminal mischief - damaging property intentionally, recklessly, or by negligence, 18 Pa.C.S.A. § 3304(a)(1), a misdemeanor of the second degree, arson endangering property - reckless endangerment of inhabited buildings, 18 Pa.C.S.A. § 3301(c)(2), a felony of the second degree, six counts of criminal attempt - criminal homicide, 18 Pa.C.S.A. § 901(a), murder of the first degree, and six counts of criminal attempt - aggravated assault - attempts to cause serious bodily injury or causes injury with extreme indifference, 18 Pa.C.S.A. § 901(a), a felony of the first degree.

appointed counsel because he is indigent. Despite the serious nature of Mr. Sellers' charges, he has been unable to reach his appointed attorney for three months, despite numerous attempts at outreach. Mr. Sellers is still incarcerated while awaiting a Call of the List scheduled for June 24, 2024.

32. Petitioner **Jessica Schmidt** has been charged in Bedford County with a lead offense of burglary - overnight accommodation, no person present, 18 Pa.C.S.A. § 3502(a)(2), a felony of the second degree.¹⁸ Ms. Schmidt qualified for representation by the Bedford County Office of the Public Defender because she is indigent. Ms. Schmidt has been held in pretrial detention since October 28, 2023. Ms. Schmidt's motion for a bail reduction was denied five months ago, after her attorney asked only generic questions of Ms. Schmidt at the hearing. Ms. Schmidt has already been incarcerated more than 180 days while awaiting a Status Conference scheduled for June 27, 2024.¹⁹

33. Petitioner **Andrew Culley** has been charged in Blair County with a lead offense of manufacture, delivery, or possession with intent to manufacture or deliver

¹⁸ In connection with the same case, Ms. Schmidt has also been charged with criminal trespass - breaking into a structure, 18 Pa.C.S.A. § 3503(a)(1)(ii), a felony of the second degree, three counts of theft by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), one of which is a felony of the second degree and two of which are felonies of the third degree, criminal mischief - intentionally damages property, 18 Pa.C.S.A. § 3304(a)(5), a felony of the third degree, theft from a motor vehicle, 18 Pa.C.S.A. § 3934(a), a misdemeanor of the second degree, possession of a firearm by a person prohibited, 18 Pa.C.S.A. § 6105(a)(1), a felony of the second degree, and firearms not to be carried without a license, 18 Pa.C.S.A. § 6106(a)(1), a felony of the third degree.

¹⁹ Under Rule 600 of the Pennsylvania Rules of Criminal Procedure, the Commonwealth may not hold a criminal defendant in pretrial detention for longer than 180 days, excluding periods of delay caused by the defendant. *Id.* at (B), (C)(2). Defendants eligible for bail who have been held in excess of 180 days may file a motion to be released on nominal bail. *Id.* at (D)(2).

a controlled substance, 35 P.S. § 780-113(a)(30), an ungraded felony.²⁰ Mr. Culley qualified for representation by court-appointed counsel because he is indigent. Mr. Culley had his “Trial List Review” hearing continued three times from its initially scheduled date of December 7, 2023, with little communication from his attorney, leaving him feeling confused and concerned. Mr. Culley has been incarcerated well over 180 days while awaiting a currently-unscheduled Call of the List.

34. Petitioner **Jason Hice** has been charged in Fayette County with a lead offense of forgery - alter writing, 18 Pa.C.S.A. § 4101(a)(1), a felony of the second degree.²¹ Mr. Hice qualified for representation by the Fayette County Office of the Public Defender because he is indigent. Mr. Hice has been held in pretrial detention more than 180 days, since November 17, 2023. Despite having a trial scheduled for June 6, 2024, Mr. Hice has not heard from his attorney about the circumstances of his case or how a trial might play out. He is awaiting trials, currently scheduled to begin on July 8, 2024.

²⁰ In connection with the same case, Mr. Culley has also been charged with conspiracy to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance, 18 Pa.C.S.A. § 903, an ungraded felony, and intentionally possessing a controlled or counterfeit substance by a person not registered, 35 P.S. § 780-113(a)(16), an ungraded misdemeanor.

²¹ In connection with the same case, docketed at CP-26-CR-0002358-2023, Mr. Hice was also charged with 21 additional counts of forgery - alter writing, 18 Pa.C.S.A. § 4101(a)(1), a felony of the second degree, manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered, 35 P.S. § 780-113(a)(30), an ungraded felony, intentionally possessing a controlled or counterfeit substance by a person not registered, 35 P.S. § 780-113(a)(16), an ungraded misdemeanor, and use or possession of drug paraphernalia, 35 P.S. § 780-113(a)(32), an ungraded misdemeanor. Mr. Hice has also been charged with 60 counts of forgery - alter writing, 18 Pa.C.S.A. § 4101(a)(1), a felony of the second degree, 60 counts of forgery - unauthorized act in writing, 18 Pa.C.S.A. § 4101(a)(1), a felony of the second degree, tamper records or ID-writing, 18 Pa.C.S.A. § 4104(a), a misdemeanor of the first degree, and two counts of make repairs/sell/Etc offensive weapons, 18 Pa.C.S.A. § 908(a), a misdemeanor of the first degree, on a case docketed at CP-26-CR-0002359-2023.

35. Petitioner **Dustin Galasso** has been charged in Fayette County with a lead offense of burglary - overnight accommodations, person present, commits, attempts or threatens to commit a bodily injury crime, 18 Pa.C.S.A. § 3502(a)(1)(i), a felony of the first degree.²² Mr. Galasso qualified for representation by the Fayette County Office of the Public Defender because he is indigent. Mr. Galasso has been held in pretrial detention more than 180 days, since December 2, 2023. Mr. Galasso's attorney did not review discovery, conduct investigation, or discuss filing any motions with his client ahead of his trial date. Mr. Galasso ultimately agreed to plead guilty to the charges docketed at CP-26-CR-0002363-2023. He is awaiting a currently-unscheduled sentencing on the case docketed at CP-26-CR-0002339-2023.

36. Petitioner **Robby Robertson** has been charged in Fayette County with a lead offense of criminal attempt - theft from a motor vehicle, 18 Pa.C.S.A. § 901(a), a misdemeanor of the third degree.²³ Mr. Robertson qualified for representation by

²² In connection with the same case, docketed at CP-26-CR-0002363-2023, Mr. Galasso was also charged with criminal trespass - breaking into a structure, 18 Pa.C.S.A. § 3503(a)(1)(ii), a felony of the second degree, theft by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), a misdemeanor of the third degree, loitering and prowling at night time, 18 Pa.C.S.A. § 5506, a misdemeanor of the third degree, and criminal mischief - intentionally damages property, 18 Pa.C.S.A. § 3304(a)(5), a summary offense. Mr. Galasso has also been charged with theft from a motor vehicle, 18 Pa.C.S.A. § 3934(a), a misdemeanor of the third degree, and receiving stolen property, 18 Pa.C.S.A. § 3925(a), a misdemeanor of the third degree, on a case docketed at CP-26-CR-0002339-2023.

²³ In connection with the same case, docketed at CP-26-CR-0000795-2024, Mr. Robertson was also charged with disorderly conduct - creates a hazardous or physically offensive condition, 18 Pa.C.S.A. § 5503(a)(4), a summary offense. Mr. Robertson has also been charged with theft by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), a misdemeanor of the second degree and receiving stolen property, 18 Pa.C.S.A. § 3925(a), a misdemeanor of the second degree, on a case docketed at CP-26-CR-0000796-2024.

the Fayette County Office of the Public Defender because he is indigent. On or about April 19, 2024, Mr. Robertson was told by his public defender attorney at his preliminary hearing that he should be released soon. But as of June 6, 2024, Mr. Robertson had not been released from jail, nor had he heard from his public defender attorney since his preliminary hearing. He is awaiting a currently-unscheduled pre-trial conference.

37. Petitioner **Shannon Sord** has been charged in Fayette County with a lead offense of simple assault, 18 Pa.C.S.A. § 2701(a)(1), a misdemeanor of the second degree.²⁴ Mr. Sord qualified for representation by the Fayette County Office of the Public Defender because he is indigent. Mr. Sord has been held in pretrial detention for well over 180 days, since September 3, 2023. Mr. Sord has only spoken with his attorney once since his preliminary hearing, when he saw his attorney coming into the jail while he was cutting grass for his jail job. He is awaiting a currently-unscheduled trial.

38. Petitioner **Heather Hice** has been charged in Fayette County with a lead offense of receiving stolen property, 18 Pa.C.S.A. § 3925(a), a felony of the second degree.²⁵ Ms. Hice qualified for representation by the Fayette County Office

²⁴ In connection with the same case, Mr. Sord was also charged with public drunkenness and similar misconduct, 18 Pa.C.S.A. § 5505, a summary offense, and aggravated assault - attempts to cause or causes bodily injury to designated person, 18 Pa.C.S.A. § 2702(a)(3), a felony of the second degree.

²⁵ In connection with the same case, docketed at CP-26-CR-0001677-2023, Ms. Hice was also charged with firearms not to be carried without a license, 18 Pa.C.S.A. § 6106(a)(2), a misdemeanor of the first degree, and carrying a loaded weapon, 18 Pa.C.S.A. § 6106.1(a), a summary offense. Ms. Hice has also been charged with theft

of the Public Defender because she is indigent. Ms. Hice has been held in pretrial detention since December 25, 2023. Ms. Hice's attorney has spent virtually no time discussing her cases with her, despite having had a trial scheduled for June 3, 2024. Ms. Hice was never brought down for the June 3, 2024, trial. She is thus awaiting a now-unscheduled trial.

39. Petitioner **Scott Welsh** has been charged in Lancaster County with a lead offense of manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered, 35 P.S. § 780-113(a)(30), an ungraded felony.²⁶ Mr. Welsh qualified for representation by the Lancaster County Office of the Public Defender because he is indigent. Mr. Welsh has been held in pretrial detention since February 11, 2024. Mr. Welsh has only been able to speak with his attorney once, for approximately two minutes prior to his preliminary hearing. Unable to reach his attorney, Mr. Welsh applied for mental health and veterans court on his own initiative. Mr. Welsh has his next scheduled court date on June 20, 2024, for a Status Conference.

by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), a felony of the second degree, on a case docketed at CP-26-CR-0000331-2024.

²⁶ In connection with the same case, docketed at CP-26-CR-0002363-2023, Mr. Welsh was also charged with criminal trespass - breaking into a structure, 18 Pa.C.S.A. § 3503(a)(1)(ii), a felony of the second degree, theft by unlawful taking - movable property, 18 Pa.C.S.A. § 3921(a), a misdemeanor of the third degree, loitering and prowling at night time, 18 Pa.C.S.A. § 5506, a misdemeanor of the third degree, and criminal mischief - intentionally damages property, 18 Pa.C.S.A. § 3304(a)(5), a summary offense. Mr. Welsh has also been charged with theft from a motor vehicle, 18 Pa.C.S.A. § 3934(a), a misdemeanor of the third degree, and receiving stolen property, 18 Pa.C.S.A. § 3925(a), a misdemeanor of the third degree, on a case docketed at CP-26-CR-0002339-2023.

II. The Respondents

40. Respondent **Commonwealth of Pennsylvania** has an obligation under the United States and Pennsylvania Constitutions to ensure that indigent criminal defendants receive effective assistance of counsel. *See Kuren*, 146 A.3d at 749. As a state, the Commonwealth bears the ultimate responsibility for guaranteeing that indigent defense service providers across the Commonwealth have the funding and oversight they need to provide constitutionally-adequate representation. *Id.*

41. Respondent **Josh D. Shapiro** is the Governor of the Commonwealth of Pennsylvania. Respondent Shapiro is vested with “supreme executive power” under Article IV, Section 2 of the Pennsylvania Constitution and must ensure that the “laws be faithfully executed.” Respondent Shapiro is responsible for submitting an annual state budget to the General Assembly. Respondent Shapiro also has the power to appoint at least seven of the members of the Pennsylvania Commission on Crime and Delinquency (“PCCD”). As the chief executive officer of the Commonwealth, Respondent Shapiro has a duty under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution to ensure that indigent defense services across the Commonwealth are adequately funded. In recognition of these responsibilities, Respondent Shapiro proposed a \$10 million appropriation to fund indigent defense in his March 7, 2023, budget address,

an amount that was later reduced to \$7.5 million during budget negotiations.²⁷

Respondent Shapiro is a state actor who acts under color of state law. He is sued in his official capacity.

42. Respondent **Kim L. Ward** is President Pro Tempore of the Pennsylvania Senate. Under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution, the Senate has an obligation to ensure that indigent defense services throughout the Commonwealth are adequately funded. Respondent Ward, as the highest-ranking member of the Pennsylvania Senate, directs the legislative priorities during the legislative session, engages in budgetary negotiations with the Governor, and refers all bills and joint resolutions which may be introduced in the Senate or received from the House of Representatives to the appropriate standing committee. This includes the General Appropriation bill and other necessary budget implementation legislation. Respondent Ward is sued in her official capacity.

43. Respondent **Joanna E. McClinton** is Speaker of the Pennsylvania House of Representatives. Under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution, the House has an obligation to ensure that indigent defense services throughout the

²⁷ Governor Shapiro's 2023 Budget Address as Prepared (Mar. 7, 2023) <https://www.governor.pa.gov/newsroom/governor-shapiros-2023-budget-address-as-prepared/> (last visited Apr. 17, 2024).

Commonwealth are properly funded. Respondent McClinton, as the presiding officer and administrative head of the House, presides over legislative sessions, engages in budgetary negotiations with the Governor, appoints the chair and vice-chair of each standing committee, refers all bills to committees for consideration, and signs all bills and joint resolutions passed by the General Assembly. This includes the General Appropriation bill and other necessary budget implementation legislation. Respondent McClinton has recognized that given the current minimal state funding for indigent defense services, “many communities still lack the resources to offer the defense that is guaranteed by our Constitution.”²⁸ Respondent McClinton is sued in her official capacity.

BACKGROUND AND STATEMENT OF FACTS

I. The Commonwealth Has a Duty to Provide Effective Assistance of Counsel to Indigent People Charged with Crimes.

44. The Sixth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution guarantee the right to the assistance of counsel.

45. *Gideon v. Wainwright*, 372 U.S. 335 (1963), and its progeny guarantee the right to effective assistance of counsel for state indigent criminal defendants. The

²⁸ *Press Release: After Governor Shapiro Proposes Historic Indigent Defense Funding in 2024-25 Budget, PCCD Hosts Inaugural Meeting of Indigent Defense Advisory Committee* (Feb. 12, 2024), <https://www.governor.pa.gov/newsroom/after-governor-shapiro-proposes-historic-indigent-defense-funding-in-2024-25-budget-pccd-hosts-inaugural-meeting-of-indigent-defense-advisory-committee/> (last visited May 1, 2024).

Gideon Court recognized that “in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” 372 U.S. at 344.

46. The right to counsel mandates *effective* assistance of counsel for indigent criminal defendants. *United States v. Cronin*, 466 U.S. 648, 654 (1984). A state’s appointment of an attorney, without regard to that attorney’s capacity to render effective assistance, is not enough to satisfy the Sixth Amendment as “*Gideon*’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.” *Kuren*, 146 A.3d at 735; *Cronin*, 466 U.S. at 654-55 (“[t]he Constitution’s guarantee of assistance of counsel cannot be satisfied by mere formal appointment” (quoting *Avery v. Alabama*, 308 U.S. 444, 446 (1940) (footnote omitted))).

47. The right to effective assistance of counsel is “the right of the accused to require the prosecution’s case to survive the crucible of meaningful adversarial testing.” *Cronin*, 466 U.S. at 656. The “essence” of the right to counsel “is the opportunity for a defendant to consult with an attorney and to have him investigate the case and prepare a defense for trial.” *Kuren*, 146 A.3d at 733 (quoting *Michigan v. Harvey*, 494 U.S. 344, 348 (1990) (citations omitted)). Effective representation is essential throughout a defendant’s criminal case, as “**to deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel**

during the trial itself.” *Kuren*, 146 A.3d at 733 (quoting *Maine v. Moulton*, 474 U.S. 159, 170 (1985) (citations modified; emphasis added in *Kuren*)).

48. In *Kuren*, the Supreme Court of Pennsylvania emphasized that it is “**our Commonwealth’s** obligation to comply meaningfully and completely with *Gideon*.” 146 A.3d at 749 (emphasis added).²⁹ The *Kuren* Court stressed that “compliance with *Gideon* should not—cannot—depend upon the county in which a crime is alleged.” 146 A.3d at 749.

II. The Commonwealth Has Abdicated Its Duty to Provide Indigent Criminal Defendants with Effective Assistance of Counsel, Leaving County Indigent Defense Service Providers Critically Underfunded, Understaffed, and Without Necessary Independence.

49. The Commonwealth has failed to ensure that indigent defense service providers have adequate funding, oversight, and independence. The Commonwealth’s reliance on counties to provide virtually all funding, oversight, and administrative responsibilities for indigent defense services has resulted in widespread systemic violations of the right to counsel, as well as dramatic differences in the quality of such services across counties.

50. The Commonwealth has delegated its responsibility to provide counsel for indigent defendants through the Public Defender Act. The Public Defender Act

²⁹ The *Kuren* Court’s recognition of the Commonwealth’s obligation to provide for the right to counsel aligns with the American Bar Association’s Ten Principles of a Public Defense Delivery System, which state, in part, that “the responsibility to provide public defense representation rests with the state; accordingly, there should be adequate state funding and oversight of Public Defense Providers.” See Principle 2, *Ten Principles of a Public Defense Delivery System*, the American Bar Association (2023).

requires that “[i]n each county except the County of Philadelphia, there shall be a public defender,” 16 P.S. § 9960.3, “appointed by the Board of County Commissioners,” *id.* § 9960.4. The county public defender is “responsible for furnishing legal counsel, in the following types of cases, to any person who, for lack of sufficient funds, is unable to obtain legal counsel: (1) Where a person is charged with juvenile delinquency; (2) Critical pretrial identification procedures; (3) Preliminary hearings; (4) State habeas corpus proceedings; (5) State trials, including pretrial and posttrial motions; (6) Superior Court appeals; (7) Pennsylvania Supreme Court appeals; (8) Postconviction hearings, including proceedings at the trial and appellate levels; (9) Criminal extradition proceedings; (10) Probation and parole proceedings and revocation thereof; (11) In any other situations where representation is constitutionally required.” *Id.* § 9960.6(a).

51. Should a county office of the public defender have a conflict that prevents it from representing an indigent criminal defendant, the Public Defender Act empowers the Court of Common Pleas to appoint an attorney to represent the defendant. 16 P.S. § 9960.3. The funding for appointed conflict counsel comes from a county’s budget. *See Dauphin County Public Defender’s Office v. Court of Common Pleas of Dauphin County*, 849 A.2d 1145, 1150 (Pa. 2004).

