

Under-resourced And Ignored:

Indigent Defense in Schuylkill County

THE WREN COLLECTIVE

JANUARY 2024

Introduction

In 1963, the Supreme Court in *Gideon v. Wainwright* ruled unanimously that the Sixth Amendment of the Constitution requires states to provide a lawyer to anyone facing criminal charges who cannot afford one. Sixty years later, as criminal justice reforms are made in urban cities, rural America has consistently found itself left behind, especially in the provision of indigent defense. These counties have small populations and small county budgets. As a result, public defender offices are often nonexistent or work on a skeleton crew with little to no capacity to provide the robust representation required to meet their clients' tremendous needs. The lack of funding across these counties means public defenders and court-appointed attorneys often lack access to the resources that are necessary to address the underlying issues that led to the client's criminal legal system involvement. In well-resourced counties, many offenses that are often a result of homelessness, substance use disorder, and mental health problems are processed through the criminal court system differently because there are more "alternative to incarceration" programs that address the client's underlying needs.¹ In under-resourced counties, however, similar clients will likely end up in jail.

26%

increase in rural
counties' jail
incarceration rates
since 2013

America's rural counties now have the highest jail incarceration rates,² and many jails are simply a revolving door for certain people with problems that could otherwise be solved with a little help.³ As Pam Metzger, an expert who studies rural jails, has stated: "You don't have any treatment options, or at least it seems to them that they don't, so many judges and prosecutors feel that they have no choice but to lock people up."⁴ Since 2013, rural counties' jail incarceration rates have increased by 26%, while in urban cities, jail populations have decreased by 22%.

As part of the 60th anniversary of *Gideon*, the Wren Collective sought to evaluate the state of indigent defense across the country, in urban counties, medium-sized counties, and in rural America. In the latter group, we visited Schuylkill County, a rural county with a small public defender office about two hours outside of Philadelphia, Pennsylvania. The County, with a declining population hovering at just over 143,000 people,⁵ is majority white, at 92.7%.⁶ Like many other areas that relied on the coal industry, the County has suffered economically,⁷ and the poverty rate is slightly higher than the national average, which hovers at 13.1%.⁸ Schuylkill also has a growing unhoused population, which is illustrated by the increased population counted in the Housing and Urban Development Point in Time Count.⁹

We visited the County, where we interviewed public defenders and their investigators, talked to magistrates, and observed court proceedings. We interviewed three staff members from Service Access and Management about mental health facilities and drug treatment access in the County. We also spoke to a staff at Servants To All, a homeless service provider.

Additionally, we spoke with consultants for an advocacy organization to end homelessness called Pennsylvania Continuum of Care. We requested data we hoped would provide objective metrics on the way poor people are represented in the County. Unfortunately, we received little information because the County lacks a robust data monitoring structure to track things like bail amounts, sentencing, jail visits, investigative and expert resources used, or motions filed.

Despite this lack of data, we can draw several clear conclusions.

First, we found an underfunded indigent defense system that lacks the support for enough lawyers to represent clients, including at bail hearings that determine release, for immigration consultations where appropriate, and adequate technology for attorneys to properly do their jobs.

Second, because of insufficient funding across the County – primarily in the human services area – lawyers lack access to resources that can help improve client case outcomes.¹⁰ According to a number of interviews, for example, the County struggles to provide sufficient housing, including shelters, group homes, recovery homes, and the like. The County’s inability to provide shelter for those who need it means attorneys cannot advocate for their clients to serve alternative sentences to incarceration as effectively as many lawyers in other areas, who can present courts with release plans that include housing access. The County also does not have enough resources for specialty courts, like mental health courts. This lack of resources impacts client outcomes, as judges and prosecutors may see incarceration as the only viable response to entrenched social problems.

