



FY 2022 BUDGET TESTIMONY TO CITY COUNCIL

OVERVIEW

To Council President Clarke and esteemed Members of City Council:

My name is Alan Tauber, and I am the Interim Chief of the Defender Association of Philadelphia.

On behalf of the Defender and the communities we serve, I thank you for taking the time to consider how, at a time when we are facing extraordinary challenges, investments in the Defender Association are the most effective way to use taxpayer dollars to create a fairer criminal justice system, make our city safer, and fulfill the City's constitutional duty to supply effective assistance of counsel.

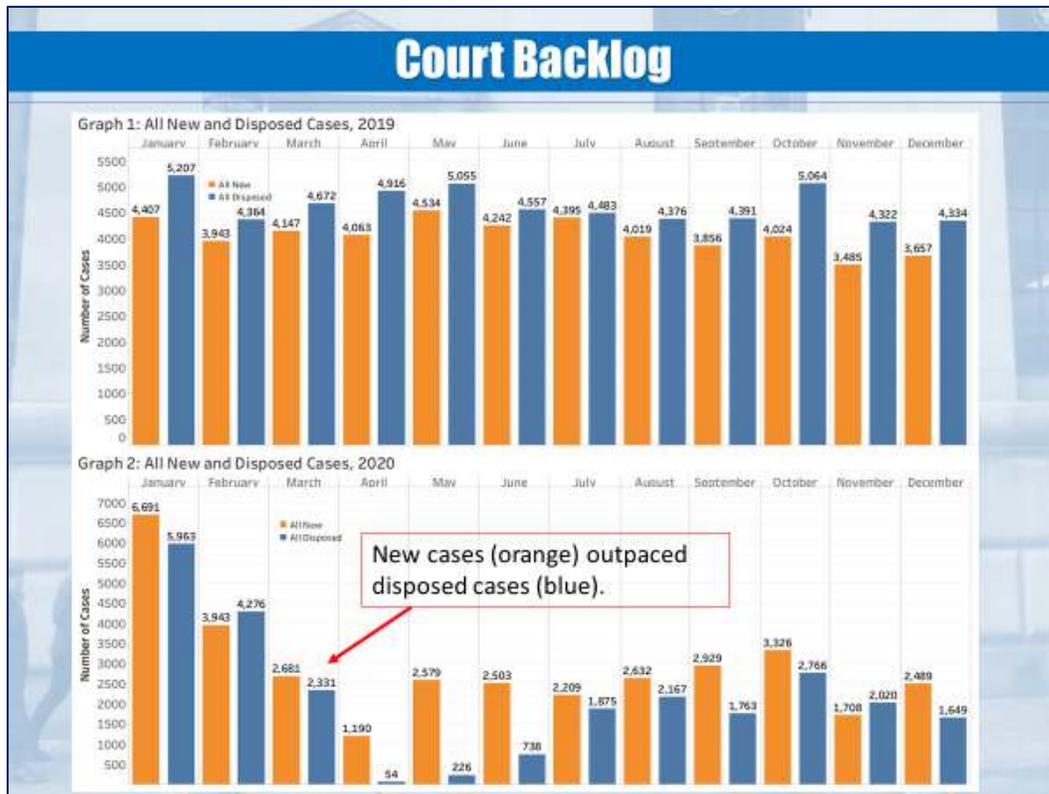
At a time when Philadelphia is experiencing unique economic challenges and a rise of violent crime, investment in the Defender's client-centered, community-driven approach to criminal justice is needed now more than ever. [Our policies and practices save the City money, improve legal and social outcomes for many of our City's poorest citizens, and increase public safety.](#)

Last year, as a result of the COVID-driven economic shortfalls, we, like all city agencies, experienced budget cuts. Because of these painful budget cuts, our inability to backfill open positions or hire a full class of new attorneys resulted in a 4% reduction in our workforce. Through creative leadership, technological capacity, and remaining staff dedicated to its public interest mission, we were able to weather these losses last year. [The impact of the COVID-19 pandemic on court and prison rolls has placed a sharp increase on the demand for the Defender's services](#) this year as the entire system copes with enormous case backlogs and attempts to arrest the dangerous growth in the City's prison population.

