



Keir Bradford-Grey, Chief Defender

TESTIMONY: FY21 OPERATING BUDGET

OVERVIEW

To the members of City Council:

Thank you for taking the time to consider the Defender's budget request and considering why it is a sound investment of taxpayer resources. Through this testimony we intend to demonstrate why it is much more beneficial to pay now for public defense, rather than paying higher financial and human costs in the future.

Underinvesting in public defense does not save cities money; it postpones *and amplifies* both economic and social costs by inviting over-incarceration and miscarriages of justice. Investment in the Defender's client-centered, community-driven approach to criminal justice saves the City money, improves legal and social outcomes for many of our City's poorest citizens, and increases public safety.

Compared to our FY21 proposal, **the Mayor's proposed budget for the Defender is \$3,234,360 (4%) less** than what is required to carry out our Constitutionally-required mission to provide free legal counsel for poor people in Philadelphia.¹

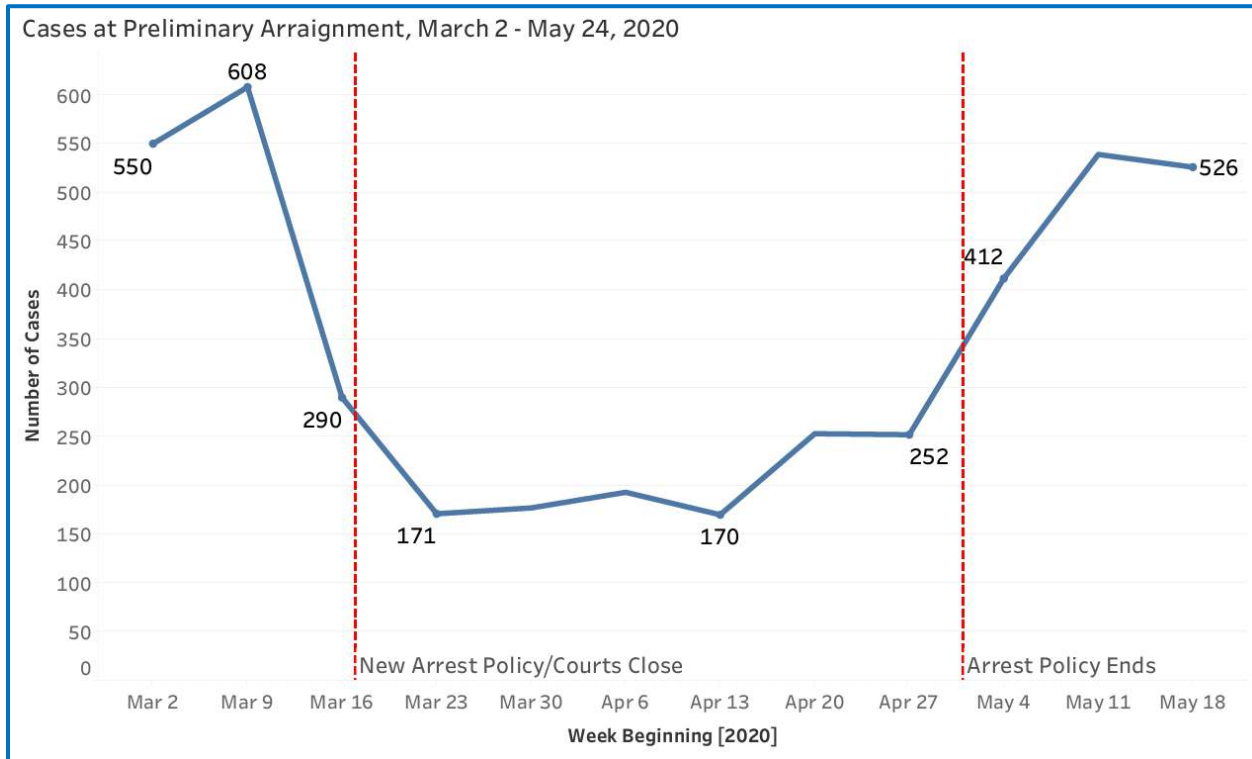
Such a reduction in our budget is a strategic misstep that actually works against the City's Poverty Action Plan, because we expect that **the COVID-19 pandemic will, in fact, increase demand for the Defender's services:**