\$10 million

amount the County has spent to incarcerate its residents in other places because its jail is, at times, at capacity

Third, the lack of resources in the County directly impacts the advocacy options available to indigent defense attorneys, which likely contributes to far too many people in jail and prison. This result is extremely costly to the County, which has spent well over \$10 million since 2016 to incarcerate its residents in other places because its jail is often at capacity.¹¹ As of April 2023, Schuylkill still pays for over 60 residents’ incarceration in other counties.¹² The 2023 budget for the County Prison¹³ alone was over \$9.5 million, compared to the public defender budget, which was merely \$885,041.¹⁴ The district attorney office’s budget was more than double the public defender’s, at approximately \$1.8 million.¹⁵ The County only contributed approximately \$4.6 million to the human services budget.¹⁶ Without a long-term funding solution that supports people’s basic needs, like shelter or mental health treatment, the County will likely continue to bleed money to jail its residents.

All is not lost – we also observed a County with a strong foundational structure and people who want to help those facing a loss of liberty.

But Schuylkill County needs state funding and other outside resources to improve its indigent defense system. **We therefore recommend that the County push for financial support from the state legislature** – which to date has not meaningfully supported indigent defense across Pennsylvania – both for the public defender office and human services in the County. In turn, we recommend that the County use this money to provide more funding to the public defender, like putting defense attorneys at arraignment, hiring more experts, providing immigration consultations, and improving its technology. We also recommend that the County use resources to improve outside support for its struggling population, including supportive housing and treatment beds, as research shows that having access to those resources is vital to improving client outcomes.

Finally, we recommend that the state legislature’s newly established Indigent Defense Advisory Committee conduct a robust study of the gaps in rural defense in the state. Our review was limited, and our investigation shows a dearth of research about indigent defense in rural counties, which make up a large part of Pennsylvania. It should then take steps to help counties fill those identified gaps. It is time for Pennsylvania to stop ignoring its many residents who live across this beautiful but long-neglected region.

An Overview of Indigent Defense In Schuylkill County.

Until the 2023–2024 budget,¹⁷ Pennsylvania did not provide any state financial assistance to indigent defense, making it one of two states in America where all funding for indigent defense comes from local county budgets.¹⁸ The funding for indigent defense is only \$7.5 million that will be shared among indigent defense providers across the state.¹⁹ Pennsylvania’s population hovers just under 13 million people, and all counties combined currently spend \$125.4 million on indigent defense – a woefully inadequate amount.²⁰ That money, therefore, will barely put a dent in improving indigent defense.

723

*cases handled by
the public defender’s
office in 2022*

Schuylkill County has a public defender office, which consists of just three full-time attorneys for its 143,000 residents – including the chief public defender – six part-time attorneys, six investigators, just two of whom are full-time, and one part-time office administrator. The public defender accepts all indigent cases unless there is a conflict, which may happen when people are charged as co-defendants. According to the Chief Public Defender, the office handled approximately 723 cases in 2022.

Finding: Schuylkill County Desperately Needs More Resources To Comply With the Promise of Gideon.

A. Schuylkill County Needs More Resources for Attorneys and Support Staff in the Public Defender Office.

Currently, there are not enough attorneys to perform the broad range of work that is required of public defenders. To provide adequate representation, attorneys must investigate their client's case and assess the sufficiency and strength of the prosecutor's evidence. Often, this work involves talking to witnesses, reviewing body camera evidence, going to crime scenes, and hiring experts. Attorneys must also investigate the client's personal history to see whether there are root causes that explain or help contextualize what occurred – mental illness, substance use disorders, struggles with housing, to name a few – which they can then present as mitigating evidence to both the judge and prosecutor to advocate for a less harsh outcome. Additionally, attorneys must meet with their clients regularly to discuss and explain potential case outcomes, like whether to go to trial or plead guilty, a decision that is difficult to navigate.

3

*full-time attorneys
in the public
defender's office*

As explained above, the public defender operates a small office, with just three full-time attorneys – including the chief public defender – six part-time attorneys, four full-time investigators, two part-time investigators, and two full-time and one part-time office staff. There is no social worker on staff. The part-time attorneys carry additional caseloads across the County for their private work, which includes civil and family cases. Based on Wren's observations and interviews, full-time staff carry the brunt of the work.