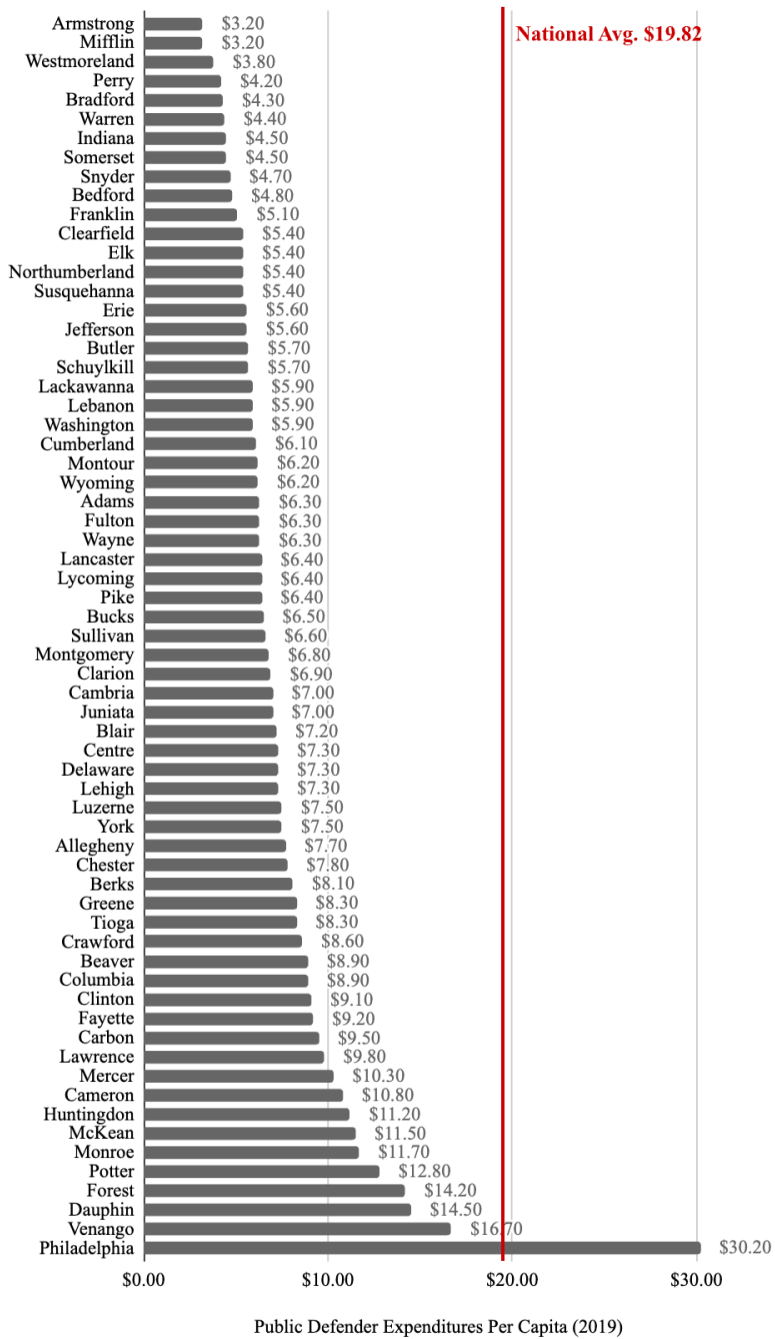
52. Operating only with county funding, county indigent defense service providers “are chronically underfunded and understaffed.” *Kuren*, 146 A.3d at 717.

As a result, Pennsylvania’s committed indigent defense attorneys are forced to work under untenable caseloads that leave them “hard-pressed to meet the baseline demands of the Sixth Amendment.” *Id.*

53. Pennsylvania’s indigent defense service providers remain critically underfunded. On a per capita basis, excluding the Defender Association of Philadelphia, Pennsylvania is tied with Mississippi for the lowest funded state indigent defense system.³⁰ As the exhibit below demonstrates, every Pennsylvania county other than Philadelphia had per capita public defender expenditures that fell below the national average, and in most counties, far below the average.

³⁰ *See supra*, note 3.

Exhibit: Public Defender Expenditures Per Capita (2019)³¹



³¹ General Assembly’s 2021 Report, *supra* note 3, at 32-34 (Northampton County is excluded because the county did not provide the necessary data).

54. Pennsylvania spends considerably less on indigent defense than similar states that have worked to address their indigent defense crises. While Pennsylvania's counties spent only \$125 million on their public defender's offices in 2020, or less than \$10 per capita, similarly-sized Michigan is budgeted to spend \$319 million on indigent defense services in 2024, or \$32 per capita, and the considerably smaller Massachusetts is budgeted to spend \$331 million, or \$47 per capita.³² Both states responded to lawsuits in the early 2000s alleging widespread deficiencies in indigent defense services by dramatically increasing state funding for such services.³³

55. Indigent defense funding in Pennsylvania also varies greatly by county. The Defender Association of Philadelphia had \$30.20 in per capita funding in 2019, compared to Mifflin County, whose public defender office had just \$3.20 in per capita funding.³⁴

³² *Grant Funding for Compliance Planning*, Michigan Indigent Defense Commission, <https://michiganidc.gov/wp-content/uploads/2023/10/MIDC-FY24-approved-totals.pdf> (last visited Apr. 17, 2024); *Budget Summary: Committee for Public Counsel Services*, Commonwealth of Massachusetts, <https://budget.digital.mass.gov/summary/fy24/enacted/judiciary/public-counsel/?tab=historical-budget> (last visited Apr. 17, 2024); General Assembly's 2021 Report, *supra* note 3, at 31.

³³ See Complaint, *Duncan v. State*, No. 278652 (Mich. Cir. Ct. Feb. 22, 2007); Petition for Relief, *Lavallee v. Justs. In Hampden Superior Ct.*, No. SJ-2004-0198 (Mass. May 6, 2004); Petition for Relief, *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, No. SJ2004-0282 (Mass., Jun. 28, 2004).

³⁴ See General Assembly's 2021 Report, *supra* note 3, at 32-34.

56. County governments across the Commonwealth have failed to provide adequate funding for indigent defense service providers because many counties lack the financial capacity to fully fund these services.

57. Unlike the Commonwealth, Pennsylvania counties generally cannot collect revenue from income or sales taxes.³⁵ Instead, counties' main source of revenue comes from property taxes.³⁶ Relying on property tax revenue to fund indigent defense services is problematic, because counties with low or declining property tax bases are then unable to provide sufficient funding. As the Sixth Amendment Center has warned, "in many instances, the same indicators of limited revenues – low property values, high unemployment, high poverty rates, limited household incomes, and limited higher education, etc. – are often the exact same indicators of high crime."³⁷

58. Pennsylvania counties' limited revenue sources have made them reliant on state and federal funding. According to a study by the National Association of Counties, state and federal funding made up 38% of Pennsylvania counties' revenues

³⁵ Philadelphia and Allegheny counties are the only counties authorized to impose a sales tax.

³⁶ See *Pennsylvania County Government Overview*, National Association of Counties (2022), https://www.naco.org/sites/default/files/event_attachments/DRAFT_Pennsylvania_012022.pdf (last visited Apr. 17, 2024).

³⁷ David Carroll, *Right to Counsel Services in the 50 States* at 100 (Mar. 2017); see also General Assembly's 2011 Report, *supra* note 5, at 2 (noting that the lack of state funding "is particularly burdensome to the poorer counties, which must contend with the dual handicap of scant resources and high crime rates").

in 2017.³⁸ However, state and federal funding has rarely been granted for indigent defense services. For example, while district attorneys offices have received millions of dollars from the state's opioid settlement fund, public defenders in counties ravaged by the opioid crisis have had their requests for funds denied.³⁹

59. When county executives allocate scarce county funds to local services, they regularly favor more politically popular services at the expense of indigent defense funding. Pennsylvania counties budgeted more than twice as much for their district attorney's offices in 2023, as compared to their public defender offices.⁴⁰ At the extreme, Wyoming County's district attorney office had a 2023 budget that was more than six times larger than the county's public defender office.⁴¹ District attorney offices also benefit from state and federal funding and other revenue sources, like civil forfeitures, that public defender offices do not receive. *See, e.g.*, 42 Pa. C.S.A. § 5805.

³⁸ *See* National Association of Counties, *supra* note 36, at 1.

³⁹ Danielle Ohl and Ed Mahon, *Opioid settlement cash a boon to Pa. prosecutors but public defenders are being turned away*, Spotlight PA (Apr. 9, 2024), <https://www.spotlightpa.org/news/2024/04/opioid-settlement-cash-boon-to-pennsylvania-prosecutors-but-public-defenders-are-being-turned-away/> (last visited Apr. 23, 2024).

⁴⁰ District attorney's offices have higher caseloads than public defender offices because they prosecute cases defended by public defenders as well as those defended by private and appointed counsel. However, higher caseloads cannot explain the large discrepancy in funding between district attorney's offices and public defender offices, as district attorney's offices make use of separately-funded police departments for investigations, while public defender offices have to fund their own investigations.

⁴¹ The Wyoming County District Attorney's Office had a 2024 budget of \$906,167 while the County Public Defender's Office had a budget of \$143,568. *See* Wyoming County 2024 Final Budget (Jan. 30, 2024), <https://wyomingcountypa.gov/wp-content/uploads/Wyoming-County-PA-2024-Final-Budget.pdf> (last visited Mar. 27, 2024).

Public Defender Offices

60. Inadequate funding for public defense has left public defender offices chronically understaffed and public defender attorneys overworked.

61. Public defender attorney caseloads regularly exceed national standards. In 2023, the American Bar Association, the RAND Corporation, and others released their *National Public Defense Workload Study*.⁴² After “a comprehensive review and analysis of the 17 state-level public defense workload studies conducted between 2005 and 2022,” the study’s authors convened “a panel of expert criminal defense attorneys to come to a consensus on the average amount of time needed to provide reasonably effective assistance of counsel in an array of adult criminal cases.”⁴³

62. Professor Paul Heaton, Academic Director at the University of Pennsylvania Law School’s Quattrone Center for the Fair Administration of Justice, applied the *National Public Defense Workload Study* to Pennsylvania in his study, *Gideon's Promise Versus Gideon's Reality: Resource Shortfalls In Pennsylvania Public Defense* (the “Quattrone Study”).⁴⁴

⁴² Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study* (2023), https://www.rand.org/pubs/research_reports/RRA2559-1.html (last visited Apr. 17, 2024).

⁴³ *Id.* at vii.

⁴⁴ Paul Heaton, *Gideon's Promise Versus Gideon's Reality: Resource Shortfalls In Pennsylvania Public Defense*, Quattrone Center for the Fair Administration of Justice (2024), <https://www.law.upenn.edu/institutes/quattronecenter/reports/indigent-defense-funding/resource-shortfalls-in-public-defense/content/#/> (last visited June 12, 2024).

63. The Quattrone Study employed a very conservative methodology that significantly understates the public defender attorney staffing deficit.⁴⁵ In particular, the Quattrone Study did not factor in the time public defender attorneys spent on juvenile delinquency cases, dependency hearings, probation and parole violation hearings, summary appeals, contempt cases for child support and protection order violations, payment determination hearings, civil commitments, appeals, extraditions, expunged cases, and immigration matters, many of which public defenders are required to cover by the Public Defender Act.⁴⁶ It also did not account for time required for administration.

64. Even with this very conservative methodology, the Quattrone Study found that at least 64 of Pennsylvania's 67 counties did not have enough public defender attorneys to meet the standards set forth in the *National Public Defense Workload Study*, assuming public defender attorneys have 1,650 hours to devote to client matters annually.⁴⁷ Taking into account the cases handled by indigent defense

⁴⁵ The Quattrone Study emphasized that limitations in the study led the author to “underestimate the resources needed by each public defender relative to a situation with perfect data.” *Id.*

⁴⁶ For example, public defender offices handled an annual average of over 11,000 juvenile delinquency cases from 2018 through 2020, the attorney labor for which was not included in the Quattrone Study's estimates. *See* General Assembly's 2021 Report, *supra* note 3, at 65. Additionally, the study excluded instances in which the public defender initially represented a client before being replaced by private counsel prior to case disposition.

⁴⁷ The Quattrone Study provided attorney “resource shortfall” calculations for four different assumptions for the annual hours attorneys have available for client matters: 1,650, 1,785.2, 1,900, and 2,080 hours. Quattrone Study, *supra* note 44. Petitioners use the 1,650 hour figure. The Quattrone Study notes that “[e]xperts have opined that 1,650 is an appropriate number of hours in litigation challenging the adequacy of public defense resources in other jurisdictions.” *See* Affidavit of Robert C. Boruchowitz at 15, *Allen et. al. v. Bel Edwards et. al.*, No. 17-665079 (La. 19th Jud. Dist. Ct. Sep. 19, 2017),

attorneys that were omitted by the Quattrone Study, all of Pennsylvania’s counties likely lack adequate staffing.

65. The Quattrone Study identified 47 counties that would need to *more than double* their attorney staffing levels to meet the national standards, before even considering the case types left out of the study.⁴⁸ And the Quattrone Study estimated that Bedford County’s public defender office would need to expand from one to eight-and-a-half attorneys in order to adequately manage the office’s caseload.

66. Low pay and excessive caseloads have had a particularly negative effect on public defender offices’ ability to retain experienced attorneys.⁴⁹ As experienced attorneys leave, public defender offices are forced to assign inexperienced attorneys to responsibilities that they may not be able to handle competently. For example, in Luzerne County, an attorney with just one year of legal experience was handling first-degree felonies due to a lack of experienced personnel in the office. In Armstrong County, the county commissioners appointed an attorney who was just one year out of law school as its chief public defender.

https://www.splcenter.org/sites/default/files/documents/2017.05.04_boruchowitz_report.pdf (last visited June 8, 2024).

⁴⁸ *Id.*

⁴⁹ See, e.g., Jennifer Learn-Andes, *Vacant positions prompt policy change in Luzerne County Public Defender’s Office*, Times Leader (Sep. 12, 2022), <https://www.timesleader.com/news/1574400/vacant-positions-prompt-policy-change-in-luzerne-county-public-defenders-office> (last visited Apr. 19, 2024) (describing comments made by then-chief public defender Steven Greenwald that the Luzerne County Office of the Public Defender was down eight of 28 budgeted attorney spots because of low attorney pay, which was forcing the remaining attorneys to make “superhuman” efforts to juggle untenably high caseloads).

67. Most county public defender offices also lack a comprehensive training program, which is fundamental to the provision of effective defense services. New public defender attorneys are frequently asked to represent clients despite having limited, or no, formal training. Many public defender offices do not conduct a training program because office leadership does not have the time or the resources to conduct such a program. For example, the Fayette County’s public defender’s office has allocated just \$2,500 annually for the training of its eight attorneys.⁵⁰ The office’s more experienced attorneys sometimes pay out-of-pocket for training, while more junior attorneys are forced to forgo training because they cannot afford the cost. In contrast, the relatively better-resourced Allegheny County public defender’s office provides new attorneys with a “12-week intensive training program” that includes classroom training, mentorship, and shadowing.⁵¹

68. Most public defender offices do not provide their attorneys with mandatory, comprehensive training on the immigration consequences of criminal convictions, which puts these offices’ noncitizen clients at risk of removal.⁵² A study

⁵⁰ The Fayette County 2024 Adopted Budget at 22 (Dec. 21, 2023), <https://www.fayettecountypa.org/ArchiveCenter/ViewFile/Item/176> (last visited May 16, 2024).

⁵¹ See Public Defender Careers, Allegheny County, <https://www.alleghenycounty.us/Government/Employment/Job-Opportunities-by-Department/Public-Defender-Careers> (last visited Apr. 17, 2024).

⁵² See *Padilla v. Kentucky*, 559 U.S. 356 (2010) (holding that criminal defense attorneys have a constitutional duty to advise their noncitizen clients of the immigration consequences of pleading guilty in their criminal case); see also Mikaela Wolf-Sorokin, Liz Bradley & Whitney Viets, *Padilla’s Broken Promise: Pennsylvania Case Study*, 26 U. Pa. J. Const. L. 1046, 1112 (2024); *Under-resourced And Ignored: Indigent Defense in Schuylkill County*, The Wren Collective at 8 (Jan. 2024), https://www.wrencollective.org/_files/ugd/8fe8f0_3158817f5d3e45c7b06b9c1132bc896e.pdf (last visited May 13,

of *Padilla* advising practices in twenty Pennsylvania county public defender offices found that only Philadelphia and Allegheny counties’ offices provided mandatory *Padilla* trainings.⁵³

69. Attorneys in many public defender offices receive no meaningful supervision, either because the offices have no formal supervision program or because their supervisors are forced to carry caseloads that preclude effective supervision of subordinates.

70. Unable to retain experienced full-time attorneys, many county offices of the public defender rely on part-time attorneys. Nearly one-third of county offices rely primarily on part-time attorneys. Fayette County, for example, has just one full-time attorney, its chief public defender, but employs seven part-time attorneys to handle a caseload of more than 1,700 cases, per year.⁵⁴ Some counties, such as Forest, Lackawanna, and Northampton, employ part-time attorneys as their chief public defenders.

2024) (finding that the Schuylkill County Office of the Public Defender “does not have the resources or knowledge to advise its clients on immigration consequences”).

⁵³ Mikaela Wolf-Sorokin, Liz Bradley & Whitney Viets, *Pennsylvania’s Padilla Problem*, 8 For the Defense 4 at 48 (Dec. 2023), https://www.nxtbook.com/nxtbooks/PACDL/FORTHEDEFENSE_vol8_issue4_2023/ (last visited May 14, 2024) (finding that the Berks, Bucks, Butler, Centre, Chester, Cumberland, Dauphin, Delaware, Erie, Lancaster, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Pike, and York county public defender offices lacked mandatory training programs, which “resulted in few being able to provide detailed warnings about whether a given crime would impart specific immigration consequences”).

⁵⁴ Assuming cases are distributed evenly across Fayette’s eight public defender attorneys, each *part-time* attorney would be expected to handle more than 200 cases each year. But national standards developed by the American Bar Association and others found that *full-time* public defenders should not handle more than 21 high-level non-sex, non-murder, non-LWOP felonies, 36 mid-level felonies, 59 low-level felonies, 93 high-level misdemeanors, or 150 low-level misdemeanors annually. See Pace, *National Public Defense Workload Study*, *supra* note 42, at xii.

71. Part-time public defender attorneys are typically free to continue to represent private clients. Because “[e]very additional hour an attorney spends on indigent defense is a lost opportunity to earn an hourly fee from a paying client,” there is a significant risk that part-time public defender attorneys will spend more time on their clients under retainers or on attracting new private clients, to the detriment of their public defender clients.⁵⁵

72. The perverse incentives affecting part-time public defender attorneys were on display in Clearfield County at Petitioner McCauley’s April 3, 2024, preliminary hearing. When Petitioner McCauley appeared at the hearing, a part-time public defender attorney attempted to solicit \$3,500 from Petitioner McCauley for his representation, without revealing that he also worked at the public defender’s office. When Petitioner McCauley declined the attorney’s offer, the preliminary hearing was rescheduled. At the April 10, 2024, preliminary hearing, the same attorney appeared and told Petitioner McCauley that he would be representing Petitioner McCauley for free through the public defender’s office.