By restoring the \$834,360 cut from our budget last year and returning us to our FY 2020 funding level, the Kenney Administration's budget proposal reflects the value the Defender brings to the community and system partners and the growing demand for our services. [This investment is a strategically sound choice and we ask that City Council allocate these funds as proposed by the Mayor. In addition to the restoration of these funds, we ask Council to add an additional \\$300,000 to the Administration's proposal to support an increase in our data collection and reporting capacity and automate administrative tasks.](#)

THE DEMAND FOR DEFENDER SERVICES

Last summer, during our budget presentation, we came before Council with concerns about the impact the three-month court closure would have on demand for our services when court operations resumed. At the time, we anticipated the courts would re-open shortly and that the suspension of court operations would mean a 25% increase in the daily number of cases our staff would need to handle upon re-opening.



Unfortunately, though court operations did slowly resume, safety measures required to mitigate community spread of the coronavirus have severely limited case processing in the Philadelphia courts, resulting in a backlog that far exceeded our projections.

Today, courts are addressing cases at about 50% of their pre-pandemic pace which means the backlog of cases has continued to grow. Our current estimate, based on now a year’s worth of data, reveals a backlog of 17,893 cases in the adult criminal justice system. *We will need to close 2,312 cases per month (about 100 more per month than our 2020 average) just to keep pace with new assignments.* Eliminating the backlog will require our staff to close on average 4,300 cases per month for the rest of this year—nearly double the average monthly cases we closed in 2020.

The court backlog represents far more than an administrative headache or constitutional imperative. Additional delays in addressing these cases have very real and severe adverse impacts on our clients and their families. This is especially true at a time when so many Philadelphians are reeling from the devastating economic impacts of the pandemic. Waiting for trials to resume is even more life-threatening for our incarcerated clients, who face difficult and sometimes dangerous conditions in the jail due to the rising population and ongoing staff shortages.

VALUE OF A WELL-FUNDED DEFENDER

Since 1934, the Defender Association of Philadelphia has been providing indigent defense services to people arrested in the city of Philadelphia. Under the leadership of our former Chief Keir Bradford-Grey, the agency focused our efforts on strengthening and enhancing our trial practice through building strong community partnerships. Our community education and engagement programs empower communities' work to support community members and reform the justice system.

Our efforts to strategically engage the community have created opportunities and continue to result in better outcomes for clients. This has had a positive impact on public safety, especially during the pandemic.