The most recent comprehensive data we have about attorney caseloads is from a 2021 report by the Pennsylvania Legislative Budget and Finance Committee.²¹ According to the report, in 2019, the office's annual caseload consisted of 17 summary appeal cases, 4 non-capital homicides, 612 felonies, 1,151 misdemeanors, 22 other cases, and 101 juvenile cases, resulting in a total of 1,907 cases.²² While we do not have data showing the distribution of cases per attorney, 612 felonies would likely mean that each of the three full-time attorneys carried over 100 felonies. A comparison with a recent workload study on indigent defense conducted by the RAND Corporation shows how problematic that caseload is. That study, which acknowledges the increased time defense attorneys must now spend on each case with the addition of forensic and body camera evidence, recommends that attorneys handle no more than 7 felony cases that carry a life sentence, 8 murder cases, 21 felony-high cases, or 59 felony-low cases per year.²³ RAND made this calculation assuming that lawyers had 2,080 hours a year to work, which, it acknowledged, is an extremely high estimate, because those hours do not include work spent

on activities unrelated to adult criminal case representation – like travel, billing, juvenile representation, and administrative work.²⁴ In reality, attorneys probably have less time to spend on their work.

Given the number of hours RAND recommends lawyers spend on each case, it is clear that attorneys in Schuylkill County cannot do sufficient work on the cases that they have. Indeed, the Chief Public Defender shared that as of October 2023, one full-time attorney reported having 172 cases. Another full-time attorney had approximately 142 cases, and a part-time attorney had 125 cases, not including his private practice caseload.

As a result of insufficient staffing, non-attorney staff are doing work beyond their traditional roles. Our court observations and interviews with attorneys demonstrated that investigators provide overwhelming support to attorneys, especially those who are not full-time. Their work treads a thin line between work that is appropriate for a legal assistant vs. work that must be performed by a licensed lawyer. Wren was only in Schuylkill County for a minimal amount of time, and therefore, we cannot comment on how widespread the practice is. But we witnessed investigators performing tasks typically reserved for lawyers. We also learned that investigators regularly request case discovery, and are also responsible for going through the discovery in cases and keeping track of attorney caseloads. Attorneys also rely heavily on investigators to communicate information to clients, including legal information.

Most cases are simply resolved without any investigation.

Providing representation in this way comes at a significant cost – investigators are not trained to be lawyers – and it creates other gaps as certain duties become less of a priority. According to one interview, “very little” traditional investigation is done in the office. There are few occasions when Schuylkill County investigators will engage in traditional investigation, like going to the scene of a case to verify a witness’s account of events, including whether the witness could have seen what they claim to have seen. Most cases are simply resolved without any investigation.

B. The Office Lacks Adequate Technology To Do Its Job

In the Schuylkill County public defender office, the technology gap is colossal.²⁵ Effectively utilizing technology increases the efficiency of public defenders and provides better representation for indigent clients. The “technology gap” between public defenders and law enforcement exists throughout the country, from the smallest town to the largest city, and is one of the many ways that our legal system favors the government.²⁶

In Schuylkill County, the public defender office cannot meet basic technological needs. The only scanner that uploads documents onto their case management system is broken. The case management system is outdated. The County’s technology department continues to tinker with it but the system has limited capabilities to collect and analyze data. During the pandemic, when court

appearances were primarily held virtually, the office struggled to purchase sufficient web cameras to make their necessary court appearances. The district attorney office has a projector they are able to connect to a laptop in court to display exhibits for the jury. Since the public defender is not equally equipped, they have to borrow it from the prosecutor. This does not happen often – according to one attorney, “very rarely do we bring anything technological to the table.” Instead, if attorneys are introducing exhibits, they tend to use printed paper exhibits that are passed around amongst the jurors. This may limit the efficacy of the exhibit altogether, since the jury is not simultaneously viewing the exhibit as the testimony occurs.

The public defender office has to rely on prosecutors to accurately calculate prior record scores, and it means that case management software cannot be fully integrated.

Additionally, according to Sara Jacobson, Executive Director of the Public Defender Association of Pennsylvania, Pennsylvania public defenders do not have the same access to the statewide court system computer program that prosecutors and police do, because public defenders are not considered “law enforcement agencies.” The public defender has to rely on prosecutors to accurately calculate prior record scores, which means that their case management software cannot be fully integrated with the statewide court system.