1. More people will be unemployed and, therefore, eligible to have counsel assigned to them; and
2. The three-month court closure has created a backlog of cases; we anticipate a 25% increase in the daily number of cases our staff will need to handle when the courts reopen. We have already seen an increase in arrests and pretrial incarceration since

¹ See attached document with a breakdown of budget cuts and how the Defender has adjusted its budget accordingly.

TESTIMONY ON FY21 BUDGET

May 1, when the PPD suspended their coronavirus policy and resumed making arrests for all offenses.



The Defender understands the financial situation the City finds itself in due to the devastation of COVID-19, and we appreciate the Mayor’s efforts to preserve as much of our budget as possible. However, because of the increased demand for public defense and our ability to prevent further economic and social devastation, **we ask City Council to consider increasing our budget by \$1,000,000 more than the Mayor’s proposed FY 21 budget.**

THE REAL COST OF CUTTING PUBLIC DEFENSE

There’s no freebie when it comes to criminal justice services. We can pay now or pay later. If we pay now, we can control the outcome. If we pay later, we just get more devastation and a bigger bill.

Consider the case of Chester Hollman, whose story was recently featured on *The Innocence Files* on Netflix. In 1993, Chester, an exemplary 21-year old with no criminal record, was identified by a coerced “eyewitness” as the man who robbed and murdered a UPenn student six blocks away.

TESTIMONY ON FY21 BUDGET

Despite serious flaws and misconduct in the handling of his case, Chester was convicted of second-degree murder and robbery, and sentenced to life in prison.

Alan Tauber, (who is First Assistant Defender at the Defender Association) represented Chester in his petition for post-conviction relief. Alan brought forth new exonerating evidence and proof of misconduct. After years of fighting in court, Chester was finally released in July of 2019, after spending 28 years in prison for a crime he did not commit.

Contrast Chester's case to that of Michael White, a Defender client who was accused of murder in the stabbing death of a local real estate developer. Unlike Chester Hollman, Michael White had the benefit of a Defender's office that was well-resourced enough to:

- Engage in the **location and investigation** of witnesses;
- **Use technology and forensics** to bring critical information to light; and
- **Have the ability to focus on the case at hand**, rather than an overburdened public defender forced to cut corners due to being overburdened with cases or not having the resources to properly defend a person who is facing a life changing outcome

RESOURCES MEAN GETTING IT RIGHT

Chester Hollman	Michael White
Key Witnesses relocated or otherwise unavailable to the defense	Able to locate and travel to interview witnesses
No forensic reconstruction of the crime scene	Conducted investigations to learn new information and add context to the incident
No testing of DNA evidence collected at the crime scene	IT resources available to obtain and analyze video footage taken at the scene
OUTCOME: 28 years in prison, millions of dollars paid by the city following exoneration	OUTCOME: Not Guilty verdict rendered

There are certain quantifiable costs for not getting it right the first time. For instance, the **City paid \$14.5 million in the last two years** to two people wrongfully convicted and exonerated, and **it costs an average of \$42,000 per year to incarcerate someone** in Philadelphia jails or

TESTIMONY ON FY21 BUDGET

a prison upstate. There is also the public safety cost—the person who murdered that Penn student walked free, and could have gone on to harm others.

THE COST OF WRONGFUL CONVICTION

Philly paid
\$14.5 million in the past two years
for TWO wrongful convictions

Pennsylvania pays
\$42,000 per year, per person
to house people in PA Prisons.

*States and municipalities have paid
\$2.2 billion to exonerees.

*Exonerated defendants have spent more than
20,000 years in prison.