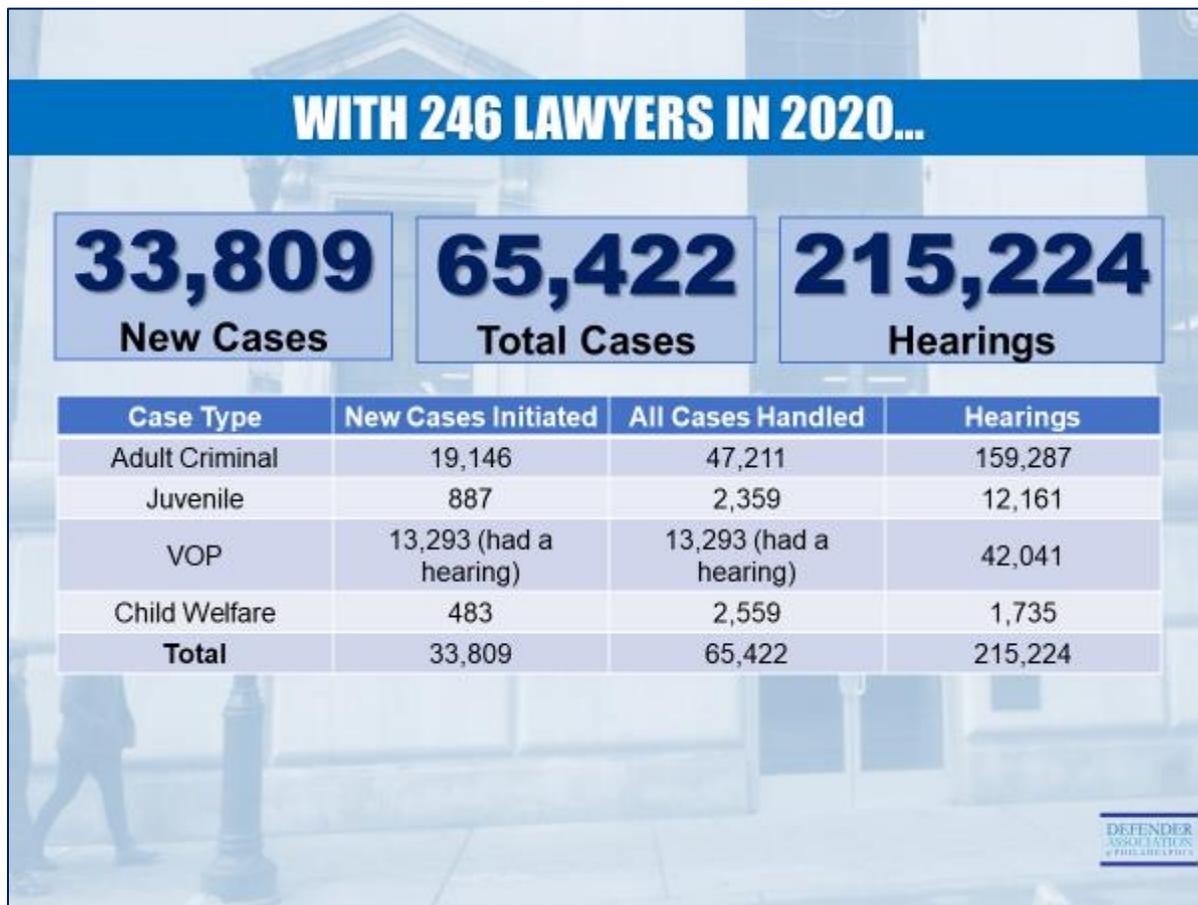
Working Through the Pandemic

Despite the limitations the COVID-19 safety protocols have placed on the operations of the courts, our office continued to prepare our cases for court. By way of example, new clients were interviewed and connected to services,

investigations went on unabated, bail and detainer motions were litigated daily, remote hearings methods were created. Some units, like Probation Alternative Sentencing Unit, continued with little

interruption, staffing over 7,800 Gagnon I Hearings for 3,612 distinct clients and securing the release of 739 people.

Other units, like our Youth and Children Justice (CYJ) Unit, found creative ways to resolve cases that required little to no criminal justice system response. Throughout the pandemic, our staff continued to prepare cases and represent some of the most vulnerable people in the city.



Community Education and Engagement

In 2020, our strong relationship with community organizations was on full display as our partners, our clients, and their families have always relied on us to communicate accurate and up-to-date information about Philly’s ever-changing criminal justice processes. In turn, we rely on our community partners for the latest information about services they were able to provide to improve case outcomes, and the lives of the clients we served. But COVID-19 forced us to rethink our community engagement strategy as the pandemic made it necessary to transition from traditional in-person efforts like face-to-face meetings and information tables at public events.

We were able to quickly pivot to a virtual model of client and community engagement:

- We established our online attorney request form to triage nearly 800 requests for assistance for clients or loved ones;
- We set up online forms for client interview scheduling, probation terminations, and record expungements;
- we hosted monthly virtual community forums through the fall of 2020; and
- we modified our Know Your Systems training to a virtual format.

Despite the pandemic, our team also helped to establish three new [Participatory Defense Hubs](#) in the city. All but two of the eight citywide hubs have continued to hold virtual weekly meetings.