The consistent lack of technology may have a chilling effect on the public defender office’s willingness to try and use it because they are unfamiliar with new technological developments. It also reduces the efficacy of the defense, because the lack of technology creates more work for staff. Defense counsel simply cannot provide effective representation when it cannot even scan documents or communicate with the court.

C. The Office Lacks Adequate Funding for Defense Experts

Experts are essential in criminal cases. They have specialized knowledge, training, and expertise in their fields. Their testimony can be crucial in explaining complex aspects of the case that a jury will otherwise struggle to understand, like mental health diagnoses or even blood spatter patterns. Defense experts can rebut evidence presented by the prosecution that may be false or misleading. As such, their testimony can significantly impact the outcome of a case.

In Schuylkill County, however, interviews reveal that public defenders scarcely use experts to affirmatively help their cases. On rare occasions, the public defender retains experts at the pre-trial stage to conduct assessments and write psychological reports, because they suspect that due to a mental condition, their client does not have the capacity to understand the charges against them or participate in their own defense. The public defender uses that expert to convince the judge to halt criminal proceedings.²⁷

But interviews reveal that the public defender office otherwise rarely uses experts. Expert witnesses are an important tool for public defenders. Pretrial, an attorney can retain a defense expert to establish mitigating evidence and

to help refine the defense's theory of the case. A defense expert can examine evidence and determine whether counsel should initiate further investigation. A defense expert can also point out issues with a government expert's report that an attorney without specialized knowledge could never identify.²⁸

Attorneys also usually do not use defense experts to challenge the government's experts. Instead, public defenders reported that they often use cross-examination as the sole defense tactic in those cases. Cross-examining an expert necessitates that the defense attorney have a strong grasp on the subject, which they may not if the subject is complicated, like interpreting DNA evidence or forensic pathology. Even if the attorney does not plan on using the expert at trial, a defense expert in the same field can be crucial for helping counsel prepare that cross-examination.²⁹

Longstanding budget constraints have led to a culture of underutilizing experts.

There are many reasons why defense attorneys might underutilize experts in Schuylkill County. One reason is because it is difficult to find experts who reside in or near Schuylkill County, and it is costly to pay for travel expenditures. Second, longstanding budget constraints have led to a culture of underutilizing experts. Using the most comprehensive data available to us, which is from 2020, the average cost of a public defender case in Pennsylvania is \$1,216.54.³⁰ In Schuylkill it is only \$620.79.³¹ Therefore when Chief Public Defender Karen Domalakes reports the office remains well within the budget, it is possible that attorneys are not requesting experts because attorneys know they must be budget-conscious when considering such requests. One attorney reported that there is a perception amongst public defenders that the office cannot afford to hire an expert due to fiscal issues, so attorneys pursue alternate options.

D. The County Lacks Resources To Provide Immigration Consultations

In 2010, the Supreme Court in *Padilla v. Kentucky*³² held that the Sixth Amendment right to counsel requires that attorneys advise their noncitizen clients about the immigration consequences of a guilty plea and defend against any adverse immigration consequences. Since then, there has been no standardized practice of integrating this constitutional requirement into public defender offices, and many places, including Schuylkill County, have no such practice.

Implementing a system to ensure Padilla obligations are met within a public defender's office is crucial and can directly impact whether someone stays in this country.

Even the most minimal criminal charge could lead to a client's deportation – which could result in that person being separated from their family and forcibly returned to a country where they could be harmed or killed due to persecution or dangerous conditions.³³

Immigration law is a vast and complicated field, with practitioners honing their knowledge over decades of practice. Moreover, immigration law is always changing, often depending on a President's policy whims. Public defenders already have to master the entire field of criminal law. It is impossible to expect attorneys to have specialized knowledge in both fields.

At the time of our visit, there were no Spanish-speaking staff in the office, or access to a language line, a translation service conducted over the phone.