⁵⁵ Amanda Agan, Matthew Freedman, Emily Owens, *Is Your Lawyer a Lemon? Incentives and Selection in the Public Provision of Criminal Defense*, 103 *The Review of Economics and Statistics* 294, 205 (2021) (finding that “differences in attorney effort on assigned versus retained cases is likely an important contributor” to the report’s finding that “a defendant [in Bexar County, Texas] is 50% more likely to be convicted with assigned relative to retained counsel.”); Eve Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 *Mich. L. Rev.* 207, 220 (2023); see also Brandon Buskey, *Escaping the Abyss: The Promise of Equal Protection to End Indefinite Detention Without Counsel*, 61 *St. Louis U. L.J.* 665, 668–69 (2017) (“a part-time public defender [] candidly admitted that she did not know her clients existed until indictment, and that, if she was to ‘keep the lights on’ at her private practice, she could not afford to know them”); Pennsylvania Supreme Court’s 2003 Report, *supra* note 4, at 190 (relying on part-time public defender attorneys, “at a minimum, creates the appearance that the part-time defenders attend more closely to paying, private cases than to the cases of indigent defendants”).

73. The staffing crisis at public defender offices is not limited to attorneys. County offices of the public defender need additional investigators, social workers, and support staff to meet their constitutional obligations. Several smaller counties, including Clinton, Forest, Juniata, Mercer, Montour, Perry, Somerset, and Sullivan, employ no dedicated investigators, social workers, or support staff. Larger counties, like Cambria, Northampton, and Northumberland, also lack sufficient non-attorney staff.

74. Non-attorney public defender staffing shortages are particularly acute for investigators and social workers. National standards call for public defender offices to employ one investigator and one mental health professional, such as a social worker, for every three public defender attorneys.⁵⁶ But only 10 of Pennsylvania's 67 county public defender offices employed a dedicated social worker. And less than half employed even one dedicated investigator.⁵⁷

75. Public defender offices also do not have sufficient support staff. National standards recommend that public defender offices employ one paralegal and one administrative assistant for every four attorneys.⁵⁸ But most offices do not come close to the recommended staffing levels. The Northampton County Office of

⁵⁶ *NAPD Policy Statement on Workloads*, National Association for Public Defender at 10 (Feb. 23, 2024), <https://publicdefenders.us/app/uploads/2024/03/NAPD-Policy-Statement-on-Workloads-2024.pdf> (last visited May 17, 2024).

⁵⁷ As of a September 2023 review of public defender office personnel records.

⁵⁸ *Id.*

the Public Defender, which employs 18 attorneys, has only three non-attorney staff members. Without adequate administrative support, “attorneys must devote their time to administrative and clerical tasks rather than legal work, and they may also ‘cut corners’ by, for example, cutting down on motion practice.”⁵⁹

76. The Commonwealth’s reliance on a county-funded indigent defense model makes chief public defenders in Pennsylvania beholden to their county executive for their continued employment. Under the Public Defender Act, boards of county commissioners are responsible for appointing and terminating chief public defenders. 16 P.S. § 9960.4.

77. This process undermines necessary independence and creates a significant conflict of interest for chief defenders who want to seek greater resources for their offices.⁶⁰ In 2013, for example, the Luzerne County Council terminated chief public defender Al Flora Jr. after he sought better funding for his office, which included serving as an initial plaintiff in the *Kuren* case. Mr. Flora brought and settled a § 1983 suit in federal court alleging that he was illegally retaliated against, in violation of his First Amendment rights, for advocating for better funding for his office. *See Flora v. County of Luzerne*, 776 F.3d 169, 180 (3d Cir. 2015) (holding that Mr. Flora stated a claim for First Amendment retaliation). Ten years later, in

⁵⁹ Pennsylvania Supreme Court’s 2003 Report, *supra* note 4, at 186.

⁶⁰ *Id.* at 168 (noting “the lack of political independence afforded public defenders whose budgets are controlled by local county politicians”).

2023, Mr. Flora's successor, Steven Greenwald was terminated by the county manager after Mr. Greenwald similarly requested desperately needed funding for his office and adequate compensation for his employees. In both instances, a lack of resources led Mr. Flora and Mr. Greenwald to attempt to stop taking new cases because their attorneys had overwhelming caseloads that prevented effective representation.⁶¹

Court-Appointed Attorneys

78. Like public defender attorneys, court-appointed attorneys also face dire funding, staffing, and independence issues.

79. Court-appointed counsel plays an essential role in Pennsylvania's indigent defense system. Appointed attorneys represent indigent defendants when the county public defender's office has a conflict. Courts will also sometimes appoint attorneys when public defender offices refuse to take on new cases due to staffing shortages. Appointed attorneys represented approximately 8% of adult criminal cases in Pennsylvania in 2019.⁶²

⁶¹ See Complaint at 13-14, *Flora, et al. v. Luzerne County, et al.*, No. 04517 (Luzerne Cty. Ct. Com. Pl. Apr. 10, 2012); Jennifer Learn-Andes, *Vacant positions prompt policy change in Luzerne County Public Defender's Office*, Times Leader (Sep. 12, 2022), <https://www.timesleader.com/news/1574400/vacant-positions-prompt-policy-change-in-luzerne-county-public-defenders-office> (last visited Apr. 17, 2024); James Halpin and Eric Mark, *Greenwald out as Luzerne County chief public defender*, The Citizens' Voice (Oct. 25, 2023), https://www.citizensvoice.com/news/crime-emergencies/greenwald-out-as-luzerne-county-chief-public-defender/article_f97c94bc-9343-588f-9dfc-ffc9b2c3406a.html (last visited Jun. 12, 2024).

⁶² General Assembly's 2021 Report, *supra* note 3, at S-6, 64 (finding that there were 207,596 adult criminal cases in Pennsylvania in 2019, of which 16,665 had court-appointed counsel).

80. Funding for court-appointed counsel in many Pennsylvania counties is inadequate. Court-appointed attorneys' reliance on county funding implicates the same structural issues described above for public defenders.

81. Each county structures its court-appointment compensation system differently. Court-appointed counsel may be compensated by an hourly fee, a flat fee, or a salary.

82. Many court-appointed attorneys are paid an hourly rate. Hourly rates vary significantly by county. For example, Bradford County pays appointed counsel \$60 per hour, while Potter County offers \$100 per hour. But across the Commonwealth, hourly rates for counsel in state cases are considerably lower than the rates paid to attorneys who are appointed to represent indigent defendants in federal cases. Under the Criminal Justice Act, appointed attorneys in federal criminal cases are paid \$220 an hour for capital cases and \$172 an hour for non-capital cases.⁶³

83. Other counties pay court-appointed attorneys a flat fee for each case they take or to handle some or all of the conflict cases in the county. As an example, Mercer County pays appointed attorneys \$500 per case. Flat fees “can be a disincentive to effective preparation and advocacy.”⁶⁴ Appointed counsel

⁶³ Guide to Judiciary Policy, Vol 7 Defender Services, Part A, §§ 230.16(A), 630.10.10(A).

⁶⁴ Pennsylvania Supreme Court's 2003 Report, *supra* note 4, at 168.

compensated by fixed fee has a financial incentive to dispose of their assigned case in as little time as possible, since additional time spent investigating, hiring experts, filing motions, or communicating with clients reduces their net income from the appointment.⁶⁵

84. Other counties employ attorneys directly to serve as conflict counsel. Like public defender offices, many county conflict counsel offices struggle to retain experienced attorneys due to low salaries, high caseloads, and a lack of support services.

85. Across all models for appointing counsel in Pennsylvania, very low rates of compensation discourage more competent and experienced attorneys from taking conflict cases and incentivises other attorneys to take an excessive volume of cases to survive financially.

86. In some instances, compensation for court appointments is so low that counties cannot secure attorneys to provide representation in all conflict cases. For example, in 2022, Lebanon County was offering uncompetitive flat rates for criminal appointments.⁶⁶ As a result, the County was unable to staff many of its conflict appointments. In response, the County began conscripting local attorneys to take on

⁶⁵ *Id.* at 189.

⁶⁶ James Mentzer, *ACLU contends Lebanon County Courts non-compliant with the Sixth Amendment*, LebTown (Nov. 22, 2022) <https://lebtown.com/2022/11/22/aclu-contentends-lebanon-county-courts-non-compliant-with-the-sixth-amendment/> (last visited Apr. 17, 2024).

criminal conflict cases. A number of the attorneys appointed had never practiced criminal law, raising serious concerns that their clients would receive ineffective representation. After protests, the County relented and hired two local law firms to handle the majority of the County's conflict cases.⁶⁷

87. In addition to a lack of funding, court appointed counsel do not receive adequate oversight in many counties, and their appointment practices often raise independence concerns.⁶⁸ Many counties give judges full control over the selection of conflict counsel. As a consequence, judges may appoint counsel based on political or personal connections, rather than on the quality and experience of the attorney. Similarly, because judges control the appointment process, appointed attorneys have less incentive to advocate for their clients, by filing motions and appeals or requesting experts, due to fear of alienating the judge responsible for their appointment. Finally, many counties lack systems for monitoring appointed counsel caseloads.

⁶⁷ James Mentzer, *Lebanon County resolves conflicted court case issue for indigent defendants*, LebTown (Feb. 6, 2023) <https://lebtown.com/2023/02/06/lebanon-county-resolves-conflicted-court-case-issue-for-indigent-defendants/> (last visited Apr. 17, 2024).

⁶⁸ General Assembly's 2011 Report, *supra* note 5, at 55, 90; Pennsylvania Supreme Court's 2003 Report, *supra* note 4, at 190.

III. Commonwealth Agencies Have Repeatedly Warned that the Commonwealth's Delegation of Indigent Defense Funding and Oversight Responsibilities to the Counties Cause Systemic Denials of Counsel.

88. The systemic underfunding of indigent defense service providers has been repeatedly and prominently documented by Commonwealth agencies and non-governmental experts over the last twenty years.

89. In 2003, a Supreme Court of Pennsylvania study found that “Pennsylvania is generally not fulfilling its obligation to provide adequate, independent defense counsel to indigent persons.”⁶⁹ The report pointed to “the Commonwealth’s failure to provide sufficient funding and other resources, along with a lack of statewide professional standards and oversight” as contributing factors. *Id.*

90. The report noted that “the sparse resources available for support services, coupled with exploding and unmanageable caseloads, allow indigent defense counsel little time, training, or assistance for conferring with clients in a meaningful manner, researching relevant case law, reviewing client files, conducting necessary pre-trial investigations, securing expert assistance or testimony or otherwise preparing adequately for hearings and trials.”⁷⁰

⁶⁹ Pennsylvania Supreme Court’s 2003 Report, *supra* note 4, at 164.

⁷⁰ *Id.* at 168.

91. The report recommended that the Commonwealth “institute statewide funding and oversight of the indigent defense system by establishing an independent Indigent Defense Commission and appropriating state funds for the support of indigent defense.”⁷¹ The Commonwealth failed to heed the report’s recommendations.

92. In 2011, the General Assembly’s Task Force and Advisory Committee on Services to Indigent Criminal Defendants (“General Assembly’s Task Force”) found that no significant progress had been made to address Pennsylvania’s indigent defense crisis and in many instances the Task Force’s findings were “nearly identical” to the findings of the 2003 report.⁷²

93. The General Assembly’s Task Force recognized the heavy human toll brought on by the Commonwealth’s inaction, including the “Kids for Cash” scandal in Luzerne County. During the first decade of the 2000s, up to 4,000 “juveniles who had committed minor offenses were consigned for harshly excessive terms to juvenile detention centers in return for kickbacks” to two Luzerne County Court of Common Pleas judges.⁷³

⁷¹ *Id.*

⁷² General Assembly’s 2011 Report, *supra* note 5, at 1-2, 5.

⁷³ *Id.* at 3.

94. In nearly 2,000 of these cases, juveniles appeared before the offending judge “without counsel or where the right to counsel was not properly waived.” *Id.* The then-chief public defender had “directed office staff to deemphasize juvenile cases because of lack of resources.” As a result, it was “accepted practice before these judges that juveniles would face the court with either no legal representation, or only token representation, and that no effort would be made to ensure that waivers of constitutional rights would be informed and voluntary.”⁷⁴

95. The Interbranch Commission on Juvenile Justice, established by the General Assembly, partially attributed the cause of the scandal to public defender deficiencies, writing that “excessive caseloads and inadequate funding, training, and supervision of assistant PDs allowed the scandal to continue.”⁷⁵

96. As the Supreme Court’s committee did nearly a decade earlier, the General Assembly’s Task Force recommended *state* funding for indigent defense: “[f]unding ... should be provided primarily by the Commonwealth from the general fund” and “[s]uch funding should be sufficient to enable publicly funded defense attorneys to deliver zealous and highly competent indigent defense representation in

⁷⁴ *Id.*

⁷⁵ *Id.* at 102.

accordance with the adversary system.”⁷⁶ Again, the Commonwealth and its elected officials failed to implement these recommendations.

97. In 2020, the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness reported that county public defender “budgets are woefully inadequate to provide [indigent defense] services effectively.”⁷⁷ The Commission warned that “the acute underfunding of [indigent defense] services has not only created significant fiscal problems for the counties, but has cost the state hundreds of thousands of dollars each year to incarcerate and retry defendants, due to the inability of their indigent defense counsel to represent them effectively.”⁷⁸

98. In his March 7, 2023, budget address, Respondent Shapiro recognized that “Pennsylvania is one of only two states in the nation that provides zero state dollars for indigent defense.”^{79,80} Respondent Shapiro stressed that Pennsylvania’s “criminal justice system falls short” in its funding for indigent defense services, as

⁷⁶ *Id.* at 11.

⁷⁷ Interbranch's 2020 Report, *supra* note 6, at 1.

⁷⁸ *Id.*

⁷⁹ Governor Shapiro’s 2023 Budget Address as Prepared (Mar. 7, 2023), <https://www.governor.pa.gov/newsroom/governor-shapiros-2023-budget-address-as-prepared/> (last visited Apr. 17, 2024).

⁸⁰ The other state commonly identified as providing no state funding for indigent defense services is South Dakota. *See, e.g., Editorial: State Senate should approve indigent defense bill*, Pittsburgh Post-Gazette (Jun. 18, 2023), <https://www.post-gazette.com/opinion/editorials/2023/06/18/state-senate-indigent-defense-bill/stories/202306180070> (last visited Dec. 13, 2023). But on December 5, 2023, South Dakota’s governor recommended that the state create and fund a statewide indigent defense commission that will oversee an appellate defender office. Governor Kristi Noem’s 2023 Budget Address (Dec. 5, 2023), https://news.sd.gov/news?id=news_kb_article_view&sys_id=1c1efb2f1bbab550d54d62c6bc4bcb53 (last visited Apr. 17, 2024).

public defenders are often “underpaid and under resourced.”⁸¹ Lieutenant Governor Austin Davis similarly identified that “Pennsylvania public defenders are ... often underpaid and overburdened with huge caseloads.”⁸²

99. In recognition of the current crisis in indigent defense services across the Commonwealth, the General Assembly passed H.B. 1300 on December 13, 2023, to create the Indigent Defense Advisory Committee (the “Committee”). PL 2441, Act No. 34 of 2023. This committee was established to propose minimum standards for indigent defense services, provide training for appointed counsel, and collect data, among other responsibilities.⁸³

100. As one of its first official acts, one of the Committee’s two proposed standards recognized that “[t]he responsibility to provide indigent defense representation rests with the state; accordingly, there should be adequate state funding and oversight of Indigent Defense Providers.”^{84, 85}

⁸¹ Governor Shapiro’s 2023 Budget Address as Prepared (Mar. 7, 2023), <https://www.governor.pa.gov/newsroom/governor-shapiros-2023-budget-address-as-prepared/> (last visited Apr. 17, 2024).

⁸² *Shapiro-Davis Administration Approves Applications For Historic Indigent Defense Grant Funding* (Jun. 6, 2024), <https://www.media.pa.gov/pages/pccd-details.aspx?newsid=112> (last visited Jun. 7, 2024).

⁸³ *Id.* at 168-178.

⁸⁴ Indigent Defense Advisory Committee, *Preliminary Standards for Indigent Defense Services in Pennsylvania Approved by the IDAC & Recommended to the Pennsylvania Supreme Court at 1* (Apr. 23, 2024) available at <https://www.pccd.pa.gov/AboutUs/Documents/Indigent%20Defense/Final%20IDAC%20Approved%20Standards%201%20and%202.pdf> (last visited May 6, 2024).

⁸⁵ On May 29, 2024, the Supreme Court of Pennsylvania adopted the preliminary standards in amended form:

STANDARD 1: Funding, Structure, and Oversight

Where county case volume allows, indigent defense should be a mixed system: primarily dedicated public defender offices, augmented by additional Court Appointed/Conflict Counsel to handle overflow and conflict of interest cases. The compensation for lawyers working for Public Defender Offices should be

IV. The Commonwealth's Recent Efforts to Address Pennsylvania's Indigent Defense Crisis Are Insufficient.

101. The Commonwealth's establishment of the Indigent Defense Advisory Committee and its supplementing of county indigent defense funding by \$6.75 million are inadequate to alleviate the crisis in indigent defense services across the Commonwealth.

102. In Respondent Shapiro's 2023 budget address, the Governor proposed a \$10 million appropriation for indigent defense services.⁸⁶ The General Assembly reduced the \$10 million to \$7.5 million in the approved budget.⁸⁷ On April 26, 2024,

appropriate for and comparable to other publicly funded lawyers. Court Appointed/Conflict Counsel should be paid a reasonable fee, in a timely manner, that reflects the cost of overhead and other office expenses, as well as payment for work. Investigators, social workers, experts, and other staff and service providers necessary to indigent defense for all Indigent Defense Providers should also be compensated in a manner consistent with this Principle.

STANDARD 2: Essential Components of Effective Representation

Indigent Defense Providers should adopt a client-centered approach to representation based around a client's needs and working with them to achieve their goals. Indigent Defense Providers should have the assistance of investigators, social workers, mitigation specialists, experts, and other specialized professionals necessary to meet indigent defense needs. Funding for such services should be provided to and controlled by Indigent Defense Providers. Indigent Defense Providers should address collateral issues that are relevant to their clients' cases. Indigent Defense Providers can offer direct assistance with such issues or establish collaborations with, or provide referrals to civil legal services organizations, social services providers, and other lawyers and non-lawyer professionals.

See Supreme Court of Pennsylvania, Preliminary Minimum Standards for Delivery of Effective Indigent Defense Services Pursuant to Act 34 of 2023, Article II-F, Indigent Defense, No. 617 (May 29, 2024), <https://www.pacourts.us/assets/opinions/Supreme/out/Attachment%20-%20105951951267892749.pdf?cb=1> (last visited June 7, 2024).

