PROSECUTION AND PUBLIC DEFENSE: THE PROSECUTOR’S ROLE IN SECURING A MEANINGFUL RIGHT TO AN ATTORNEY

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Executive Summary

Public defenders have faced mounting caseloads and declining budgets for years. While well-documented in court cases and research reports, this crisis has yet to be remedied through adequate funding or policy and practice change. The insufficient time and resources that public defenders have undermines representation for, and the life and liberty of, their clients.

All legal stakeholders should be concerned with the state of indigent defense and its implications for constitutional protections, equality under the law, and justice. In our adversarial system, prosecutors, in particular, have a role to play in securing a meaningful right to an attorney.

Today there is unprecedented focus on the power of the prosecutor. With discretion to charge, recommend bail, and condition pleas, prosecutors are amongst the most powerful stakeholders in the criminal justice system. As communities demand, and prosecutors strive towards, a more equitable and effective justice system, prosecutors should be prepared to answer: How are you going to ensure a robust defense for all?

This paper outlines tangible steps for prosecutors to meet this aim:

1. Support funding for public defense.
2. Promote mechanisms of oversight and accountability in prosecution.
3. Implement discovery best practices (open-file discovery, automatic and mandatory disclosures, timing, certification, and remedies for noncompliance).
4. Ensure the integrity of forensics.
5. Institute case and conviction reviews.
6. Remedy consequences of arrest or conviction.
7. Collect and publish case data.
8. Scrutinize arrests and decline to prosecute low-level cases.
9. Endorse alternatives to cash bail.
10. Advocate for alternatives to incarceration.