Wren's interviews with attorneys at the Schuylkill County Public Defender revealed that the office does not have the resources or knowledge to advise its clients on immigration consequences. Through our interviews with staff at the public defender office, we learned that the office has seen a considerable increase in non-English speaking clients. At the time of our visit, there were no Spanish-speaking staff in the office, or access to a language line, a translation service conducted over the phone. Attorneys either waited to talk to their client in court, where they could utilize the court's translator, used a translation application on their cell phone, or communicated with their client through family or a friend who could translate between English and Spanish. Attorneys in the office often advise noncitizen clients to search the internet for an immigration attorney, or sometimes, the attorney may provide information for an immigration attorney they found on the internet. But the office does not have an established relationship with an immigration attorney to provide consultations or direct their client on collateral consequences. If an attorney does make a referral, there is no procedure in place to verify those clients received an immigration consultation as the U.S. Constitution requires.³⁴

E. The County needs resources to provide attorneys at arraignment

Like most of the other 67 counties in Pennsylvania, magisterial district judges (MDJs) make pretrial release decisions and set bail in Schuylkill County without a defense attorney present.³⁵

In Schuylkill County, the arrested individual, the prosecutor and the MDJ are present at the preliminary arraignment. More often than not, law enforcement is also present. The prosecutor makes a bail request. Law enforcement may be present to provide any additional information needed. Then the MDJ makes an independent determination whether bail should be set and the amount at which it should be set. But the defense attorney is absent for this decision-making about his or her client's life, both because their presence is not legally required at preliminary arraignment and because they are not yet assigned to the case. During this critical moment where the accused's liberty is at stake, the arrested individual is alone. Defense counsel is not present to make arguments regarding why pretrial detention is not necessary in the case. Instead, the accused individual is absolutely defenseless and at the mercy of the judge,

who has only heard from law enforcement and the prosecution. As a result, the accused is further inclined to make incriminating statements, particularly because defense counsel is not present to provide legal advice.

If an MDJ sets a bail amount that the individual cannot afford, the individual is detained and must apply for a public defender from the jail. The application includes providing evidence of indigency. It is only at that point that a public defender is assigned to the case. Once the public defender has the case, they will write to the court to request the preliminary hearing date. While some MDJs may allow the attorney to readdress bail at the hearing, others require attorneys to request a bail reduction hearing. According to interviews, the preliminary hearing usually occurs a month after the preliminary arraignment, sometimes sooner. Therefore a person could be held in pretrial detention for up to one month before a lawyer can argue for a bail reduction or release. Those who are eventually released have already lost several days or weeks of their freedom.

21%

more likely to be released without cash bail if have a lawyer at their bail hearing

A pretrial release decision has massive implications for a person's life and for the trajectory of their case. Pretrial detention separates people from their communities, putting their health, housing, familial relationships, and employment at risk. Pretrial detention makes it more difficult for people to fight their cases.³⁶ It also significantly increases the likelihood of a guilty plea,³⁷ and further perpetuates racial and class disparities in the criminal legal system while undermining public safety.³⁸ A study examining the impact of Allegheny County's decision to provide lawyers at bail hearings, for example, found that people with lawyers at their bail hearings were 21% more likely to be released without cash bail than those who didn't have a lawyer.³⁹

Finding: The County Lacks The Necessary Supportive Services to Fully Assist in the Support of Residents in Need.

As explained earlier, the public defender's job is no longer limited to going to trial and negotiating pleas. It is now widely recognized that defense attorneys must help their clients with an array of needs, from substance use disorders to mental health treatment to housing, because, aside from the morality of the issue, it helps their client's case. Often, the attorney's goal is to address the root causes of why an individual entered the criminal system as a tool for convincing a prosecutor to drop a case or offer a more lenient sentence. Thus, having access to these services is a predicate to effective defense.

Unfortunately, the fiscal capacity of rural counties is limited to generated tax revenues.⁴⁰ Schuylkill County has always been reluctant to raise taxes,⁴¹ and the County's poverty rate and low per capita income makes it difficult for them to provide many services, including basic fundamentals like housing.