DEFENDER ASSOCIATION of PHILADELPHIA

*Source: National Registry of Exonerations

But there are significant costs that can't easily be measured. What would Chester have done with those 28 years if he weren't in prison? What contributions would he have made to society in that time? Were members of his family disadvantaged by his absence? Did his community lose confidence in the police and the justice system? This is the comprehensive view we should take toward measuring the societal costs when the justice system gets it wrong.

The City could face similar costs if it fails to recognize and respond to the increased demand for public defense post-pandemic. The criminal justice system only produces positive, reliable results when all of the participants in that system are adequately funded. Neglecting public defense will decrease the accuracy and efficiency of our criminal justice system. The following table shows how the benefits of well-resourced indigent defense stand in stark contrast with the expected consequences of the proposed budget cuts.

<h2>Consequences of Underinvestment in Public Defense</h2>	
Adequate Funding	Inadequate Funding
Attorneys and social workers have manageable workloads and can spend ample time on each client/case, leading to greater accuracy and sustainable outcomes.	Staff triages cases, giving close attention only to the most serious cases or vulnerable clients, leading to inefficiency, delays, and unjust outcomes.
Attorneys and social workers find alternatives to pretrial detention that meet clients' needs and ensure appearance at court, saving thousands from unnecessary incarceration	Clients are subjected to unnecessary pretrial detention , increasing incarceration costs to the city (\$115 per day) and costs in income and stability for the family and community
Attorneys and social workers connect clients with mental health and substance use issues to treatment alternatives , which improve health and decrease recidivism, leading to safer and healthier families and communities in our poorest neighborhoods.	Mental health and substance use issues go unresolved, leading to more recidivism and unnecessary costs on the back end of the process and ongoing costs of future involvement in the system.
A well-resourced defense shows prosecutors/judges/juries that many cases are unfounded and defendant is not guilty, leading to sustainable outcomes that will not be overturned through costly appeals processes.	An inadequate defense leads to wrongful convictions or guilty pleas , which upend defendants' lives and decrease economic opportunity, leading to decrease in public safety, costly appeals, and costly settlements with the city.
Community groups are engaged to improve clients' knowledge of the criminal justice system and enlist character witnesses that humanize the client .	Clients lack community support and may be seen by the justice system as just another "offender."

Instead of neglecting Chester Hollman's case early on and paying mightily years later, what if Philadelphia had instead invested in careful consideration of his case *from the start*? His case may have looked more like the Michael White case in which he could prepare a defense with attentive attorneys outside the confines of pre-trial detention and with the support of his community.