Additionally, our [Pre-Entry Partnership](#), the network of community-based agencies that provide social support to people who have been arrested, has continued to grow. To date, thirty-five agencies have signed formal partnership agreements and over 50 agencies attend our quarterly partnership meetings.

LEADERSHIP IN CRISIS

The COVID-19 pandemic has coincided with a national racial reckoning that demands we confront the issue of overcriminalization, particularly of Black and Brown bodies. As the largest criminal defense law firm in the Commonwealth, we have a panoramic view of how our justice system functions. Our attorneys and staff have a deep understanding of some of the toughest issues our criminal justice system faces and the impact even subtle changes to practice or policy can have.

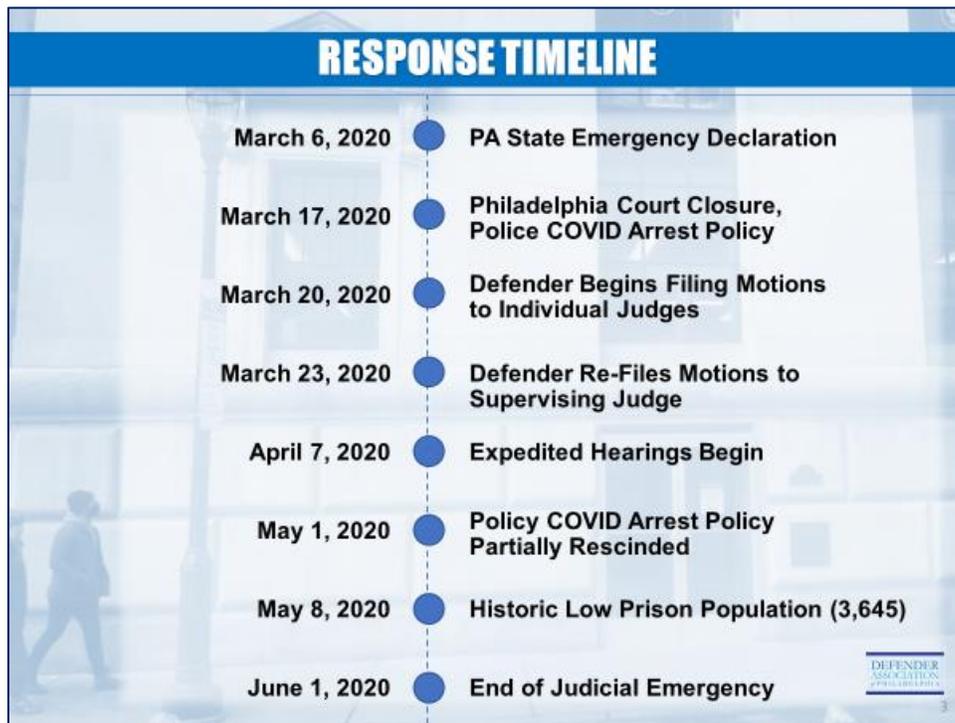
Over the past year, we have lent our expertise and perspective to statewide task forces and legislative hearings designed to bring more equity to justice system process. The Defender Association of Philadelphia is committed to serving as a knowledgeable resource, providing our data analysis and perspective, for decision-makers on City Council and throughout the Commonwealth. Attorneys from our office have testified before Council this year on a wide array of subjects, from conditions our clients experience in custody to strategies to improve police accountability.

It was this deep system knowledge that enabled us to mobilize quickly to protect our clients last spring. In March of 2020, at the beginning of the COVID-19 crisis, the Defender quickly identified Philadelphia's jails as the epicenter of the public health crisis, with an infection rate more than double that of any zip code in the city.

While the Defender's leadership team worked with our justice system partners to develop a streamlined process to review cases, our department heads mobilized attorneys and staff to review the files of all incarcerated clients and prepare appropriate motions for release. Prior investments in technology (made possible by this Council) allowed our staff to work from home, remotely access client files, coordinate with social service systems and electronically file thousands of motions.