A. The County Lacks Housing & Instead Uses Jail as a Solution to Homelessness

Our legal system has criminalized homelessness across the country, in rural and urban communities alike.⁴² Unable to deal with a growing unhoused population, communities across the nation have used jails as de facto shelters to take people off the streets, overlooking mental health or substance use disorders that are often contributing factors to a lack of housing, as are a lack of affordable units.⁴³ Schuylkill's approach seems to be no different. Advocacy groups and staff who support the unhoused explained that the County only has 16 shelter beds in their one general population shelter, and seven of those beds are reserved for individuals on probation or parole.

Many judges and prosecutors believe that people who don't have a regular place to live are automatically presumed a flight risk.

Specifically, the Schuylkill County courts have an unofficial practice of holding unhoused clients in jail on unaffordable bail, regardless of the charge or their risk to community safety. According to interviews, many judges and prosecutors believe that people who don't have a regular place to live are automatically presumed a flight risk, and thus, pre-trial detention is necessary to ensure their appearance in court.⁴⁴

Once a magistrate sets bail on an unhoused person, judges regularly require an "address affidavit" that states where an individual will reside as a condition of release from jail. According to one interview, this affidavit is ordered in most cases, and can hinder someone's release even if they post bail. For example, if a judge sets bail on an unhoused individual and their friend posts bail for them, they will remain incarcerated until they submit an address affidavit. Homeless shelters are not considered legitimate addresses. With this knowledge, public defenders do not request a bail hearing if their client does not have an address that will be approved because they are only given one opportunity to have a bail hearing before a common plea judge. Any subsequent hearing requires a showing of a "change of circumstances."

We want to be clear that this discrimination against the unhoused is patently unconstitutional. But there are two things the public defender could do about this problem if the County had more resources. First, attorneys could file challenges to these practices, either in individual cases or in a class action, in partnership with a larger legal advocacy group like the ACLU. Second, with more housing options in the community, the public defender could help clients access stable housing, and therefore, improve their clients' case outcomes. However, the public defender lacks both the time and the access to even temporary housing like shelter beds that could help with these issues. As a result, the unhoused, regardless of the offense, are further penalized for their poverty.

B. The County Lacks Treatment Options

Healthcare deserts are common in rural counties.⁴⁵ County employees explained that while the County has funds to cover both substance use disorder and mental health treatment for individuals, the in-county service providers lack capacity because of the County's healthcare professional shortage. The shortage means those with the necessary licenses to provide treatment are in high demand, and private healthcare providers can offer better compensation than Medicaid healthcare providers, thereby recruiting more licensed treatment professionals.⁴⁶ As a result, Medicaid-accepted treatment centers have limited capacity due to staff shortages and there can be waitlists for both substance use and mental health treatment. The domino effect means there are little to no treatment options for clients, ultimately limiting a lawyer's advocacy options. Obtaining inpatient treatment in another county is often the only viable solution. We interviewed Service Access and Management staff members who shared that sending patients seeking inpatient treatment outside the County is a common practice. The County does not even have certain detox facilities. When patients must travel outside the County for treatment, transportation to the facility is provided. However, the same luxury is often not offered for in-County outpatient treatment, and the County lacks public transportation, with buses running as little as once a day and, in some areas, just once a week. And, unlike treatment, transportation is often not covered through insurance or Medicaid for in-County services. That means in-County treatments are often not viable for those struggling financially. The County does not have sufficient funds to cover all forms of transportation. As a result, outpatient services are impossible for certain indigent clients to access.

The County also cannot start a mental health court, a treatment court focused on addressing the underlying mental health needs of the individual charged with a crime. The public defender office, district attorney, and judges agree that one is needed. However, according to our interviews, there are simply not enough service providers to partner with the court. Many judges may, therefore, believe that they have no other choice but to incarcerate individuals with mental health issues.

The lack of services, therefore, has a significant impact on the liberty of the most vulnerable residents who are in serious need of community support.

Recommendations

A. Schuylkill County must increase the public defender and human services budgets to safeguard indigent people’s constitutional rights.