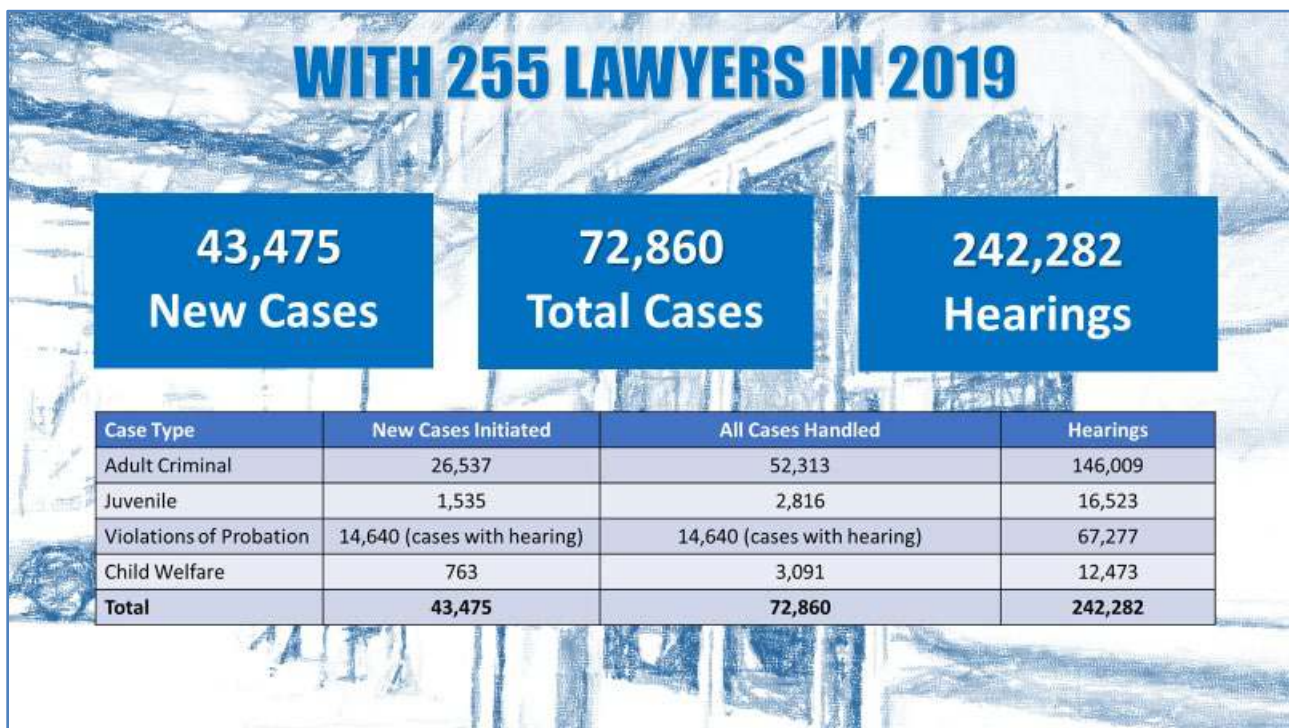
TESTIMONY ON FY21 BUDGET

The fact that we must ask ourselves these questions emphasizes the need to get it right the first time—we pay now or we pay later.

THE DEFENDER’S MODEL: COST SAVINGS AND BETTER OUTCOMES FOR CITIZENS

The criminal justice system has historically chosen to “pay later,” responding to social issues in a punitive manner that yields little return on investment. The Defender employs the “pay now” approach by focusing on the front-end of the criminal justice system to achieve better results at lower costs. We bring this philosophy to every case and every client, which in 2019 amounted to nearly 50,000 clients represented on over 72,000 cases and 240,000 hearings.

We accomplish this in large part by being deeply embedded in the communities we serve. A few years ago, guided by the principle that effective delivery of justice is a social service, the Defender began to work more closely with community groups to connect our clients with much-needed, high-value, culturally competent resources. **Our efforts to strategically engage the community have created opportunities and better outcomes for clients. This has had a positive impact on public safety, especially during the pandemic.**



TESTIMONY ON FY21 BUDGET

One of our innovations has been the creation of bail advocates. Bail advocates are trained social workers that work to understand defendants' needs pretrial and connect them with the community-based services they need—housing, food, jobs, health care, etc. In the video below Paul Heaton talks about a study by the Upenn Quattrone Center which found that, in addition to improving racial equity, meeting these needs reduces the likelihood that defendants will fail to appear in court, and so bail commissioners are more likely to allow defendants to await their court date at home instead of in jail. [<https://youtu.be/kmfXDyvCbW4>]



In 2019, the Defender used its existing relationships with community groups to form the **Pre-Entry Coalition**. The goal of this initiative is to assess the needs of an individual when they first enter the criminal justice system and determine ways to deal with their behavior that both increase public safety and create a path for them to avoid a lifetime criminal conviction.

The Pre-Entry Coalition is guided by the research-supported philosophy that community connection and supportive peers protect against re-arrest, re-conviction, and re-incarceration. The Coalition recognizes that periods of incarceration themselves, however brief, are both traumatic and criminogenic.² Rather than leave our clients to face the typical trappings of the

² Incarceration may be criminogenic because people learn criminal habits or develop criminal networks while incarcerated, but it may also be because of the collateral consequences that derive from even short periods of incarceration, such as loss of employment, loss of stable housing, or disruption of family ties.