Once the eligibility criteria for the expedited reviews were established, our technological investments allowed the Defender Association to generate the court lists quickly and accurately. It was not long before

the Courts and the District Attorney’s Office relied on our support to guide the calendars for the daily hearings.



Through our Pre-Entry Partnership, our attorneys and social workers reviewed thousands of cases and coordinated support services for people who could be safely released into the community. Defender attorneys even stood in for private counsel and court-appointed counsel to ensure every defendant was represented without undue delay. Our staff also worked with defense offices in neighboring counties, to get over a hundred out-of-county detainers lifted without an in-person hearing, so our clients could be served with new court dates and released from the jail.

These efforts reduced the jail population to 3,645, a historic low, creating a safer environment for incarcerated people and jail staff, mitigating the spread of the coronavirus and saving the City millions in costs of incarceration.

Our efforts provided a literal lifeline to over 1,400 people and helped to mitigate the spread of COVID-19 in the jail, creating a safer environment for incarcerated people and city staff. *As it costs the City, on average, \$115 per day to incarcerate someone, the Defender's reduction in the jail population saved millions of taxpayer dollars.*

These higher release rates were achieved without compromising public safety. The overwhelming majority

of those released during the spring crisis have remained arrest-free during this difficult year following their release. And arrests for violent offenses are comparable to typical one-year rates.

EMERGENCY PETITIONS & HEARINGS

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 31, 2020 (end of judicial emergency):

- **1,387 written petitions – 857 granted (61%)**
- **4,308 hearings – 2,376 granted (55.2%)**
- **1,474 people released**
- **Estimated \$14.95 million saved***

*Using MacArthur average length of stay of 88 days and incarceration cost of \$115.29/day

PUBLIC SAFETY IMPACT

Significant decarceration did not increase recidivism. Rearrests thus far are on track with typical rearrest rates for violent offenses in Philadelphia.

Violent Recidivism Metric	One-Year Re-arrest Among Emergency Releases	One-Year Re-arrest from Philadelphia Prisons (2015) ¹
Violent Rearrest	5.4%	5.4%

¹ Calculating a Unified Recidivism Rate for Philadelphia: A Data Snapshot of Reentry and Recidivism 2012-2015 (2018). The Philadelphia Reentry Coalition.

DEFENDER ASSOCIATION OF PHILADELPHIA

Since our program ended, the jail population has steadily risen. As of May 3, 2021, the jail population has increased over 1,100 since June 1, 2020. Conditions would likely be more untenable if the Defender had not led the charge to review and release as many people as we did last spring.

INNOVATION

The Defender is more than deep criminal justice system knowledge and excellent trial attorneys. Our staff has a history of successfully developing and implementing organizational change initiatives and city-wide programming.

Technology upgrades

The Defender has been a good steward of the resources provided by City Council to meet our technology needs. The relationship between improved client services and network switches and industrial scanners may not be obvious, but these and other improvements to our technological infrastructure were invaluable this year. Our office was able to seamlessly switch to remote work without interruption or fear that confidential client information would be compromised.

One of the best examples of the impact of technology was the speed and efficiency with which the Defender was able to stand up the system of expedited release hearings at the beginning of the pandemic. Ready access to electronic case files, court history and prison information was seamlessly integrated to generate hearing lists that led to the historic hearing process that safely reduced the prison population by 20%.

These investments also allowed us to improve our clients' experience. For example, our laptops and wireless technology allowed us to remotely interview clients before probation detainer review hearings, and provide individualized information, in real time for our attorneys to raise before a decision was rendered.

We were also able to create remote portals for social services clients to access from a dedicated space in the office. This allowed our clients to come to the office on a staggered schedule to meet confidentially with social workers while still maintaining COVID-19 safety protocols. Because of this, we were able to provide individualized information to judges, that would otherwise be unavailable, at the time a decision was rendered.

