
December 8, 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 hugely destructive impact of proposed cuts to the federal indigent defense system. When the House and Senate marks for the defender program were first made public this summer, they were each over one hundred million dollars less than what the defender program needed simply to maintain current operations and ensure timely payment to CJA panel lawyers. Since that time, the federal defender program has implemented a range of emergency cost-saving measures. These measures, which include a hard hiring freeze, have reduced the gap between the current marks and what the program needs, but they have also inflicted damage on the program. Even after implementing these emergency measures, the program faces a devastating shortfall: the House

mark is \$80.6 million less than the bare minimum of what the program needs, and the Senate mark is \$109 million short.

Unless corrected, these cuts risk loss of federal defender staff, unpaid furloughs, and lengthy deferments of CJA panel attorney payments. These cascading consequences would disrupt the federal criminal legal system, compound the burden on private counsel (mostly small business owners), and cost more in the long run than it would save now. Simply put, insufficient funding will undermine the administration of justice, harming the public, witnesses and victims, and 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 legal system cannot be sustained unless all components – prosecution, judiciary, and defense – receive adequate and stable funding. Federal defender offices were already operating quite leanly; indeed, the judiciary has recently found that the defender program needs to add hundreds of positions to continue doing its job effectively.

Underfunding 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 felony 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 low appropriation marks set by the House and Senate would push the system over the brink.

Given that roughly 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, 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 delays in payment. Such unreliable compensation will prevent many panel attorneys, who are already paid well below the market rate, from taking on federal indigent clients. The result will be an unacceptable shortage of criminal defense attorneys available to represent federal defendants. The human and administrative impacts of this would be severe, resulting in delays and postponements that will impede case resolution and 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