⁸⁶ Press Release, Governor Josh Shapiro Unveils Commonsense Budget to Address the Issues Pennsylvania Faces (Mar. 7, 2023), <https://www.pa.gov/en/governor/newsroom/press-releases/governor-josh-shapiro-unveils-commonsense-budget-to-address-the-.html> (last visited June 11, 2024).

⁸⁷ The Office of the Governor, *Governor Shapiro Signs Into Law Commonsense Budget that Makes Historic Investments to Create a Stronger Economy, Safer and Healthier Communities, and Better Schools* (Aug. 3, 2023), <https://www.governor.pa.gov/newsroom/governor-shapiro-signs-into-law-commonsense-budget-that-makes-historic-investments-to-create-a-stronger-economy-safer-and-healthier-communities-and-better-schools/> (last visited Apr. 17, 2024).

the Committee released a plan to award up to \$6.75 million of the appropriation to support counties' indigent defense services.⁸⁸

103. \$6.75 million is not nearly enough to address the indigent defense funding crisis; it supplements the \$125 million Pennsylvania counties spent on their public defender offices in 2020 by only 5%.⁸⁹ Additionally, the state funding is not guaranteed beyond the current year and thus public defender offices cannot confidently use the funds to budget for additional long-term staff.⁹⁰

104. Bringing Pennsylvania in line with the national average per-capita state spending on indigent defense would require the Commonwealth to appropriate approximately \$100 million in additional funding for indigent defense services.⁹¹ And for Pennsylvania's per capita indigent defense spending to approximate Michigan' spending, a state which experts have described as most comparable to

⁸⁸ Pennsylvania Commission on Crime and Delinquency, *2023-24 Indigent Defense Grant Program* at 14 (Apr. 26, 2024), https://www.pccd.pa.gov/Funding/Documents/Funding%20Announcements/Funding%20Announcement_FY23-24%20Indigent%20Defense%20Grant%20Program.pdf (last visited Jun. 12, 2024).

⁸⁹ General Assembly's 2021 Report, *supra* note 3, at 30-31. (estimating statewide public defender office expenditures at \$125 million).

⁹⁰ See *2023-24 Indigent Defense Grant Program, Funding Announcement Q&A Track*, Pennsylvania Commission on Crime and Delinquency, <https://www.pccd.pa.gov/Funding/Documents/Funding%20Announcement%20Q-A%20PDFs/2023-24%20Indigent%20Defense%20Funding%20Announcement%20Q%20and%20A.pdf> (last visited May 30, 2024) ("Will this funding be available on an ongoing basis? Answer: Future Indigent Defense Grant Program funding is currently contingent upon the budget that the General Assembly passes and Governor Shapiro signs").

⁹¹ David Carroll and Aditi Goel, *The State of the Nation on Gideon's 60th Anniversary*, Sixth Amendment Center (Mar. 14, 2023), <https://6ac.org/the-state-of-the-nation-on-gideons-60th-anniversary/> (last visited Apr. 17, 2024).

Pennsylvania, the Commonwealth would need to provide an additional \$250 million and \$450 million in funding, respectively.⁹²

105. Even under the conservative approach embodied in the Quattrone Study, the Commonwealth would need to add, at a minimum, 649 full-time equivalent attorneys to meet national workload standards.⁹³ While the actual number of attorneys Pennsylvania’s public defender offices would need to hire to meet national workload standards is considerably greater than the Quattrone Study’s estimates, hiring 649 full-time equivalent attorneys would require more than \$60,000,000 in additional funding.⁹⁴ Additionally, as detailed above, most county offices of the public defender are in need of additional investigators, social workers, paralegals and other support staff as well as funding for technology, training, experts, and other vital services.

106. For example, the Quattrone Study estimated that Lancaster County’s public defender office needs 40.8 additional full-time equivalent attorneys in order to competently handle its caseload, without even considering time the office spends

⁹² Minutes, Indigent Defense Advisory Committee Meeting (Mar. 18, 2024) (when asked “which state is most comparable to Pennsylvania to use as a model,” the Sixth Amendment Center’s David Carroll stated that “Michigan is very much like Pennsylvania, with large urban centers and a lot of rural area”).

⁹³ Quattrone Study, *supra* note 44 (assuming public defender attorneys have 1,650 hours to devote to client matters annually).

⁹⁴ This calculation is based on the assumption that each public defender attorney incurs approximately \$100,000 in annual personnel costs, including salary, benefits, and payroll tax. The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness estimated in its 2020 report that full-time public defender attorneys would be paid salaries of between \$70,000 to \$122,000, depending on seniority. *See* Interbranch’s 2020 Report, *supra* note 6, at 21..

on juvenile delinquency cases, dependency hearings, probation and parole violation hearings, summary appeals, contempt cases for child support and protection order violations, payment determination hearings, civil commitments, appeals, extraditions, expunged cases, and immigration matters.⁹⁵ But under the Commonwealth's current \$6.75 million funding plan, Lancaster will receive a maximum of \$104,329 for its indigent defense services,⁹⁶ which is not nearly enough to hire 40.8 qualified full-time attorneys.

107. The lack of Commonwealth funding also prevents the newly-established Committee from effectively overseeing indigent defense services. Among other responsibilities, the Committee has been tasked with developing standards for indigent defense services, data reporting, and case management systems; establishing statewide training programs, including specialized programs for capital representation, juvenile delinquency defense, public defender management, newly hired public defenders, and appointed counsel; and advising PCCD as to the disbursement and auditing of Commonwealth funds that are provided to county indigent defense service providers through the "Indigent Defense Grant Program." 72 P.S. § 203-F. To do this work, the Committee has been provided

⁹⁵ Quattrone Study, *supra* note 44.

⁹⁶ Pennsylvania Commission on Crime and Delinquency, *2023-24 Indigent Defense Grant Program* at 14 (Apr. 26, 2024), https://www.pccd.pa.gov/Funding/Documents/Funding%20Announcements/Funding%20Announcement_FY23-24%20Indigent%20Defense%20Grant%20Program.pdf (last visited Jun. 12, 2024).

with some portion of the \$750,000 allocation, i.e., monies not directed to the Indigent Defense Grant Program. This level of funding is facially inadequate for the Committee to carry out its critical mission in all 67 Pennsylvania counties.

108. The Committee also lacks the power to enforce its standards. The Sixth Amendment Center has found a “direct correlation between the extent to which states authorize commissions to hold state or local [indigent defense] services accountable to state promulgated standards, and the quality of services rendered.”⁹⁷ Through the Indigent Defense Grant Program, the Committee has the power to advise PCCD to make grants to counties based on the county’s adherence to the Committee’s standards. However, for the Committee to effectively enforce its standards, the Indigent Defense Grant Program must have a funding capacity to motivate compliance by the counties. Currently, the Commonwealth has allocated just \$6.75 million to the Indigent Defense Grant Program, which allows for one-time grants of only \$90,700 to \$141,720 to individual counties.⁹⁸ Such limited funding is inadequate to effectuate the substantial changes that must be made to county indigent defense services.

⁹⁷ See Carroll, *supra* note 37, at 99.

⁹⁸ 2023-24 Indigent Defense Grant Program: Fiscal Year 2023-24 Solicitation, Pennsylvania Commission on Crime and Delinquency at 14, https://www.pccd.pa.gov/Funding/Documents/Funding%20Announcements/Funding%20Announcement_FY23-24%20Indigent%20Defense%20Grant%20Program.pdf (last visited June 3, 2024).

V. The Commonwealth's Abdication of its Sixth Amendment Obligations Has Led to the Denial of Counsel for Indigent People.

109. Indigent defendants throughout Pennsylvania are being denied their right to effective representation due to the lack of funding for indigent defense services. In some counties, indigent people regularly go entirely unrepresented. Even when indigent individuals are represented by appointed counsel, the traditional markers of effective representation are absent or significantly compromised, leading to constructive denials of counsel.

110. The systemic denials of indigent criminal defendants' right to counsel in Pennsylvania is not the fault of individual public defender attorneys or appointed attorneys. Most indigent defense attorneys are intelligent, committed, and hard-working advocates. But, "[i]n many of Pennsylvania's counties, the most brilliant and accomplished lawyer could not provide adequate representation because he or she simply would not have the time and resources needed to mount a constitutionally adequate defense."⁹⁹

Denials of Counsel

111. In some Pennsylvania counties, indigent people are routinely convicted and sentenced without counsel. Incarcerated indigent individuals are frequently faced with the coercive choice of pleading guilty without counsel to secure release

⁹⁹ General Assembly's 2011 Report, *supra* note 5, at 3.

from custody, before the appointment system provides defense counsel on their behalf.

112. For example, Dennis James Brown, II, an indigent defendant, was held in pretrial detention in Northampton County for three weeks before he tried to plead guilty, *pro se*, to two summary charges for driving an unregistered car without proof of insurance. Mr. Brown contested the basis for the charges, stating at his May 25, 2023, plea hearing: “[a]ctually, it was insured but I -- being incarcerated I can’t prove that my insurance cards -- I can’t access them.” *See* Transcript of Proceedings at 8, *Commonwealth v. Dennis James Brown, II*, No. CP-48-CR-3288-2022 (May 25, 2023). “But,” Mr. Brown nevertheless determined that, “I will plead guilty today just to get released today.” *Id.* Because Mr. Brown would not admit guilt, the presiding judge refused to take the plea. *Id.* at 12-13. Mr. Brown was sent back to jail, where he remained incarcerated for nearly two more months until a public defender attorney appointed to represent him argued for a bail modification. Docket Sheet at 1, *Commonwealth v. Dennis James Brown, II*, No. CP-48-CR-3288-2022 (last visited Apr. 17, 2024). Mr. Brown eventually pleaded guilty to a single summary offense, driving an unregistered vehicle, a crime which carries no statutorily recommended jail time, but for which Mr. Brown spent more than ten weeks in jail. *Id.*; 75 Pa.C.S. § 1301(d).

113. Had Mr. Brown been effectively represented, that attorney could have sought a bail modification soon after Mr. Brown was arrested. Out of jail, Mr. Brown would have had access to the insurance cards on which he hoped to establish a defense against his charges. Even if he was not released on bail, an attorney could have explained the plea offer and plea hearing procedures and helped Mr. Brown negotiate an appropriate resolution at the plea hearing.

114. Like Mr. Brown, indigent people in Pennsylvania regularly attempt to plead guilty without counsel, and many enter pleas before counsel is appointed. More than 10% of defendants convicted during 2022 and 2023 in Armstrong, Fayette, Northampton and Westmoreland counties had no defense counsel listed in their dockets.¹⁰⁰ Those held in pretrial detention face the unfair and coercive decision to plead guilty without counsel or continue their cases and remain incarcerated while they await representation.

115. Indigent people have also been refused representation by a public defender's office because the office does not have the resources to competently represent them. Since 2022, chief public defenders in Erie, Franklin, Lebanon, and Luzerne counties have refused new cases because of understaffing.

¹⁰⁰ Analysis of adult criminal cases initiated in 2022 or 2023, based on data provided by the Administrative Office of Pennsylvania Courts.

116. Former Luzerne County chief public defender Steven Greewald informed the County’s president judge that “due to staffing shortages with the Public Defender’s Office,” he “felt that they were no longer capable of meeting their constitutional obligations regarding effective and proper representation as a result of which the [Office] would not be accepting applications or appointments ... in certain cases.”¹⁰¹ In most counties, the president judge has responded to such requests by appointing private counsel to handle the cases the public defender office cannot address due to understaffing. However, in Luzerne County, the president judge continued to appoint the public defender in hundreds of cases for which the office did not have the staffing to provide constitutionally-adequate representation, over the objection of the office.

Late Appointments of Counsel

117. Indigent people in Pennsylvania are not represented by counsel in most counties until their preliminary hearings. Such hearings often take weeks to schedule, and sometimes even longer. Defendants, thereby, are denied the assistance of counsel at critical stages of their cases. Late assignment of counsel increases the likelihood that an indigent defendant will be held in pretrial detention and hinders the attorney’s ability to conduct time-sensitive investigation and advocacy. Early access to counsel is one of the American Bar Association’s *Ten Principles of a*

¹⁰¹ Steven Greenwald, Motion to Vacate, Court of Common Pleas of Luzerne County (2022).

Public Defense Delivery System, which calls for counsel to “be appointed immediately after arrest, detention, or upon request.”¹⁰²

118. Few counties provide representation to indigent people at their preliminary arraignments. The preliminary arraignment is a defendant’s first formal post-arrest hearing, at which a Magisterial District Judge sets bail. Pa. R. Crim. P. 519(A)(1), 540. As such, most indigent defendants have no representation when bail is set, even though the right to counsel attaches at the preliminary arraignment. *Rothgery v. Gillespie County*, 554 U.S. 191, 213 (2008) (“a criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel”); *Commonwealth v. Arroyo*, 723 A.2d 162, 170 (Pa. 1999); *but see Commonwealth v. Padilla*, 80 A.3d 1238, 1254 (Pa. 2013) (declining to find that “the entirety of the ten-day period following a preliminary arraignment” constitutes a critical stage). The bail determination made at the preliminary arraignment has significant consequences for a criminal defendant. Persons who are held in pretrial detention experience worse case outcomes as compared to similarly situated defendants who are released on bail. They also face significant pressures to plead guilty to secure their release, and

¹⁰² See Principle 6, *Ten Principles of a Public Defense Delivery System*, American Bar Association (2023).

regularly experience other harms to themselves and their families from their incarceration.¹⁰³

119. The presence of counsel at the preliminary arraignment improves a person's chances of being released on bail, receiving a lower amount of cash bail, or having their bail reduced.¹⁰⁴ A 2023 study found that indigent individuals represented by the Allegheny County public defender's office at preliminary arraignments were 21% more likely to be assigned non-monetary bail and 10% more likely to be immediately released than an unrepresented control group.¹⁰⁵ This may be because "[u]nrepresented defendants, especially those that have had no experience in the criminal justice system, are in no position at an initial bail hearing to present the best, most persuasive case on why they should be released pending trial." *Booth v. Galveston Cnty.*, No. 3:18-CV-00104, 2019 WL 3714455, at *11 (S.D. Tex. Aug. 7, 2019), *report and recommendation adopted as modified*, No. 3:18-CV-00104, 2019 WL 4305457 (S.D. Tex. Sept. 11, 2019). Given these benefits,

¹⁰³ *The Civil Rights Implications of Cash Bail*, U.S. Commission on Civil Rights at 46 (2022) available at <https://www.usccr.gov/files/2022-01/USCCR-Bail-Reform-Report-01-20-22.pdf> (last visited Apr. 19, 2024) ("Data shows that pretrial detention can result in numerous negative consequences such as a higher likelihood of being convicted, losing one's job, housing, and parental rights, harsher sentences, higher likelihood of pleading guilty, and increased recidivism"); Alexander M. Holsinger, Kristi Holsinger, *Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes*, 82 *Federal Probation* 39, 40 (2018) available at <https://www.uscourts.gov/federal-probation-journal/2018/09/analyzing-bond-supervision-survey-data-effects-pretrial-detention> (last visited Apr. 19, 2024) (pretrial detention has "negative effects on one's financial situation, residential stability, dependent children, and social support").

¹⁰⁴ Colbert et al., *Do Attorneys Really Matter? The Empirical and Legal Case for the Right to Counsel at Bail*, 23 *Cardozo L. Rev.* 1719, 1755-56 (2002).

¹⁰⁵ Shamena Anwar et al., *The impact of defense counsel at bail hearings*, *Sci. Advances* 9 at 5 (2023).

Philadelphia and Allegheny counties, two of the relatively better-resourced public defender offices in the Commonwealth, provide representation to at least some clients at the preliminary arraignment, and where such representation is not provided those offices seek bail reductions for clients held on excessive bail.

120. Nearly all other Pennsylvania county public defender's offices do not have the resources to provide counsel at the preliminary arraignment stage. Indigent defendants in these counties are, thus, denied counsel and equal protection of the laws.

121. Indigent defense attorneys typically first meet and begin representing their clients at the preliminary hearing, a critical stage in the proceedings. The Pennsylvania Rules of Criminal Procedure mandate that a preliminary hearing be held within 14 days of the preliminary arraignment for people held in pretrial detention or within 21 days of the preliminary arraignment for others. Pa. R. Crim. P. 540(G)(1).

122. Preliminary hearings are regularly waived, however, or delayed by days or weeks due to the fact that defense attorneys were not appointed in time to prepare for the first listing. Over 80% of indigent criminal defendants in Fayette, Greene, and Northampton counties had their preliminary hearings continued at least once

during 2022 and 2023.¹⁰⁶ As a result, a majority of indigent people held in pretrial detention in Fayette and Northampton counties were forced to wait at least four weeks for their preliminary hearings, while in Greene County, indigent people not held in pretrial detention waited 63 days, at median, for a preliminary hearing.¹⁰⁷

123. Preliminary hearings are regularly continued multiple times. In Northampton County, the majority of cases in 2022 and 2023 involving indigent defendants with preliminary hearings had those hearings continued, canceled, or moved more than once.

124. In the weeks that pass between the defendant’s arrest and the attorney assignment, relevant evidence can become unavailable, security camera footage can be overwritten, and witnesses can forget important details or even disappear.

125. In some counties, counsel may not be appointed until long after the preliminary hearing. In Northampton County, for example, indigent people regularly plead guilty moments after their first and only conversation with a “standby” attorney. These “standby” attorneys are present at formal arraignments—which occur weeks after the preliminary hearing—to help facilitate unrepresented, typically indigent, defendants’ guilty pleas. One Northampton County defendant who pleaded guilty in June 2023 described his 30-second interaction with a

¹⁰⁶ Analysis of adult criminal cases initiated in 2022 or 2023, based on data provided by the Administrative Office of Pennsylvania Courts.

¹⁰⁷ *Id.*

“standby” counsel as akin to a “fast food” restaurant. The attorney met him for the first time at the courthouse elevator and said, “I’m just here to make sure things go smoothly. I’m not your attorney.” The attorney then explained the plea offer and encouraged the person to take the deal. This practice represents a denial of counsel, as “the 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.” *Kuren*, 146 A.3d at 744. Instead, Northampton’s practices turn the right to counsel into “a mere formality.” *Id.* at 735.

126. Even when counsel is assigned at, or before, the preliminary hearing, poorly-funded public defender’s offices are not able to staff every subsequent hearing with an attorney or to employ attorneys to handle critical tasks like negotiating plea agreements with prosecutors and filing motions. These critical tasks may be delegated to non-attorney public defender staff. As an example, investigators at the Schuylkill County Office of the Public Defender “tread[] a thin line between work that is appropriate for a legal assistant vs. work that must be performed by a licensed lawyer.”¹⁰⁸ These investigators are sometimes tasked with negotiating plea deals with the prosecution and advising public defender clients on such pleas.