Re-thinking the Role of the Justice System:

The Defender has continued to work with community partners to find alternative pathways for people whose actions, while requiring intervention, do not necessarily demand a criminal justice system response.

NO-CAPS

Our Children and Youth Justice Unit, for example, developed and implemented a pilot program called NO-CAPS, which connects youth with community-based support and petitions the DAO for dismissal after six months. For many young people, this intervention—which is not court-mandated or supervised—was a much-needed connection to their communities at a desperate time. [These efforts helped reduce the](#)

backlog in juvenile court and helped youth avoid unnecessary entanglement with the system at no cost to the city.

Problem-Solving Community Partnerships

We recently partnered with COMHAR, Inc. in its effort to receive federal funds to provide 300 people over 5 years with medically assisted treatment for opiate use disorder and Why Not Prosper, in its pursuit of funding to support a peer mentored civilian response network.

The Defender will continue to look for opportunities to partner with community-based programs to better serve our clients in common and limit severe justice system responses for true criminality.

Process and Improvements and Program Development

Early Bail Review

Changes to the DAO's bail policy meant that many of our clients' bails were higher than they would have been in the past, and now their preliminary hearings were delayed for months. Recognizing that our clients needed an earlier review of their bail, we restructured our internal interviewing process to decrease the time between arrest and initial interviews with incarcerated clients. This new structure allowed us to work with the Courts, Pretrial Services, and the DAO to expand the Early Bail Review (EBR) Initiative.

This means an additional 160 people receive an automatic review of their bail within 6 days of their initial arrest. During that six-day window, the Defender opens the file, assigns it, interviews the client, either virtually or in-person at the jail, completes a social services' needs assessment, reaches out to family and friends, and creates a release plan, if necessary.

EBR 3 launched on March 1, 2021. We are now staffing approximately 200 Early Bail Review hearings every month. We believe that more individualized assessments, and information about a release plan, will provide judges with needed assurances that people can be safely released and that these efforts will contribute to a coordinated priority to reduce the jail population and eliminate racial disproportionality in the jail.

Restorative Response to Civil Unrest

The criminal charges filed against those who participated in last year's protests over the killing of unarmed Black people provided a unique platform to highlight our commitment to reducing racial inequity in the criminal legal system. Our Children and Youth Justice Unit worked diligently to develop restorative programming with community partners in exchange for dismissals for all but a few of the charges against youth during the protests and unrest.

Our adult cases were specially assigned to experienced trial attorneys in our office. These attorneys worked with private members of the bar, Troy Wilson, Esq. and Paul Hetznecker, Esq. to develop a restorative response to the civil unrest cases. Those who participate in the program, nearly all of whom are young people of color, will exit the system free of felony convictions that would otherwise have shut off all manner of professional, educational and business prospects.

Because we represent over 500 of the people charged in these cases, the Defender has taken the lead in making the [Restorative Response Program](#) a reality. These efforts include:

- Contacting all the clients;
- Creating the agreement form with the DAO,
- Building the web page and online registration platforms;
- Working with the Metropolitan Christian Council of Philadelphia to develop the training and information sessions; and
- Securing commitments from organizations all over the city to provide community service opportunities for over 800 people.

LOOKING FORWARD

As citizens of the city, we must acknowledge the alarming rise in shootings and homicides. As criminal justice practitioners and leaders, we have a daunting job before us this year. But we also know this is not a time to cut corners or return to shortsighted policies that data and history have shown to be ineffective. Traditional justice system responses only serve to exacerbate the root causes of violent behaviors and perpetuate racial injustice.

The Defender Association of Philadelphia believes that now is the time to commit to long-term investments in public safety. That includes developing policies that limit criminal justice responses to those behaviors that are in fact criminal.

A well-funded Defender is an investment in more reliable and just outcomes for the people we represent. Moreover, it helps ensure a fairer, more efficient criminal justice system that does more to advance the cause of public safety and justice for all Philadelphians.