TESTIMONY ON FY21 BUDGET

justice system—cash bail and pretrial detention, incarceration, and other punitive measures—we engage our participants on the front end and make a long-term investment in public safety by finding appropriate community supports. The Defender is one of many partners in the Pre-entry Coalition, which includes groups like the bail funds, housing agencies, mental health and substance use service providers, and others who work to mitigate the combat the impact of poverty.

Our social service staff are a crucial component of the Pre-Entry Coalition and continually prove their worth in their ability to solve problems that benefit our clients, courts, and city. In 2019 our 7 social workers processed over 4,000 referrals, which connected clients to substance use, mental health, and housing services. Our staff also partnered with service providers to share space in the Juanita Stout Center, creating a “Hub” for Forensic Intensive Recovery (FIR) referrals.

This arrangement continues to save the city millions of dollars every year by reducing wait times for FIR assessments. **Unfortunately, these savings will be reduced under the current FY21 budget proposal, which would force us to reduce our social service staff. At a time when diversion and problem-solving will be more critical, social work and investigative staff become a necessity, not a luxury.**



Stemen, Don. The Prison Paradox: More Incarceration Will Not Make Us Safer. For the Record Evidence Brief Series, , : , 2017. Retrieved from Loyola eCommons, Criminal Justice & Criminology: Faculty Publications & Other Works



TESTIMONY ON FY21 BUDGET

The work of the Defender's Probation and Alternative Sentencing Unit has provided the city with significant savings as well, by lifting probation detainers and identifying clients who are eligible for early termination of probation.

- **State supervision alone costs approximately \$1,000 per year, per person.** In 2019 the Defender's was responsible for 1,271 probation terminations, saving an average of two years of supervision per client—a **total cost savings of \$2,542,000.**
- **The Defender successfully executed 1,171 detainer lifts in 2019.** At an average of 7 days of incarceration, at \$115/day, **these detainer lifts saved Philadelphia \$945,032** last year.

The value of our client-centered, community-based model has been on full display during the COVID-19 emergency. Thankfully, prior investments in technology (made possible by this Council) allowed our staff to work from home. Together with our Pre-Entry Coalition partners, our attorneys and social workers filed thousands of motions and coordinated support services for people who were in custody on low cash bail to secure their release. This provided a literal lifeline to over 1,000 people to escape the health risk of COVID-19 in the city's jails and reduced the jail population to historic lows.

As it costs the City, on average, \$115 per day to incarcerate someone, the Defender's reduction in the jail population has undoubtedly saved millions of taxpayer dollars.

COVID-19 JAIL POPULATION REDUCTION

The Defender swiftly responded to the COVID-19 pandemic to reduce the jail population and thus the risk of community transmission of the virus.

As of May 15:

- **1,334** written petitions
- **3,738** hearings
- **1,164** people released
- **\$11.8 million saved***
- **Historic low jail census of 3,645 (21.8% reduction)**

*Uses average length of stay of 88 days, as reported by MacArthur Foundation. Cost of \$115.29/day in Philadelphia prisons.

CONCLUSION

Given the grim economic picture facing our city, it is natural and prudent to consider immediate cost savings. But disinvestment in public defense at this time will not only negatively impact some of our city's poorest people, it will cost the city in terms of dollars and compromised public safety in the future. **We believe that our request for a restoration of \$1,000,000 in our budget is not only reasonable, but necessary given the challenging times ahead for the poor in Philadelphia.**

In post-COVID Philadelphia, as unemployment levels rise and economic opportunities are placed even further out of reach of our most vulnerable citizens, we expect a dramatic increase in the number of people who come into contact with our justice system and are unable to afford legal counsel. We cannot effectively meet this increased demand while simultaneously cutting the budget for public defenders.

Through our work with community partners we have seen meaningful, cost-effective results. We have an opportunity to make our justice system more efficient, more thoughtful, and less wasteful.

It is unnecessary and counterproductive to brand everyone who comes into our system with a lifetime criminal record and thereby diminish their future social and economic opportunities. Making better decisions on the front end will enable us to better utilize our resources in ways that protect and promote public safety and economic opportunity.