¹⁰⁸ *Under-resourced And Ignored: Indigent Defense in Schuylkill County*, The Wren Collective at 5 (Jan. 2024), https://www.wrencollective.org/_files/ugd/8fe8f0_3158817f5d3e45c7b06b9c1132bc896e.pdf (last visited May 13, 2024).

Lack of Consistent, Timely, and Confidential Client Communication

127. Indigent defense attorneys are unable to meet consistently or in a timely fashion with their clients due to their high caseloads.¹⁰⁹

128. Indigent defense attorneys commonly first meet with their clients on the day of their client's preliminary hearing. Without access to confidential meeting spaces, attorneys often conduct an initial interview in crowded courthouse hallways and jury boxes, where conversations can be overheard.

129. In some counties, public defender attorneys do not meet with their clients before their preliminary hearings. For example, Ralph Warren, an indigent man charged in Lebanon County, saw his public defender attorney appear in court at his preliminary hearing from a screen at the Lebanon County Correctional Facility. But Mr. Warren was unable to speak with his attorney before or after the hearing.

130. Between hearings, indigent defendants are often unable to reach their attorneys, because their attorneys are so overwhelmed with other client work that they do not have the time to contact clients who do not have hearings immediately scheduled.

¹⁰⁹ The Supreme Court of Pennsylvania's Committee on Racial and Gender Bias in the Justice System recognized this issue in 2003, when it noted that "staggering caseloads" for public defenders lead to "Poor attorney-client contact, as attorneys fail to meet personally with their clients to receive and communicate vital information." Pennsylvania Supreme Court's 2003 Report, *supra* note 4, at 188.

131. As a result, indigent defendants regularly are in pretrial detention in derogation of legal standards for weeks, or even months, without being able to reach their defense attorneys. For example, Daniel Polites, an indigent defendant in Clearfield County, was held in pretrial detention for nearly three weeks after he failed to appear at a hearing of which he was unaware. Mr. Polites tried to reach his public defender attorney, but all three of his letters went unanswered. When his public defender attorney finally visited him in jail, she explained that her delayed response was due to understaffing. Shortly thereafter, the public defender moved successfully for Mr. Polites' bail to be reset and Mr. Polites was promptly released. In another instance, a man represented by the Lebanon County Office of the Public Defender tried repeatedly by mail to reach his public defender attorney to schedule a meeting. After seven months in the Lebanon County Correctional Facility without a response, the man was awakened after midnight one night for a meeting with his attorney.

Failure to Investigate Facts and Defenses

132. A lack of resources from the Commonwealth prevents indigent defense service providers from employing investigators to adequately or timely investigate the facts of their clients' cases.¹¹⁰ More than half of Pennsylvania's county offices

¹¹⁰ The Supreme Court of Pennsylvania's Committee on Racial and Gender Bias in the Judicial System warned in 2003 about public defenders' "[i]nadequate preparation, as attorneys, for example, fail to conduct interviews or investigations, file no motions or file the same boilerplate motions in every case, fail to act in a timely manner on

of the public defender have no dedicated investigators on staff. Other offices do not employ a sufficient number of investigators.¹¹¹ Chester County, for example, employs two investigators to cover the approximately 2,500 cases the office handles annually.

133. Without adequate investigative resources, indigent defense attorneys are left with the responsibility for interviewing witnesses, visiting crime scenes, and performing other investigative tasks that could be performed by non-lawyer staff. But these attorneys have too many other case-related responsibilities to thoroughly investigate each case. Instead, attorneys are forced to triage their cases, dedicating time only to investigate their most serious cases or cases where the client insists on taking the case to trial. For example, a Wren Collective study on the Schuylkill County Office of the Public Defender found that “‘very little’ traditional investigation is done in the office” and that “[m]ost cases are simply resolved without any investigation.”¹¹²

important information, fail to pursue issues, or ‘cut corners’ in their work.” Pennsylvania Supreme Court’s 2003 Report, *supra* note 4, at 188.

¹¹¹ Pennsylvania Supreme Court’s 2003 Report, *supra* note 4, at 185 (“[i]n counties that do employ investigators, they may spend most of their time on such matters as indigency screening and serving subpoenas”).

¹¹² *Under-resourced And Ignored: Indigent Defense in Schuylkill County*, The Wren Collective at 5 (Jan. 2024), https://www.wrencollective.org/_files/ugd/8fe8f0_3158817f5d3e45c7b06b9c1132bc896e.pdf (last visited May 13, 2024) (“[t]here are few occasions when Schuylkill County investigators will engage in traditional investigation, like going to the scene of a case to verify a witness’s account of events, including whether the witness could have seen what they claim to have seen”).

134. As a result of the Commonwealth’s failure to adequately resource indigent defense service providers, attorneys regularly advise their clients about plea deals or trial strategy or represent clients at hearings without having conducted a meaningful review of discovery or having adequate knowledge of the factual circumstances of their client’s case. Indigent defense attorneys will sometimes identify potentially exculpatory evidence only after their client has already taken their advice to plead guilty.

Inadequate Access to Experts

135. Indigent defense attorneys in many counties are unable to retain experts due to a lack of funding.

136. In order to provide competent counsel in cases involving complex factual issues, such as those involving the interpretation of DNA evidence, ballistics, or the evaluation of a defendant’s capacity to stand trial due to serious mental health conditions, indigent defense service providers must have the capacity to hire experts to assist them in case preparation and in providing expert testimony.

137. Many public defender offices have insufficient funding for expert services.¹¹³ For example, Fayette County’s Public Defender Office had just \$4,000

¹¹³ Pennsylvania Supreme Court’s 2003 Report, *supra* note 4, at 185 (“[i]n Erie County we were informed that a case that might require a psychologist and forensic expert might exhaust the whole budget”); *Under-resourced And Ignored: Indigent Defense in Schuylkill County*, The Wren Collective at 7 (Jan. 2024), https://www.wrencollective.org/_files/ugd/8fe8f0_3158817f5d3e45c7b06b9c1132bc896e.pdf (last visited May 13, 2024) (“there is a perception amongst public defenders that the office cannot afford to hire an expert due to fiscal issues, so attorneys pursue alternate options”).

budgeted annually for experts despite taking an average of more than 40 of its nearly 2,000 cases to trial each year.

138. Without funding, indigent defense service providers cannot retain experts where needed to provide an effective defense.¹¹⁴ As an example, several attorneys in the Fayette County Public Defender's Office could not recall employing an expert even once in the past five years in cases that went to trial. Named Petitioner Galasso, who is represented by the Fayette County Office of the Public Defender, has not been given a mental health evaluation, despite having serious memory and mental health issues that could limit his culpability.

Lack of Constitutionally Effective Advocacy

139. Indigent defense attorneys regularly fail to subject the prosecution's case to meaningful adversarial testing due to a lack of resources.

140. The deficiencies are evident from the earliest stages of the prosecution. A majority of indigent defendants across Pennsylvania waive their preliminary hearings, thereby losing an opportunity to challenge the charges and to secure important discovery for later use. People represented by indigent defense counsel in

¹¹⁴ Pennsylvania Supreme Court's 2003 Report, *supra* note 4, at 185 (“[i]n Warren County, an attorney could recall only one case in which he had an expert witness”).

Armstrong, Lebanon, and Westmoreland counties waived their preliminary hearings more than 75% of the time during 2022 and 2023.¹¹⁵

141. Indigent defense attorneys, magisterial district judges, prosecutors, and jail and court employees routinely pressure indigent defendants to waive their preliminary hearings. For example, an indigent man in Lancaster County reported that when he arrived in court for his January 2024 preliminary hearing, his public defender attorney told him that the prosecution would revoke their plea offer if he didn't agree to waive his preliminary hearing. Failure to waive his preliminary hearing and accept the plea would leave him in trouble, his attorney stated, because the judge "had it in for" people who looked like the defendant, a black man with face tattoos. The attorney's comments left the man feeling as though he was being coerced into waiving his right to a preliminary hearing.

142. The Supreme Court has declared that "the guiding hand of counsel at the preliminary hearing is essential to protect the indigent accused against an erroneous or improper prosecution." *Coleman v. Alabama*, 399 U.S. 1, 9 (1970). The Court stressed that "the lawyer's skilled examination and cross-examination of witnesses may expose fatal weaknesses in the State's case that may lead the magistrate to refuse to bind the accused over ... [or] fashion a vital impeachment

¹¹⁵ Analysis of adult criminal cases initiated in 2022 or 2023, based on data provided by the Administrative Office of Pennsylvania Courts.

tool for use in cross-examination of the State's witnesses at the trial ... [or] more effectively discover the case the State has against the client and make possible the preparation of a proper defense to meet that case at the trial." *Id.* By encouraging most clients to waive their right to a preliminary hearing as a means to deal with their lack of resources and excessive caseloads, indigent defense attorneys limit their ability to test the prosecution's case at trial or to negotiate for a more favorable plea.

143. Indigent defense attorneys in many counties also fail to timely file necessary pretrial motions.

144. Indigent defense attorneys with clients held in pretrial detention on unaffordable cash bail regularly fail to file bail modification motions, leaving their clients stuck in jail unnecessarily. For example, Ralph Warren was held for more than three months in the Lebanon County Correctional Facility on a \$100 bail that he could not afford to post. Mr. Warren, who was represented by the Lebanon County Office of the Public Defender on low-level trespassing and marijuana possession charges, did not speak with his public defender attorney for weeks following his arrest despite hoping to be released through a bail modification motion. His public defender attorney, whose office was so underfunded that it had been requesting that the court limit assignments to the office's attorneys, failed to advocate for the modification of their client's bail. As a result, Mr. Warren remained

confined for more than three months, during which he lost his job and apartment. Mr. Warren was eventually sentenced to probation and released.

145. Indigent defense attorneys with inadequate investigative resources also are more likely to fail to identify potential evidentiary issues that warrant suppression motions.

146. In many counties, indigent defense attorneys rarely take cases to trial. When they do take cases to trial, indigent defense attorneys frequently lack the time to adequately prepare their cases, and clients, for trial. For example, in Franklin County, public defender attorneys are sometimes called in to represent a colleague's client at trial that same week, despite having never previously met their client, reviewed their case file, or prepared their case.

147. The same lack of effective representation is true for probation and parole revocation hearings. Public defender attorneys in Lancaster County, for example, rarely contest the Commonwealth's allegations against their clients. Instead, in nearly every instance, they stipulate to the violations.

148. Indigent defense attorneys in many counties do not timely file necessary pretrial motions in all cases due to lack of time for drafting and research.

149. Finally, indigent defendants in numerous counties are not provided with effective representation for direct appeals due to a lack of funding, which leaves their appointed attorneys without the time or experience to provide competent counsel.¹¹⁶

150. An appellate defense attorney must have the requisite knowledge of criminal appellate law and procedure in order to properly counsel their client, select and argue potentially meritorious issues, and navigate complex procedural rules.

151. Most county public defender offices do not employ specialized attorneys to handle direct appeals. Instead, trial attorneys, without appellate training or experience are expected to handle direct appeals. For example, trial attorneys in the Fayette County Office of the Public Defender are expected to file and litigate their own appeals. But few of the office's attorneys are trained on appellate law or procedure. Additionally, the office does not subscribe to any paid legal research software, such as Westlaw or LexisNexis, nor does it maintain a centralized database of appellate brief templates.

152. Even when trial attorneys have the capacity to competently handle their own direct appeals, they are too overburdened with trial caseloads to adequately and effectively research and write appeal briefs.

¹¹⁶ *Douglas v. People of State of California*, 372 U.S. 353, 356 (1963) (holding that indigent defendants have a constitutional right to counsel for their direct appeals).

VI. The Commonwealth's Delegation of its Sixth Amendment Obligations to the Counties Has Produced Unconstitutional Disparities in the Level of Funding for and Quality of Indigent Defense Representation Across Counties.

153. The Commonwealth's delegation of indigent defense funding responsibilities to the counties produces disparities in the funding for and quality of representation provided to indigent defendants based on the county in which the defendant was charged.

154. Because the Commonwealth has refused to fund indigent defense, each county determines how much funding it will provide for indigent defense services. Each county has distinct financial capacity to fund such services, based on the county's revenue base.

155. The Supreme Court of Pennsylvania recognized in *Kuren* that "[t]his funding structure necessarily leads to variations in the availability and quality of indigent representation from one county to the next." 146 A.3d at 749.

156. County public defender office budgets vary by large margins across the Commonwealth. The Defender Association of Philadelphia was budgeted 13 times more funding per case disposed of in 2020 than Mifflin County's office of the public defender.¹¹⁷

¹¹⁷ General Assembly's 2021 Report, *supra* note 3, at 35-36.

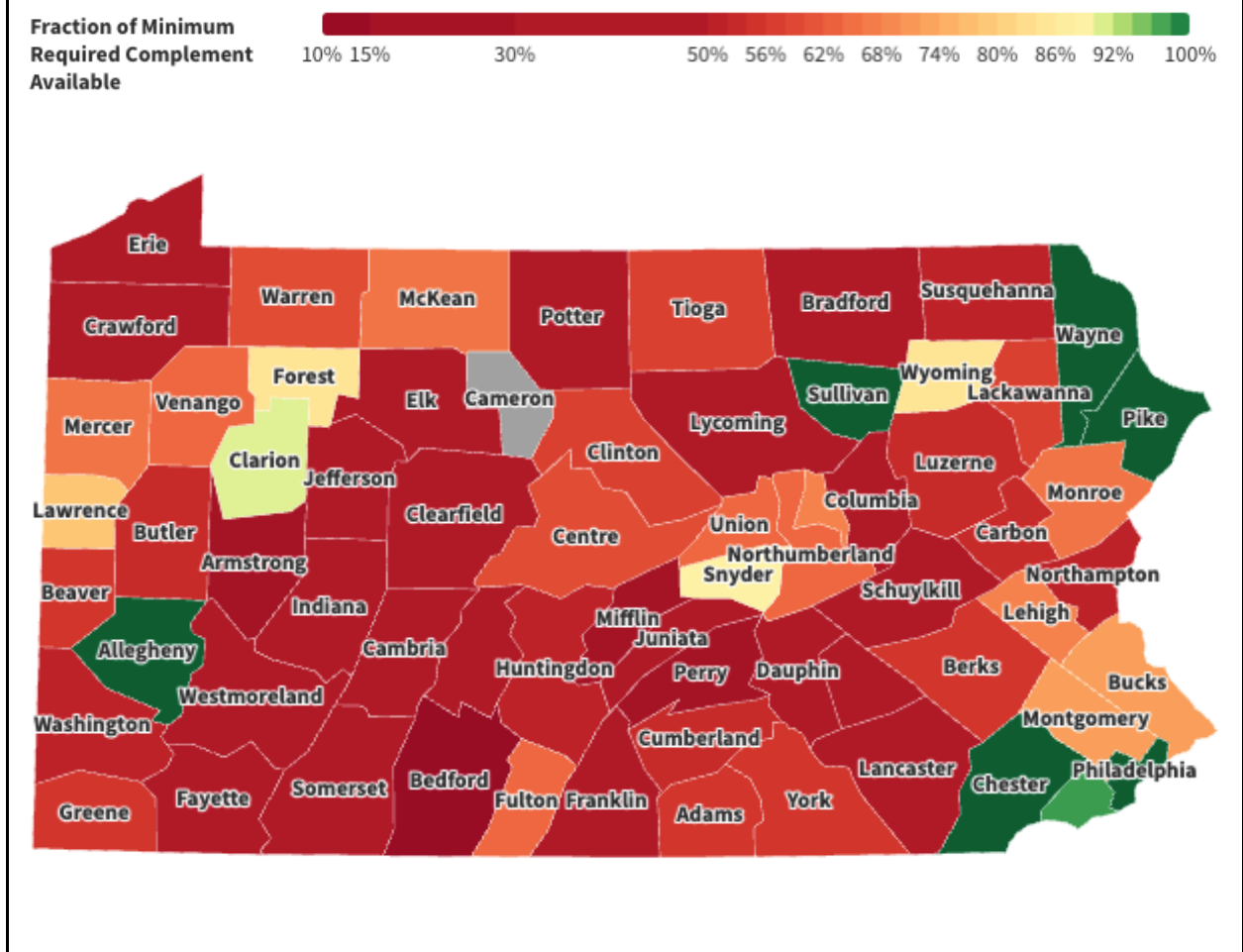
157. As a further example, an indigent defendant charged with a crime in Huntingdon County would be represented by a public defender office that was allocated nearly four times more funding per case disposed of in 2020 than an indigent defendant represented by the neighboring Bedford County office of the public defender.¹¹⁸

158. The Quattrone Study found large disparities in the capacities of county public defender offices to meet national attorney workload standards. The exhibit below shows the deficit between the required number of attorneys a county office of the public defender needed to meet national standards under the Quattrone Study's conservative methodology and the current number of attorneys employed by that office. For example, the Quattrone Study found, based on the limited case types evaluated in the study, that Chester County employed 102% of the attorneys needed to competently handle its caseloads under the national standards, while neighboring Lancaster County had just 31% of the attorneys its public defender office needed.¹¹⁹ Thus, for an indigent defendant accused of a crime while traveling west on state Route 30, the level of representation available is likely to vary greatly depending on whether the arrest is made before or after crossing the line from Chester County to Lancaster County.

¹¹⁸ *Id.* at 34-35.

¹¹⁹ Quattrone Study, *supra* note 44 (assuming public defender attorneys have 1,650 hours to devote to client matters annually).

Exhibit: Attorney Staffing Deficits by County Public Defender Office¹²⁰



159. County public defender offices also vary significantly in terms of non-attorney staffing levels, including investigators, social workers, paralegals and other support staff. For example, while most Pennsylvania county offices of the public defender employ few or no investigators, the relatively better-funded Defender Association of Philadelphia employs more than 25 investigators. Similarly, the

¹²⁰ Quattrone Study, *supra* note 44. at Figure 4: Geographic Distribution of Personnel Resourcing Levels (this exhibit, reproduced from the Quattrone Study, calculates the attorney staffing deficit based on the assumption that public defender attorneys have 2,080 hours available for client matters annually, rather than the more reasonable 1,650 hour figure used throughout this complaint).

relatively better-funded Allegheny County Office of the Public Defender employs four social workers, while neighboring Westmoreland County employs no social workers to support its more than 2,000 annual clients.

160. Finally, relatively better-resourced county offices of the public defender—though still significantly underfunded overall—are better able to hire experts, conduct staff trainings, and provide necessary supervision and oversight than relatively less-well-resourced offices.

161. Resourcing and staffing variances across county public defender offices produce disparities in the quality of representation across counties. Public defender attorneys at relatively better-resourced county public defender offices have more time than their counterparts in neighboring counties to meet with clients, investigate and prepare their cases, file motions, access experts, and advocate for their clients than do attorneys at less-well-resourced offices. For example, while most Pennsylvania county public defender offices are unable to represent clients at preliminary arraignments, the public defender offices in Philadelphia and Allegheny counties represent some or all indigent criminal defendants at preliminary arraignments.

