
July 26, 2023

Hon. Patty Murray
Chair
Senate Committee on Appropriations

Hon. Susan Collins
Vice Chair
Senate Committee on Appropriations

Hon. Chris Van Hollen
Chair
Senate Committee on Appropriations
Subcommittee on Financial Services and
General Government

Hon. Bill Hagerty
Ranking Member
Senate Committee on Appropriations
Subcommittee on Financial Services and
General Government

Hon. Kay Granger
Chair
House Committee on Appropriations

Hon. Rosa DeLauro
Ranking Member
House Committee on Appropriations

Hon. Steve Womack
Chair
House Committee on Appropriations
Subcommittee on Financial Services and
General Government

Hon. Steny Hoyer
Ranking Member
House Committee on Appropriations
Subcommittee on Financial Services and
General Government

Re: Defender Services budget

Dear Chair Murray, Vice Chair Collins, Chairman Van Hollen, Ranking Member Hagerty, Chair Granger, Ranking Member DeLauro, Chairman Womack and Ranking Member Hoyer:

The undersigned organizations are deeply concerned about the devastating impact of proposed cuts to the federal indigent defense system. The House and Senate Appropriations Committees have approved funding that is \$122 million and \$150.4 million, respectively, less than requested. Unless corrected, these cuts could cause the loss of 9-12% of current federal defender staff—even after defenders cut critical programming such as training and IT improvements. Such layoffs would almost certainly decimate the federal defender system, degrade the overall quality of federal indigent defense, and undermine the administration of justice for countless federal defendants. To avert the crisis, we are asking that you ensure that the Defenders Services account is fully funded at the requested amount.

Our federal criminal justice system cannot be sustained unless all components – prosecution, judiciary, and defense – receive adequate and stable funding. Federal defender offices were already operating quite leanly, as evidenced by a recent work measurement study that indicates the need for an additional 256 employees. Instead, the House and Senate bills would potentially result in the loss of 368-493 employees. Moreover, payments to court-appointed counsel will likely be deferred for two months or more, disincentivizing participation in the court-appointment program just as demand skyrockets. The result will be an unacceptable shortage of criminal defense attorneys available to represent federal defendants.

The drastic reduction in federal defenders will not staunch the flow of indigent defendants requiring appointed counsel in the federal criminal legal system. On the contrary, that need is predicted to increase, as the Department of Justice has indicated its intent to prosecute 800-1,200 additional January 6 cases and assume a greater role in the prosecution of crimes committed on certain Native American lands. And these extraordinarily resource-intensive prosecutions come on top of an ongoing, nationwide increase in the rate and complexity of federal criminal cases, as reflected by the addition of hundreds of federal prosecutors to the Department of Justice's ranks in 2023. Federal indigent defense was already under-resourced as compared to the Department of Justice, and the cuts proposed by the House and Senate would push the system over the brink.

Cuts to federal defense will have a ripple effect across the federal criminal legal system. It is estimated that 90 percent of people charged with federal crimes are too poor to hire an attorney and, thus, have a constitutional right to a federal defender or court-appointed counsel. Given that every federal defendant without resources to hire an attorney is entitled to government-paid counsel, no savings could even conceivably be achieved by slashing the federal defender budget.

Instead, these proposed budget cuts will simply create chaos. Federal defender offices will be forced to turn down cases that they would ordinarily accept, forcing panel attorneys—most of whom maintain busy practices alongside their CJA work—to make up the difference. Even if panel attorneys were fully able to satisfy this demand for legal representation consistent with their other professional obligations, they would have little incentive due to the projected 2-3 month delays in payment. Such unreliable compensation will prevent many panel attorneys from taking on federal indigent clients, which would cause the system to simply grind to a halt. The human and administrative impacts of this would be severe, resulting in delays and postponements that will significantly increase the time spent in expensive pretrial detention facilities.

As we mark the 60th anniversary of *Gideon v. Wainwright*, the federal indigent defense system must be protected from these devastating cuts. Testifying in support of the Criminal Justice Act in 1963, Attorney General Robert Kennedy extolled the planned system as “the most comprehensive, yet flexible solution ever devised to meet the representation problem in the federal system.” Sixty years later, the future of that system rests in the hands of this Congress.

We urge you to work with your colleagues to provide full funding for our federal indigent defense system and ensure that, in federal court, the scales of justice “measure truth, not legal fees.”

Sincerely,

National Association of Criminal Defense Lawyers

American Civil Liberties Union

Brennan Center for Justice at NYU School of Law

Drug Policy Alliance

Due Process Institute

FAMM

Gideon’s Promise

The Innocence Project

The Leadership Conference on Civil and Human Rights

NAACP Legal Defense & Educational Fund, Inc

National Association for Public Defense

National Council for Incarcerated and Formerly Incarcerated Women and Girls

National Legal Aid and Defender Association

The Sentencing Project