162. As a consequence of the Commonwealth's abdication of its Sixth Amendment obligation to ensure indigent defense services are adequately funded,

indigent defendants are at risk of receiving significantly different quality of representation depending on the county in which they are charged.

CLASS ACTION ALLEGATIONS

163. Pursuant to Rule 1701, et seq., of the Pennsylvania Rules of Civil Procedure, Named Petitioners Kahjey Warren, Khalid Brockman Jr., David McCauley, Ashley Scali, Judson Rideout, Faith Pepe, Darryl Shadle, Allen Weyant, Zachery Sellers, Jessica Schmidt, Andrew Culley, Jason Hice, Dustin Galasso, Robby Robertson, Shannon Sord, Heather Hice, and Scott Welsh bring this action on behalf of themselves and a class of all other similarly situated persons, defined as:

All indigent individuals who are now facing, or will in the future face, criminal charges brought by the Commonwealth of Pennsylvania, the penalty for which includes the possibility of confinement in a jail or correctional facility (regardless of whether actually imposed) and who do, or will, qualify for appointed representation under the Sixth Amendment to the United States Constitution or Article I, Section 9 of the Pennsylvania Constitution.

164. All of the Named Petitioners face criminal charges in this Commonwealth.

165. The Named Petitioners are all indigent persons who have been or will be charged with at least one crime by the Commonwealth and for whom the Commonwealth bears the responsibility of providing constitutionally adequate representation. As a result of Respondents' failure to provide sufficient resources and oversight for indigent representation, however, the Named Petitioners and all

members of the proposed Class face the likelihood of substantial and immediate irreparable injury—the effective denial of their right to counsel—and have no adequate remedy at law.

Kahjey Warren (Lebanon County)

166. Named Petitioner Kahjey Warren is suffering the effects of the Commonwealth’s underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Warren is facing numerous charges in Lebanon County. He faces up to twenty-two (22) years and ninety (90) days imprisonment and up to \$30,300 in fines.

167. Mr. Warren cannot afford the cost of a private attorney, and therefore applied to the Lebanon County Office of the Public Defender and obtained representation from that office.

168. Mr. Warren has been held at the Lebanon County Correctional Facility since his arrest on February 7, 2024.

169. Mr. Warren had his preliminary arraignment on February 7, 2024, where his bail was set at \$10,000. He was not represented by counsel. Mr. Warren cannot afford to post his bail and thus remains confined.

170. On February 15, 2024, Mr. Warren had his preliminary hearing. The hearing was held over video from the Lebanon County Correctional Facility. While Mr. Warren could hear audio of the proceedings, he could not see the proceedings

because the video screen was blank. To Mr. Warren's knowledge, no public defender attorney appeared at the hearing. No public defender attorney spoke to Mr. Warren before or after the proceedings. Mr. Warren agreed to waive his right to a preliminary hearing, because he assumed doing so would enable him to be released on bail. Although the magisterial district judge did agree to reduce his bail from \$10,000 to \$5,000 during the proceedings, Mr. Warren cannot afford to post the \$5,000 bail.

171. On February 16, 2024, a day after the preliminary hearing was scheduled, a public defender attorney entered their appearance in Mr. Warren's case.

172. As of June 5, 2024, Mr. Warren had never spoken to his attorney, by phone, video, or in-person.

173. On June 1, 2024, Mr. Warren received a letter from a public defender attorney informing him that his trial had been continued until September, purportedly on Mr. Warren's request, because Mr. Warren had requested more time to consider a plea deal. Mr. Warren's docket includes an entry noting a "Motion for Continuance Defendant Request," filed on May 24, 2024.

174. But Mr. Warren did not request a continuance. He had never communicated with his attorney, outside of receiving his attorney's June 1, 2024, letter.

175. Feeling confused and left out of the picture by his attorney, Mr. Warren sent a slip to his counselor, asking the counselor to have his attorney contact him. But as of June 5, 2024, Mr. Warren has not heard from his attorney.

176. As a result of his incarceration, Mr. Warren lost his job and car.

Khalid Brockman Jr. (Clearfield County)

177. Named Petitioner Khalid Brockman Jr. is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Brockman is facing numerous charges in Clearfield County. He faces up to sixty (60) years of imprisonment and up to \$117,000 in fines.

178. Mr. Brockman cannot afford the cost of a private attorney, and therefore applied to the Clearfield County Office of the Public Defender and obtained representation from that office.

179. Mr. Brockman has been held at the Clearfield County Corrections Facility since his arrest on February 17, 2024.

180. Mr. Brockman had his preliminary arraignment for his case docketed at CP-17-CR-0000171-2024 on February 17, 2024, where his bail was set at \$300,000. The county did not provide him with representation at the preliminary arraignment.

181. On February 23, 2024, Mr. Brockman had his preliminary hearing for his case docketed at CP-17-CR-0000171-2024. Mr. Brockman spoke with a public

defender attorney for a couple of minutes prior to the hearing. He agreed to waive his right to a preliminary hearing. No effort was made by his attorneys to reduce his bail, despite Mr. Brockman's request.

182. From his February 23, 2024, preliminary hearing until his May 20, 2024, motions hearing, Mr. Brockman was unable to reach his attorneys despite several attempts.¹²¹

183. Mr. Brockman sent one request to his attorneys in March 2024, requesting that they file a motion to dismiss the charges against him. When his attorneys did not respond to his request with a visit or even a letter, Mr. Brockman filed his own motion to dismiss for case number CP-17-CR-0000171-2024, which was docketed with the court on May 1, 2024.

184. On May 20, 2024, Mr. Brockman appeared at Motions Court. Without first speaking with Mr. Brockman, his attorney addressed the court stating that if Mr. Brockman wished to proceed with his motion to dismiss, the public defender's office would withdraw from his case. Mr. Brockman decided to proceed with his motion, which the judge denied. The judge granted the public defender office's motion to withdraw from both of Mr. Brockman's cases, despite Mr. Brockman only filing a motion to dismiss in one of his cases.

¹²¹ To communicate with their public defender attorneys, people detained at the Clearfield County Corrections Facility fill out paper slips, which are sent to the public defender's office. Mr. Brockman sent multiple requests to his attorneys, but did not hear from them.

185. On June 6, 2024, the court appointed stand-by counsel in case number CP-17-CR-0000171-2024.

David McCauley (Clearfield County)

186. Named Petitioner David McCauley is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. McCauley is facing numerous charges in Clearfield County. He faces up to fifteen (15) years and six (6) months of imprisonment and up to \$37,875 in fines.

187. Mr. McCauley cannot afford the cost of a private attorney, and therefore applied to the Clearfield County Office of the Public Defender and obtained representation from that office.

188. Mr. McCauley has been held at the Clearfield County Corrections Facility since his arrest on March 25, 2024.

189. Mr. McCauley had his preliminary arraignment for the charges now docketed at CP-17-CR-0000344-2024 on March 25, 2024, where his bail was set at \$35,000. The county did not provide him with representation at the preliminary arraignment.

190. On April 3, 2024, Mr. McCauley was scheduled to have his preliminary hearing for the charges now docketed at CP-17-CR-0000344-2024. He was approached by a man, who introduced himself as a private attorney who could take

Mr. McCauley's case for \$3,500. The attorney did not tell Mr. McCauley at the time that he also served as a part-time attorney for the public defender's office. Mr. McCauley, who is indigent and homeless, declined the attorney's offer to represent him for pay. Mr. McCauley's preliminary hearing was continued to allow him to apply for representation from the Clearfield County Office of the Public Defender.

191. On April 10, 2024, Mr. McCauley had his preliminary hearing. The same attorney that had approached him on April 3, 2024, again approached Mr. McCauley, but this time he informed Mr. McCauley that he would be representing him for free through the public defender's office. On advice of counsel, Mr. McCauley waived his right to a preliminary hearing.

192. On April 19, 2024, another attorney from the Clearfield County Office of the Public Defender filed a motion to reduce Mr. McCauley's bail. On May 8, 2024, a judge tentatively granted the motion to allow Mr. McCauley to live at the Salvation Army homeless shelter in Altoona, but requested that Mr. McCauley's attorney and the assistant district attorney first draft an order for his signing that would include conditions for Mr. McCauley's release. To Mr. McCauley's knowledge, as of May 25, 2024, his attorney still had not presented an order for Mr. McCauley's release to the judge. On June 12, 2024, a judge issued an order denying a "Motion to Reduce Bail."

Ashley Scali (Luzerne County)

193. Named Petitioner Ashley Scali is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Ms. Scali is facing numerous charges in Luzerne County. She is also accused of violating her probation. She faces up to twenty-one (21) years and ninety (90) days of imprisonment and up to \$267,800 in fines, in addition to the possible sanctions and resentencing if her current sentence of probation is revoked.

194. Ms. Scali was arrested on February 18, 2024.

195. Luzerne County Adult Probation & Parole has lodged a probation detainer against Ms. Scali. As a result, she has remained incarcerated at the Luzerne County Prison since February 18, 2024.

196. Ms. Scali is unable to afford the cost of a private attorney. She applied for representation from the Luzerne County Office of the Public Defender at her March 7, 2024, preliminary arraignment.

197. The county did not provide Ms. Scali with representation at her preliminary arraignment.

198. On March 20, 2024, Ms. Scali had her preliminary hearing. The hearing was held over video from the Luzerne County Prison. No public defender attorney appeared at the hearing. An employee from the Luzerne County Prison who was

present in the video conference room explained to Ms. Scali that she could have her preliminary hearing, but that the Magisterial District Judge presiding over her preliminary hearing liked to bind all of his cases over to the Court of Common Pleas. Guided by the jail employee's comments, Ms. Scali waived her right to counsel at the preliminary hearing and waived her right to the hearing.

199. On April 4, 2024, Ms. Scali had a probation revocation hearing scheduled. A public defender attorney was present for the hearing, but did not speak to her before the hearing. During the hearing, the attorney continued the revocation hearing until July to allow for the resolution of Ms. Scali's open case. The attorney did not request that Ms. Scali's detainer be lifted, so that she could be released from custody as she awaited the resolution of her revocation proceedings and new case.

200. Other than the fleeting encounter at the April 4, 2024, hearing, as of June 12, 2024, Ms. Scali has not had any interactions with the Luzerne County Office of the Public Defender. She has written to the office asking to speak with her attorney, but has not heard back.

201. As a result of her arrest and detention, Ms. Scali lost her apartment and all of the property within.

Judson Rideout (Northampton County)

202. Named Petitioner Judson Rideout is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a

way that is typical of the entire class. Mr. Rideout is facing numerous charges in Northampton County across four criminal dockets. He faces up to 152 years and six (6) months of imprisonment and up to \$333,500 in fines.

203. Mr. Rideout was arrested on November 16, 2023, and as of June 7, 2024, was still being held at the Northampton County Prison.

204. Mr. Rideout cannot afford the cost of a private attorney, and therefore applied to the Northampton County Office of the Public Defender. On January 3, 2024, he received a letter stating that he would be represented by a court-appointed private attorney. His court-appointed attorney is representing him on all four cases.

205. On December 21, 2023, prior to being appointed counsel, Mr. Rideout had a preliminary hearing for his burglary charges. No attorney appeared to represent him. Without the benefit of an attorney, he waived both his right to counsel and his right to the hearing.

206. On February 6, 2024, nearly three months after he was arrested and detained, Mr. Rideout met with his attorney at the Northampton County Prison for the first time. His attorney spoke to him only about the aggravated assault charges and did not ask about his three other cases. The attorney did not discuss an investigation plan or the filing of any motions.

207. The next day, Mr. Rideout had his preliminary hearings for his criminal trespass and burglary charges. On advice of counsel, Mr. Rideout waived his right to a preliminary hearing.

208. As of June 7, 2024, Mr. Rideout had not seen his attorney since his one, and only, meeting on February 6, 2024.

209. As a result of his incarceration, Mr. Rideout lost his job as a heavy equipment operator. Mr. Rideout also lost the apartment that he had been living at with his family, and his family was evicted after he was unable to continue paying the rent.

Faith Pepe (Schuylkill County)

210. Named Petitioner Faith Pepe is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Ms. Pepe is facing numerous charges in Schuylkill County. She faces up to twenty-two (22) years and ninety (90) days of imprisonment and up to \$50,300 in fines.

211. Ms. Pepe has been held at the Schuylkill County Prison since her arrest on or before August 20, 2023.

212. The county did not provide Ms. Pepe with representation at her preliminary arraignment, where her bail was set at \$10,000. Ms. Scali cannot afford to post her bail.

213. Ms. Pepe cannot afford the cost of a private attorney, and therefore applied to the Schuylkill County Office of the Public Defender and obtained representation from that office.

214. Ms. Pepe first spoke with her attorney on August 31, 2023, just prior to her scheduled preliminary hearing, which was held over video conference from the jail. Her attorney told her that they thought she was incompetent to stand trial. Ms. Pepe asked the attorney to request a bail modification, but the attorney said that they would not do so until they determined whether Ms. Pepe knew right from wrong. In an effort to get her attorney to seek a bail modification, Ms. Pepe agreed to be evaluated.

215. Since August 31, 2023, Ms. Pepe has asked numerous times that her attorney come to speak with her. But she has only received a letter back from the public defender's office informing her that the competency evaluation could take some time and that her preliminary hearings would be continued.

216. Her preliminary hearings have been continued five times since her arrest.

217. Ms. Pepe's competency evaluation was not conducted until December 2023, four months after her arrest.

218. In early 2024, Ms. Pepe had a video hearing in front of a Court of Common Pleas judge because Ms. Pepe's attorney had filed a petition to determine

competency. Ms. Pepe was not aware that her attorney had filed such a petition. At the hearing, Ms. Pepe's video feed was put on mute while her attorney had a sidebar with the judge and district attorney. Her attorney then stated in open court, without having consulted with Ms. Pepe, that the attorney did not believe Ms. Pepe to be competent to stand trial.

219. On April 8, 2024, Ms. Pepe was ordered to be involuntarily committed to inpatient treatment for no more than 60 days.

220. As of May 21, 2024, Ms. Pepe's attorney had never visited her in person, despite successfully petitioning to have her involuntarily committed. The public defender's office has never had a social worker or mental health professional speak with her about her situation. Ms. Pepe feels left in the dark by her attorney.

221. While detained, Ms. Pepe lost her home and all of her belongings after her landlord evicted her approximately six months after she was arrested.

Darryl Shadle (Schuylkill County)

222. Named Petitioner Darryl Shadle is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Shadle is facing numerous charges in Schuylkill County. He faces up to two (2) years, six (6) months and 120 days of imprisonment and up to \$13,875 in fines. Mr. Shadle was on supervision when he was charged.

223. Mr. Shadle has been held at the Schuylkill County Prison since March 25, 2024.

224. Mr. Shadle cannot afford the cost of a private attorney, and therefore applied to the Schuylkill County Office of the Public Defender and obtained representation from that office.

225. Mr. Shadle first spoke with his attorney immediately before his April 4, 2024, preliminary hearing, which was held over video conference from the jail. Mr. Shadle, who is hard of hearing, had difficulty hearing his attorney over the video feed. When he asked his attorney what was going to happen at the preliminary hearing, his attorney responded “you’ve been at a preliminary hearing before.” When he asked his attorney about a possible revocation hearing, she said to “sit tight” and that “it could be a while.” On the advice of his attorney, he waived his right to a preliminary hearing.

226. On April 17, 2024, a person from the Schuylkill County Office of the Public Defender, whom he believed was an investigator, called the jail to speak with him. He attempted to tell the person about his history of compliance with his supervision, but the person told him that he needed to provide this information to the attorney that would be representing him at his revocation hearing. She did not know who that attorney would be.

227. Mr. Shadle has sent multiple messages requesting to speak to his attorney and had his girlfriend call asking for the same. He has not spoken with his attorney since his preliminary hearing on April 4, 2024, and has not spoken to anyone from the public defender's office since April 17, 2024. Mr. Shadle has never met with his attorney in person.

228. On May 13, 2024, Mr. Shadle had a formal arraignment scheduled. Without first communicating with Mr. Shadle, Mr. Shadle's attorney waived his appearance at the formal arraignment.

229. Mr. Shadle is very concerned that, if he does not get released soon he will lose his house and job.

Allen Weyant (Bedford County)

230. Named Petitioner Allen Weyant is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Weyant is facing numerous charges in Bedford County. Mr. Weyant also has an open criminal case in Blair County. For the charges pending in Bedford County, he faces up to twenty-one (21) years of imprisonment and up to \$45,000 in fines.

231. Mr. Weyant is currently being held at the Bedford County Prison.

232. Mr. Weyant had a preliminary arraignment on January 25, 2024, where his bail was set at \$50,000. The county did not provide Mr. Weyant with

representation at his preliminary arraignment. He has been unable to post the \$50,000 bail set at that arraignment, and thus remains incarcerated at the Bedford County Prison.

233. Mr. Weyant cannot afford the cost of a private attorney, and therefore applied to the Bedford County Office of the Public Defender. The court subsequently appointed a private attorney.

234. On May 1, 2024, more than three months after his preliminary arraignment, Mr. Weyant had a preliminary hearing. Mr. Weyant first met with his appointed attorney for approximately two minutes before this preliminary hearing. His appointed attorney did not appear to Mr. Weyant to be aware of Mr. Weyant's case, nor had he brought so much as the police report with him to the hearing. His appointed attorney did not move to have Mr. Weyant's bail reduced.

235. As of May 20, 2024, Mr. Weyant does not know when he will next speak with his appointed attorney.

Zachery Sellers (Bedford County)

236. Named Petitioner Zachery Sellers is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Sellers is facing numerous charges in Bedford County. He faces up to 872 years of imprisonment and up to \$805,000 in fines.

237. Mr. Sellers had a preliminary arraignment on December 15, 2023, where his bail was set at \$1,000,000. The county did not provide Mr. Sellers with representation at his preliminary arraignment. He has been unable to post his bail, and thus has remained incarcerated at the Bedford County Prison since his arrest on December 15, 2023.

238. Mr. Sellers cannot afford the cost of a private attorney, and therefore was appointed private counsel.

239. Mr. Sellers first met with his attorney just prior to his preliminary hearing on December 27, 2023. On the advice of counsel, Mr. Sellers waived his right to a preliminary hearing.

240. Mr. Sellers has not heard from his attorney in three months. He has tried calling his attorney directly, but has not heard back. His mother has also attempted to reach his attorney, to no avail.

Jessica Schmidt (Bedford County)

241. Named Petitioner Jessica Schmidt is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Ms. Schmidt is facing numerous charges in Bedford County. She faces up to seventy (70) years of imprisonment and up to \$165,000 in fines.

242. Ms. Schmidt cannot afford the cost of a private attorney, and therefore applied to the Bedford County Office of the Public Defender and obtained representation from that office.

243. Ms. Schmidt has been held at the Bedford County Prison since her arrest on October 28, 2023.

244. Ms. Schmidt had a preliminary arraignment on October 28, 2023, where her bail was set at \$100,000. The county did not provide her with representation at her preliminary arraignment. Ms. Schmidt is unable to post her bail, and thus remains incarcerated at the Bedford County Prison.

245. Ms. Schmidt met her attorney for the first time as she awaited her November 22, 2023, preliminary hearing. The meeting was conducted in a holding cell and only lasted a few minutes. Ms. Schmidt felt rushed and confused. She waived her right to a preliminary hearing on the advice of counsel.

246. On December 19, 2023, Ms. Schmidt had a bail reduction hearing. Ms. Schmidt's attorney met with her for only five minutes prior to that hearing. At the hearing, Ms. Schmidt's attorney asked her a few generic questions, although Ms. Schmidt had tried to provide the attorney with detailed information in their brief meeting prior to the hearing. The motion was denied.

247. As of May 20, 2024, Ms. Schmidt had spoken to her attorney twice since the bail reduction hearing, for less than five minutes. Ms. Schmidt is waiting to discuss her discovery with her attorney.

248. Ms. Schmidt is anxious to be released so that she can continue to care for her six-year-old son and her father, who has multiple sclerosis. She has now been detained more than 180 days.

Andrew Culley (Blair County)

249. Named Petitioner Andrew Culley is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Culley is facing numerous charges in Blair County. He faces up to forty-six (46) years of imprisonment and up to \$755,000 in fines.

250. Mr. Culley cannot afford the cost of a private attorney, and therefore was appointed private counsel.

251. Mr. Culley first met his attorney at his August 16, 2023, preliminary hearing. He met with the attorney in the courtroom for a couple of minutes prior to the hearing. Mr. Culley's bail was set at \$15,000. His attorney made no effort to reduce the amount of bail. Mr. Culley waived his right to a preliminary hearing on advice of counsel.

252. Mr. Culley has remained incarcerated at the Blair County Prison since his August 16, 2023, hearing.

253. Mr. Culley is awaiting a “Trial List Review” hearing. The hearing was initially scheduled for December 7, 2023, but has been continued three times.

254. As of May 20, 2024, Mr. Culley had not heard from his attorney since March 26, 2024. He is concerned because he has no sense of what is happening with his case, despite the serious nature of his charges. His attorney has also not moved for a bail reduction. Mr. Culley has now been detained more than 180 days without trial.

Jason Hice (Fayette County)

255. Named Petitioner Jason Hice is suffering the effects of the Commonwealth’s underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Hice is facing numerous charges in Fayette County on two dockets. He faces up to 1,452 years of imprisonment and up to \$3,857,500 in fines.

256. Mr. Hice cannot afford the cost of a private attorney, and therefore applied to the Fayette County Office of the Public Defender and obtained representation from that office.

257. Mr. Hice has been held at the Fayette County Prison since November 17, 2023.

258. Mr. Hice had his preliminary arraignment on November 17, 2023. His bail was set at \$20,000 in each case. The county did not provide him with representation at the preliminary arraignments.

259. On November 29, 2023, Mr. Hice had his preliminary hearing. Prior to the preliminary hearing, Mr. Hice spoke to an attorney from the public defender's office for the first time. The conversation lasted approximately two minutes and was held at the side of the courtroom, within earshot of several other people. The attorney did not ask Mr. Hice any questions. He simply described the prosecution's plea offer and asked Mr. Hice if he wanted to take the deal. Mr. Hice was willing to take the plea offer, but insisted on a brief period in the community to get his affairs in order prior to serving the sentence. The attorney indicated that would likely be acceptable and advised Mr. Hice to waive the preliminary hearing. Mr. Hice believed he was signing a document to accept the plea deal they had discussed, including an opportunity to go home briefly before serving a prison sentence. He did not understand he was waiving his right to a preliminary hearing and that he would remain in custody.

260. Mr. Hice's did not speak with a public defender again until February 7, 2024, when he was brought to court for a *plea hearing*. At the hearing, a different public defender attorney told Mr. Hice that the prosecutor wouldn't accept a period of pre-confinement release. Mr. Hice rejected the plea without that important

condition. The attorney did not ask Mr. Hice any questions or tell him what would happen thereafter.

261. In early March 2024, another public defender attorney met with Mr. Hice for a couple of minutes to tell him that the prosecution remained unwilling to allow for a period of pre-confinement release. This attorney again did not ask Mr. Hice any questions.

262. Several weeks later, Mr. Hice participated in pre-trial conferences on both of his cases over video conference from the jail. His only opportunity to speak with the public defender attorney was an approximately 90-second conversation in a breakout room. Mr. Hice thought he pled guilty to falsely incriminating another and marijuana possession charges in exchange for time served and one-year probation, but his docket reflects no record of a plea. The other charges were listed for trial on June 3-7, 2024.

263. As of June 6, 2024, Mr. Hice had not spoken to an attorney since his pre-trial conference in March, even though he was scheduled for trial as early as June 3, 2024. To date, no attorney has spoken to Mr. Hice about the circumstances of his case or how a trial might play out. Mr. Hice has tried calling the public defender's office, but has been unable to reach them. Mr. Hice also had received no information about the status of his trial. He has now been detained for more than 180 days without trial.

Dustin Galasso (Fayette County)

264. Named Petitioner Dustin Galasso is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Galasso is facing numerous charges in Fayette County. He faces up to two (2) years of imprisonment and up to \$5,000 in fines.

265. Mr. Galasso cannot afford the cost of a private attorney, and therefore applied to the Fayette County Office of the Public Defender and obtained representation from that office.

266. Mr. Galasso has been held at the Fayette County Prison since his arrest on December 2, 2023.

267. Mr. Galasso had his preliminary arraignment on December 2, 2023 for his case docketed at CP-26-CR-0002363-2023. His bail was set at \$25,000. The county did not provide him with representation for the preliminary arraignment.

268. On December 7, 2023, Mr. Galasso had his preliminary hearing. Prior to the preliminary hearing, Mr. Galasso briefly spoke to an attorney from the public defender's office. The attorney behaved as though he was in a hurry, not asking him many questions.

269. Mr. Galasso suffered a head injury in 2021 when he was hit by a car, which has caused ongoing memory issues. Mr. Galasso has bipolar disorder,

depression, and anxiety. Despite Mr. Galasso's apparent mental health issues, Mr. Galasso's attorney has not ordered a mental health evaluation.

270. Prior to his trial date, which had been scheduled for April 1, 2024, Mr. Galasso's attorney met with him for ten-to-fifteen minutes in the jail. Mr. Galasso's attorney did not discuss trial preparation, discovery, any investigation performed, or the filing of any motions.

271. On May 6, 2024, Mr. Galasso pled guilty to the charges docketed at CP-26-CR-0002363-2023.

272. On June 6, 2024, he was sentenced to five to ten years of confinement. As of noon on June 6, Mr. Galasso had not spoken with a PD about his sentencing or any possible mitigating factors

273. Mr. Galasso's case docketed at CP-26-CR-0002339-2023 remains open. He is awaiting a currently unscheduled pre-trial conference.

Robby Robertson (Fayette County)

274. Named Petitioner Robby Robertson is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Robertson is facing numerous charges in Fayette County on two dockets. He faces up to five (5) years of imprisonment and up to \$12,800 in fines.

275. Mr. Robertson cannot afford the cost of a private attorney, and therefore applied to the Fayette County Office of the Public Defender and obtained representation from that office.

276. Mr. Robertson has been held at the Fayette County Prison since April 7, 2024. This is his first time in jail.

277. Mr. Robertson had his preliminary arraignment on his case docketed at CP-26-CR-0000796-2024 on April 7, 2024. His bail was set at \$2,500. The county did not provide him with representation for his preliminary arraignment.

278. On or about April 19, 2024, Mr. Robertson had his preliminary hearing. He met with a public defender attorney for the first time a few days before that, for an approximately five-minute video call. The attorney asked him why he was in jail on such minor charges, and indicated that he should be released at the preliminary hearing. Mr. Robertson's bail on his case docketed at CP-26-CR-0000796-2024 was modified to require only 10% of the originally imposed \$2,500 bail. Bail was also set at 10% of \$2,500 in Mr. Robertson's case docketed at CP-26-CR-0000795-2024. Mr. Robertson signed what the public defender attorney called a "waiver form," and was told that he should be released when the paperwork was done.

279. As of June 6, 2024, Mr. Robertson was still in detention. Mr. Robertson has not heard from a public defender attorney since his preliminary hearing and does not know the status of his case. Sixty of those days were spent in solitary

confinement for a disciplinary infraction, during which time he was unable to even try to call the public defender.

Shannon Sord (Fayette County)

280. Named Petitioner Shannon Sord is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a way that is typical of the entire class. Mr. Sord is facing numerous charges in Fayette County. He faces up to twelve years (12), ninety (90) days of imprisonment and up to \$30,300 in fines.

281. Mr. Sord cannot afford the cost of a private attorney, and therefore applied to the Fayette County Office of the Public Defender and obtained representation from that office.

282. Mr. Sord has been held at the Fayette County Prison since September 3, 2023. This is his first time being incarcerated.

283. Mr. Sord had his preliminary arraignment on September 3, 2023. His bail was set at \$10,000. The county did not provide him with representation for the preliminary arraignment.

284. On November 1, 2023, Mr. Sord had his preliminary hearing. Mr. Sord first met a public defender attorney as he was escorted into the courtroom. They spoke for approximately 45 seconds. Mr. Sord felt like his lawyer was trying to get him to accept a plea agreement, which he did not want to do. He eventually signed

papers, but thought they were to waive the preliminary hearing. The docket reflects he did waive the hearing.

285. On or about January 19, 2024, Mr. Sord was brought to court for a “Plea - Fast Track” hearing. Mr. Sord did not see the public defender attorney until he was escorted into the courtroom. When Mr. Sord realized he had been brought down for a *plea* hearing, he reiterated his desire to plead not guilty. He was returned to the jail.

286. The only time Mr. Sord has seen his public defender attorney since January 2024 was in, or near, May 2024. While cutting grass for his jail job at the county facility, Mr. Sord saw the lawyer walking into the jail and managed to have a less than five-minute discussion on the grass, during which he reiterated his desire for a trial.

287. Mr. Sord has received paperwork saying he was scheduled for trial the week of May 5, 2024. As of June 6, 2024, however, Mr. Sord had not been summoned for court and had heard nothing from his public defender attorney about the status of his charges. He has now been detained for more than seven months without trial.

Heather Hice (Fayette County)

288. Named Petitioner Heather Hice is suffering the effects of the Commonwealth’s underfunded and under-resourced indigent defense system in a

way that is typical of the entire class. Ms. Hice is facing numerous charges in Fayette County on two dockets. She faces up to twenty-five (25) years and ninety (90) days of imprisonment and up to \$60,300 in fines.

289. Ms. Hice cannot afford the cost of a private attorney, and therefore applied to the Fayette County Office of the Public Defender and obtained representation from that office.

290. Ms. Hice was initially arrested on her case docketed at CP-26-CR-0001677-2023 on July 28, 2023, and detained on \$10,000 bond. This was the first time Ms. Hice had been incarcerated.

291. On September 5, 2024, Ms. Hice first met her public defender attorney at the preliminary hearing, where he managed to change her \$10,000 bond from secured to unsecured, thereby prompting her release from jail on that day.

292. Ms. Hice was rearrested on December 25, 2023, on a new charge emanating from the same facts as the July charge. She has been detained at the Fayette County Prison since then.

293. Ms. Hice had her preliminary arraignment on her case docketed at CP-26-CR-0000331-2024 on December 12, 2023. Her bail was set at \$30,000, unsecured. The county did not provide her with representation at the preliminary arraignment.

294. On February 20, 2024, Ms. Hice had her preliminary hearing. She did not speak with her public defender attorney before the hearing. The first time she saw him was when she was escorted into the courtroom while it was in session. The court imposed \$30,000 secured bond and conducted a preliminary hearing. Even though the lawyer had not spoken to Ms. Hice about her case, he asked questions of a witness during the hearing. The court held her charges for court. Ms. Hice asked the lawyer to file for a bond reduction and to share discovery, neither of which had occurred as of June 6, 2024.

295. Ms. Hice was scheduled for a pre-trial conference on May 28, 2024, but she neither saw nor spoke to her attorney before the conference and was not brought to court. She was also scheduled for trial the week of June 3, 2024.

296. On June 1, 2024, her public defender attorney visited Ms. Hice in the jail for about ten minutes, spending most of the time reiterating the district attorney's plea offer. There was virtually no discussion of her case. As of June 6, 2024, Ms. Hice had not been summoned for trial. As of that date, she had been confined for more than six months on the charges lodged against her in July 2023. Ms. Hice does not know what is going on in her case.

Scott Welsh (Lancaster County)

297. Named Petitioner Scott Welsh is suffering the effects of the Commonwealth's underfunded and under-resourced indigent defense system in a

way that is typical of the entire class. Mr. Welsh is facing numerous charges in Lancaster County. He faces up to seventeen (17) years of imprisonment and up to \$255,500 in fines.

298. Mr. Welsh was arrested on February 11, 2024. He had his preliminary arraignment on the same date. He was not represented by counsel at his preliminary arraignment. Mr. Welsh's bail was set at \$25,000. He cannot afford to post his bail. As a result, he has remained incarcerated at the Lancaster County Prison since his arrest.

299. Mr. Welsh cannot afford the cost of a private attorney, and therefore applied to the Lancaster County Office of the Public Defender and obtained representation from that office.

300. Mr. Welsh first met a member of the Office of the Public Defender at his February 16, 2024, preliminary hearing. Mr. Welsh's attorney spoke with him for approximately two minutes. His attorney did not talk to him about the facts of his case, about a potential investigation plan, or about attempting to reduce his bail. On advice of counsel, Mr. Welsh waived his right to a preliminary hearing.

301. Mr. Welsh wants to speak with his attorney about his case, but as of May 20, 2024, he had not seen his attorney since his preliminary hearing in February.

302. On his own initiative, Mr. Welsh applied for mental health and veterans court, after hearing about these courts from a Lancaster County Prison counselor. As

of May 20, 2024, he has not been able to speak with his attorney about his applications.

303. Mr. Welsh has experienced a deterioration in his mental health since he was arrested. His physical health has also suffered: he lost consciousness due to the high temperatures in the Lancaster County Prison, causing him to hit his head on the concrete floor. Mr. Welsh is also the primary caregiver to his mother, who has serious health issues.

304. None of the Named Petitioners had counsel at their preliminary arraignments.

305. Named Petitioners Kahjey Warren, Khalid Brockman Jr., David McCauley, Ashley Scali, Judson Rideout, Faith Pepe, Darryl Shadle, Allen Weyant, Zachery Sellers, Jessica Schmidt, Andrew Culley, Jason Hice, Dustin Galasso, Robby Robertson, Shannon Sord, Heather Hice, and Scott Welsh aver that they have been unable to confer adequately with their indigent defense attorneys and believe and therefore aver that their lawyers, while intending to provide them with effective representation, will be unable to consult with them properly, to investigate their cases properly, and to perform all of the other functions of a constitutionally adequate representation, solely because of the fact that their lawyers have too many cases and too few resources to handle all of those cases.

306. Named Petitioners Kahjey Warren, Judson Rideout, Allen Weyant, Zachery Sellers, Jessica Schmidt, Andrew Culley, Khalid Brockman Jr., and David McCauley are facing charges in counties where there are no dedicated staff investigators to assist their public defender attorneys.¹²²

307. Named Petitioners Kahjey Warren, Ashley Scali, Judson Rideout, Darryl Shadle, Zachery Sellers, Jessica Schmidt, Andrew Culley, Khalid Brockman Jr., David McCauley, Jason Hice, Robby Robertson, Shannon Sord and Scott Welsh waived their preliminary hearing at the recommendation of their indigent defense attorneys, and they thus have not heard any of the evidence against them and are less able to assist with their own defense.

308. In better funded counties, the Named Petitioners would be represented by lawyers with smaller caseloads and with investigators and other staff to assist them.

309. The requirements of Rule 1702 are met in that:

- a. The Class is so numerous that joinder of all members is impracticable, as it includes thousands of current and future persons who are or will be eligible for indigent defense services. Public defender offices represented clients in 114,711 adult criminal cases disposed of in 2019, and court-appointed

¹²² As of September 2023.

attorneys represented clients in 16,665 cases.¹²³ Additionally, indigent defense attorneys across the Commonwealth annually handle thousands of juvenile delinquency cases, dependency hearings, probation violation hearings, and appeals, among other matters.

- b. There are questions of law or fact common to the Class. These common questions include:
 - i. Whether Respondents owe a duty under the Sixth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution to provide each Class Member with effective assistance of counsel;
 - ii. Whether the traditional markers of representation—specifically, confidential communication with clients, substantive investigation, and meaningful adversarial testing of the Commonwealth’s case—are routinely or frequently absent or significantly compromised for large numbers of clients of indigent defense services in the Commonwealth;

¹²³ General Assembly’s 2021 Report, *supra* note 3, at S-6, 64.

- iii. Whether county offices of the public defender have sufficient funding, staffing, oversight, training, and independence to provide effective representation required by the U.S. and Pennsylvania Constitutions; and
 - iv. Whether Class Members are less likely to receive constitutionally adequate representation than what they would receive if they faced the same charges in a county with a better funded indigent defense system.
- c. The Named Petitioners' claims are typical of the claims of the Class in that the constitutional and statutory deprivations alleged by the Named Petitioners (the systemic and chronic denial of constitutionally adequate representation) is the same for all other members of the Class and predominate over individual claims.
 - d. The Named Petitioners will fairly and adequately assert and protect the interests of the Class.
 - e. A class action provides a fair and efficient method for adjudication of this controversy pursuant to the criteria established by Rule 1708. Specifically:

- i. Trying these actions separately would create a risk of inconsistent and incompatible adjudications with respect to individual members of the Class;
- ii. No litigation has been commenced by or against members of the Class involving the same issues;
- iii. Common questions of law and fact predominate over any questions affecting individual members;
- iv. This Court is an appropriate forum for the litigation of the claims of the entire class, as the Respondents are Commonwealth officials over whom the courts of common pleas have no jurisdiction;
- v. The Class is sufficiently numerous to render joinder of all members or the maintenance of separate suits impracticable, and the difficulties likely to be encountered in the management of this action as a class action are minimal; and
- vi. Respondents have refused to act on grounds generally applicable to all members of the Class.

310. The Named Petitioners will fairly and adequately assert and protect the interests of the Class pursuant to Rule 1709, in that:

- a. Attorneys for the Named Petitioners are experienced in class action litigation and will adequately represent the interests of the Class;
- b. The Named Petitioners do not have any conflict of interest in the maintenance of the class action; and
- c. The attorneys are representing the parties *pro bono*. The attorneys for the Named Petitioners have adequate financial resources to assure that the interests of the Class will not be harmed.

COUNT I

**Violations of the Right to Counsel under
the Sixth and Fourteenth Amendments to the United States Constitution
Pursuant to 42 U.S.C. § 1983 and
the Pennsylvania Cause of Action Announced in *Kuren*
(*All Petitioners Versus All Respondents*)**

311. Petitioners repeat and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

312. The Sixth Amendment to the United States Constitution guarantees that “[i]n all criminal prosecutions,” an accused shall enjoy the right “to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI.

313. The Fourteenth Amendment to the United States Constitution provides that “nor shall any state deprive any person of life, liberty, or property, without due process of law” U.S. Const. amend. XIV, § 1.

314. The Sixth Amendment, applicable to the states through the due process clause of the Fourteenth Amendment, is enforceable against the Respondents pursuant to 42 U.S.C. § 1983.

315. The Sixth Amendment requires states to provide counsel for any indigent person facing state criminal proceedings.

316. Indigent criminal defendants are entitled to *effective* assistance of counsel under the Sixth and Fourteenth Amendments.

317. States retain ultimate responsibility under the Sixth and Fourteenth Amendments to ensure that indigent defendants charged by their state receive effective assistance of counsel.

318. The Commonwealth has failed to provide adequate funding and oversight for indigent defense services. Without adequate state funding and oversight, Pennsylvania indigent defendants are systematically denied effective assistance of counsel. Respondents’ failure to guarantee indigent Pennsylvanians’ right to counsel in criminal proceedings violates the Sixth and Fourteenth Amendments.

319. Pennsylvania’s courts have “inherent authority to ensure that indigent defendants receive constitutionally adequate assistance of counsel.” *Kuren*, 146 A.3d at 749 (quoting *McGarrell*, 87 A.3d at 810 (Saylor, J., dissenting)).

320. Respondents have long been aware of their failures to assure adequate representation for indigent defendants and intentionally, or with deliberate indifference, refuse to provide adequate funding and oversight for indigent defense services.

321. Petitioners and members of the Class are persons entitled to declaratory relief, as well as attorneys’ fees and costs pursuant to 42 U.S.C. § 1983, in that, under color of statute, ordinance, regulation, custom, or usage Respondents’ actions have deprived and will deprive Petitioners of their Sixth Amendment rights to effective representation.

322. Additionally, Petitioners bring suit under the Pennsylvania cause of action announced in *Kuren* for violations of indigent defendants’ Sixth Amendment rights. *Kuren* “recognize[d] for the first time in Pennsylvania a prospective cause of action enabling indigent criminal defendants to prove that the level of funding provided by a county to operate a public defender’s office has left that office incapable of complying with *Gideon*, creating the likelihood of a systematic, widespread constructive denial of counsel in contravention of the Sixth Amendment to the United States Constitution.” 146 A.3d at 751.

COUNT II

Violations of the Right to Counsel under Article I, Section 9 of the Pennsylvania Constitution

(All Petitioners Versus All Respondents)

323. Petitioners repeat and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

324. Article I, Section 9 of the Pennsylvania Constitution provides that “[i]n all criminal prosecutions the accused hath a right to be heard by himself and his counsel” Pa. Const., art. I, § 9.

325. The Supreme Court of Pennsylvania has held that “the right to counsel recognized in Article I, Section 9 and in the Sixth Amendment of the United States Constitution are jurisprudentially coextensive.” *Kuren*, 146 A.3d at 733 n.6 (citing *Commonwealth v. Wholaver*, 989 A.2d 883, 897 (Pa. 2010)).

326. The Commonwealth has also memorialized the right to counsel in statute. 42 Pa. C.S.A. § 2501(b) states that “[i]n all criminal prosecutions the accused has a right to be heard by himself and his counsel.”

327. Respondents’ abdication of their responsibilities for indigent defense threatens all indigent Pennsylvanians across the Commonwealth with a lack of effective assistance of counsel, in violation of the right to counsel under Article I, Section 9 of the Pennsylvania Constitution.

COUNT III

**Violations of the Equal Protection and Due Process Clauses
of the Fourteenth Amendment to the United States Constitution
Pursuant to 42 U.S.C. § 1983 and Equitable Causes of Action**

(All Petitioners Versus All Respondents)

328. Petitioners repeat and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

329. In order to ensure justice under law, the Fourteenth Amendment's due process and equal protection clauses require states to provide effective representation to indigent criminal defendants for their "first appeal, granted as a matter of right." *Douglas v. People of State of Cal.*, 372 U.S. 353, 356 (1963); *see also Halbert v. Michigan*, 545 U.S. 605 (2005) (holding that indigent defendants that are convicted following a guilty plea have the right to appointed counsel for their first-tier appeal as of right).

330. The due process and equal protection clauses of the Fourteenth Amendment are enforceable against the Respondents pursuant to 42 U.S.C. § 1983.

331. Respondents, acting at all times under color of state law, have violated the due process and equal protection rights of indigent defendants by failing to ensure that county indigent defense service providers have enough funding and oversight to provide effective representation to their clients on direct appeal.

332. Without Commonwealth funding and oversight, many county offices of the public defender and appointed counsel cannot and will not provide effective representation to their indigent clients on direct appeal.

333. Respondents have long been aware of their failures to ensure adequate representation for indigent defendants on direct appeal and intentionally, or with deliberate indifference, refuse to provide adequate funding and oversight for appellate indigent defense services.

334. Petitioners and members of the Class are persons entitled to declaratory relief, as well as attorneys' fees and costs, pursuant to 42 U.S.C. § 1983 in that, under color of statute, ordinance, regulation, custom, or usage Respondents' actions have deprived and will deprive Petitioners of their rights to effective representation on direct appeal under the Fourteenth Amendment's due process and equal protection clauses.

335. Additionally, Petitioners bring suit under a Pennsylvania cause of action seeking relief from the likelihood of a systematic, widespread constructive denial of counsel on direct appeal, in contravention of the Fourteenth Amendment's Due Process and Equal Protection Clauses.

COUNT IV

Violations of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution Pursuant to 42 U.S.C. § 1983 and Equitable Causes of Action

(All Petitioners Versus All Respondents)

336. Petitioners repeat and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

337. The Fourteenth Amendment to the United States Constitution, enforceable against the Respondents pursuant to 42 U.S.C. § 1983, bars states from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

338. Under the Equal Protection Clause of the Fourteenth Amendment, governmental actors, including the Respondents, may not distinguish between persons with respect to a fundamental right unless the governmental actors satisfy strict scrutiny.

339. Under strict scrutiny, the government’s infringement of a fundamental right must be narrowly tailored to serve a compelling state interest.

340. The Commonwealth’s delegation of indigent defense funding responsibilities to the counties produces disparities in the funding for and quality of representation provided to indigent defendants based on the county in which the defendant was charged.

341. The county-level disparities in indigent defense funding caused by the Commonwealth's refusal to fund indigent defense impinge on the fundamental right to counsel, triggering strict scrutiny.

342. The Commonwealth's delegation of its indigent defense funding responsibilities to the counties is not narrowly tailored to advance a compelling state interest.

343. The Supreme Court of Pennsylvania stressed in *Kuren* that “[a]t the most fundamental level, compliance with *Gideon* should not—cannot—depend upon the county in which a crime is alleged.” 146 A.3d at 749.

344. By delegating indigent defense funding responsibilities to the counties, the Respondents have unconstitutionally discriminated against Petitioners charged in counties with financially inadequate indigent defense services, and have denied these Petitioners their rights to equal protection of the laws.

345. Respondents are well aware of their unconstitutional discrimination against Petitioners charged in counties with financially inadequate indigent defense services and intentionally, or with deliberate indifference, refuse to provide adequate funding for indigent defense services in all counties.

346. As a direct and proximate result of the Respondents' violation of the Petitioners' and the proposed class's equal protection rights, Petitioners and the proposed class have been subject to and will continue to be subject to injury.

347. Petitioners and members of the Class are persons entitled to declaratory relief, as well as attorneys' fees and costs, pursuant to 42 U.S.C. § 1983 in that, under color of statute, ordinance, regulation, custom, or usage the Respondents have deprived and will continue to deprive them of rights, secured by the Constitution of the United States, to wit, the right of Equal Protection of the law guaranteed by the Fourteenth Amendment.

348. Additionally, Petitioners bring suit under a Pennsylvania cause of action seeking relief from unconstitutional discrimination against Petitioners charged in counties with financially inadequate indigent defense services, in contravention of the Fourteenth Amendment's Equal Protection Clause.

COUNT V

Violations of the Equal Protection of the Laws as Guaranteed by the Pennsylvania Constitution Article I, §§ 1 and 26 and Article III, § 32

(All Petitioners Versus All Respondents)

349. Petitioners repeat and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

350. Article I, § 26 of the Pennsylvania Constitution provides that “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” Pa. Const., art. I, § 26.

351. Under Section 26, “the government is prohibited from treating any person differently in the exercise of their civil rights.” *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*, 309 A.3d 808, 925 (Pa. 2024). “Civil rights” under Section 26 include constitutional rights, *see id.*, like the right to counsel.

352. Additionally, Article III, § 32 of the Pennsylvania Constitution mandates that “[t]he General Assembly shall pass no local or special law in any case which has been or can be provided for by general law.” Pa. Const., art. III, § 32.

353. “Section 32 embodies the principle that ‘like persons in like circumstances should be treated similarly by the sovereign.’” *William Penn School District v. Pennsylvania Department of Education*, 170 A.3d 414, 458 (Pa. 2017) (quoting *Robinson Township, Washington County v. Commonwealth*, 83 A.3d 901, 987 (Pa. 2013)).

354. Under the equality provisions of the Pennsylvania Constitution, “[f]undamental rights ... trigger strict scrutiny.” *Lohr v. Saratoga Partners, L.P.*, 238 A.3d 1198, 1210 (Pa. 2020). The right to counsel in a criminal proceeding is a fundamental right. *Commonwealth v. McDonough*, 812 A.2d 504, 506 (Pa. 2002).

355. Strict scrutiny requires that a “statute is strictly construed in light of a ‘compelling’ governmental purpose.” *Smith v. City of Philadelphia*, 516 A.2d 306, 311 (Pa. 1986).

356. Promoting local control is not a compelling purpose for delegating a constitutional obligation to a local governmental entity. *See William Penn School District*, 294 A.3d at 959-962 (holding that promoting local control of public education funding, by delegating the Commonwealth’s constitutional responsibility for education funding to individual school districts, was not a compelling purpose to justify a system that “disproportionately, negatively impacted students who attend schools in low-wealth school districts”).

357. The county-level disparities in indigent defense funding produced by the Commonwealth’s delegation of funding responsibilities to the counties implicates the fundamental right to counsel.

358. Providing indigent defendants with disparately funded indigent defense services solely based on the county in which the defendant was charged is not strictly construed to a compelling governmental purpose.

359. By delegating indigent defense funding responsibilities to the counties, the Respondents have unconstitutionally discriminated against Petitioners and members of the Class charged in counties with financially inadequate indigent defense services, and have denied these Petitioners and members of the Class their rights to equal treatment under the Pennsylvania Constitution.

360. As a direct and proximate result of the Respondents' violation of the Petitioners' rights to equal treatment, Petitioners and the proposed Class have been subject to and will continue to be subject to injury.

361. For all the reasons stated, Petitioners and members of the Class are entitled to declaratory relief in that Respondents have deprived them of rights, secured by the Pennsylvania Constitution.

COUNT VI

Mandamus

(All Petitioners Versus All Respondents)

362. This Court has jurisdiction to hear this petition for writ of mandamus pursuant to 42 Pa.C.S.A. § 761. *Jones v. Carson*, 488 A.2d 659, 661 (Pa. Commw. Ct. 1985) (“[U]nder 42 Pa.C.S. § 761(a), the original jurisdiction of this Court in civil matters extends to a Commonwealth officer, acting in his official capacity; that this jurisdictional requirement applies to mandamus actions”).

363. “Mandamus is an extraordinary writ that will only lie to compel official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate and adequate remedy.” *Kuren*, 146 A.3d at 750-51 (quoting *Jackson v. Vaughn*, 777 A.2d 436, 438 (Pa. 2001)).

364. “Mandamus is a device that is available in our system to compel a tribunal or administrative agency to act when that tribunal or agency has been sitting

on its hands.” *Kuren*, 146 A.3d at 751 (quoting *Pennsylvania Dental Association v. Commonwealth Insurance Department*, 516 A.2d 647, 652 (Pa. 1986) (internal citations and quotation marks omitted)).

365. Petitioners have a clear legal right to counsel, which includes the right to effective representation in their pending criminal cases, and a right to equal protection under the law, which guarantees that their right to counsel is not arbitrarily infringed based on the county in which they were charged.

366. Respondents have a duty under the United States and Pennsylvania Constitutions to ensure that indigent criminal defendants receive effective representation and that the quality of representation is not determined solely by the county in which the defendant was charged. The ultimate responsibility to provide for the right to counsel and for equal protection as to indigent defense funding falls to the Respondents.

367. But the Respondents have failed to perform their duties to provide for adequate indigent defense funding and oversight across the Commonwealth.

368. Mandamus is appropriate to compel Commonwealth actors to provide the necessary resources for the Commonwealth to meet constitutional and statutory standards. *See, e.g., Pennsylvania State Association of County Commissioners v. Commonwealth*, 681 A.2d 699, 703 (Pa. 1996) (granting a writ of mandamus to compel the General Assembly to enact a scheme to fund the Pennsylvania courts);

Council 13, American Federation of State, County and Mun. Employees, AFL-CIO by Keller v. Casey, 626 A.2d 683, 686 (Pa. Commw. Ct. 1993) (granting a peremptory writ of mandamus against the Governor and others to compel the payment of wages to Commonwealth employees despite the imminent exhaustion of salary appropriations).

369. If this Court finds that the relief requested in counts one through five are unavailable, then Petitioners are entitled to a writ of mandamus, because Petitioners will have no other adequate remedy at law or equity to protect their constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioners, on behalf of themselves and a class of all similarly situated persons, respectfully request that the Court order the following relief:

1. Declare that the right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution imposes a duty on the Commonwealth, through the Respondents, to ensure that indigent people receive effective assistance of counsel when they are charged with crimes by the Commonwealth;
2. Declare that the Respondents' delegation of the Commonwealth's indigent defense responsibilities to the counties without also providing adequate

funding and oversight violates the right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution;

3. Declare that the right to counsel under Article I, Section 9 of the Pennsylvania Constitution imposes a duty on the Commonwealth, through the Respondents, to ensure that indigent people receive effective assistance of counsel when they are charged with crimes by the Commonwealth;
4. Declare that the Respondents' failure to provide adequate funding and oversight violates the right to counsel under Article I, Section 9 of the Pennsylvania Constitution;
5. Declare that the Fourteenth Amendment's due process and equal protection clauses impose a duty on the Commonwealth, through the Respondents, to ensure that indigent people receive effective assistance of counsel on direct appeal;
6. Declare that the Respondents' failure to provide adequate funding and oversight violates the right to effective assistance of counsel on direct appeal;
7. Declare that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution imposes a duty on the Commonwealth not to discriminate against indigent defendants by providing them with indigent

defense services whose funding depends on the county in which the defendant was charged;

8. Declare that the Respondents' failure to provide adequate funding and oversight violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
9. Declare that Article I, §§ 1 and 26 and Article III, § 32 of the Pennsylvania Constitution impose a duty on the Commonwealth not to discriminate against indigent defendants by providing them with indigent defense services whose funding depends on the county in which the defendant was charged;
10. Declare that the Respondents' failure to provide adequate funding and oversight violates Article I, §§ 1 and 26 and Article III, § 32 of the Pennsylvania Constitution;
11. Retain jurisdiction over this matter until the Court has determined that the Respondents have shown full compliance with the Court's orders;
12. Certify the Class, appoint the Petitioners as class representatives, and appoint their counsel as Class Counsel under Rules 1701-1717 of the Pennsylvania Rules of Civil Procedure;
13. Award to the Petitioners and the Class their attorneys' fees and costs associated with Counts I, III, and IV under 42 U.S.C. § 1988;

14. Grant such other equitable or remedial relief as the Court deems just and appropriate.

Dated: June 13, 2024

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Respectfully submitted

/s/ Ariel Shapell

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Ariel Shapell _____


CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June 2024, I caused a true and correct copy of the foregoing document to be filed by the Court's electronic filing system, and thereby served on all parties of record registered with the system.

/s/ Ariel Shapell

VERIFICATION

I, Chad B., verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: 

Dated: May 21, 2024

VERIFICATION

I, Andrew J. Culley, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: 

Dated: 5/20/24

VERIFICATION

I, Dustin Galasso, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: Dustin Galasso

Dated: 6-6-24

VERIFICATION

I, Heather Hice, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed:

Heather Hice

Dated:

6/6/24

VERIFICATION

I, Jason S. Hice, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: _____

Dated: 6-6-24

VERIFICATION

I, David McCauley, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: _____

D. McCauley

Dated: _____

5/21/24

VERIFICATION

I, Faith Pepe, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: Faith Pepe

Dated: May 21, 2024

VERIFICATION

I, Dustin Galasso, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

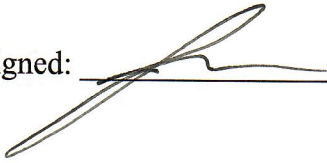
Signed: Dustin Galasso

Dated: 6-6-24

VERIFICATION

I, Jason S. Hice, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: _____



Dated: 6-6-24

VERIFICATION

I, Heather Hice, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed:

Heather Hice

Dated:

6/6/24

VERIFICATION

I, David McCauley, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: _____

D. McCauley

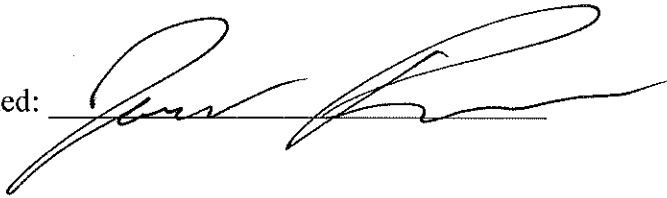
Dated: _____

5/21/24

VERIFICATION

I, Judson Rideout, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: _____



Dated: _____

May 29, 2004

VERIFICATION

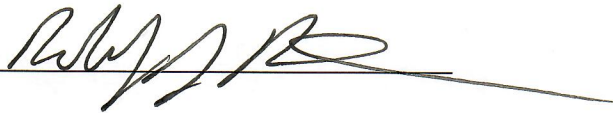
I, Faith Pepe, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: Faith Pepe

Dated: May 21, 2024

VERIFICATION

I, Robby Resator, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: 

Dated: 5-6-2024

VERIFICATION

I, Ashley Scali, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: Ashley Scali

Dated: 6-12-24

VERIFICATION

I, Jessica Schmidt, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed:

Jessica M Schmidt

Dated:

May 20, 2024

VERIFICATION

I, Zach Sellers, verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: _____

Dated: 5-20-2004