While the County budget is admittedly small, we are hopeful additional resources are coming to the County. Pennsylvania’s failure to provide state funding for indigent defense creates a wide discrepancy in the quality of representation among its counties⁴⁷ as many places, like Schuylkill, do not have the tax base to adequately fund indigent defense.⁴⁸

Lawmakers have allocated \$7.5 million to indigent defense, creating an indigent defense advisory committee, which will write Pennsylvania standards for indigent defense, and a grant fund, which will provide funding to counties that cannot meet those standards without more funding.⁴⁹ However, \$7.5 million is a drop in the bucket given the \$125.5 million on indigent defense spent in the state.⁵⁰ In order to alleviate the crisis in representation occurring in Schuylkill County (and elsewhere in Pennsylvania), the State must drastically expand funding to support indigent defense, especially in rural counties, and legislators representing constituents in Schuylkill County should advocate for increased funding.

There are also additional resources that the County can provide to support indigent defense. The County, for example, received \$27 million from the federal government through the American Rescue Plan Act (ARPA).⁵¹ As of the beginning of 2023, the County had \$9 million remaining and had only earmarked \$4.7 million to close the 2023 budget gap.⁵² We recommend that it use some of the remaining funds to support our recommendations, like Erie County did by allocating ARPA funds to pay benefits to court-appointed counsel.⁵³ The County, or the public defender office itself, could also apply for grants from the Bureau of Justice Administration (BJA) when they are available.

If the County receives additional funding, it should:

1. Increase the public defender office’s budget.

Currently, the Schuylkill County Public Defender Office struggles to meet its constitutional requirement to provide effective assistance. The office needs funding to pay additional attorneys to lessen each attorney’s workload and allow investigators to use their skills to investigate cases rather than perform legal duties. The office needs technology updates to save staff time and even the playing field with the District Attorney’s office. Its case management software must be updated to track and maintain data. And it needs a bigger budget to provide experts on its cases.

Because the office has had to work with limited technology and limited funding for experts for so long, these additional resources should be accompanied by training on best practices for effective representation. The office also needs funding for training on specialized topics like the use of forensics, mental health issues, and immigration collateral consequences.⁵⁴

\$27 million
*received from the
federal government
through the American
Rescue Plan Act*

Finally, with more resources, the public defender could file challenges to the County's practice of denying bail for unhoused individuals and conduct other impact litigation. The public defender could also use increased funding to start staffing arraignments in order to represent clients at their bail hearings.

2. *Increase the human services budget for supportive services.*

Public defenders often need to connect their clients to supportive services, like substance use disorder treatment or mental health assistance. If attorneys can locate a supportive service to address a client's needs, they can often use a treatment plan to negotiate with the prosecution to keep their client out of jail. However, residents of Schuylkill County do not have access to these robust supports, and the County should therefore fund more supportive services to assist residents. These should include homeless shelters, transitional housing, reentry counselors, and transportation to and from treatment centers. Funding these areas will have the added benefit of helping to decrease recidivism and could save the County money in the long run.

3. *Fund immigration consults for Schuylkill County.*

There are several models of *Padilla* support for a public defender office to choose from, though they all, of course, require funding.⁵⁵ An office can employ an immigration specialist, contract with an immigration specialist, or contract with an outside immigration organization. Given the relatively low number of noncitizen clients likely encountered by the Schuylkill County Public Defender Office,⁵⁶ we recommend that the County use any additional funding obtained to contract with an immigration organization like the Pennsylvania Immigration Resource Center or Immigrant Legal Resource Center to provide immigration consultations. Alternatively, the office could combine funding with neighboring counties to contract with a reasonable resource to support multiple offices.

B. *Pennsylvania must enact a state-wide rule ensuring indigent counsel's presence at arraignments.*

Public defenders' absence at arraignment is not just a Schuylkill County problem – it is a Pennsylvania problem.

The Supreme Court of Pennsylvania has proposed a Rule of Criminal Procedure that would mandate counties to provide representation at arraignment.⁵⁷ While that is certainly a positive first step, if the pending change to the criminal procedure statute mandating the appointment of lawyers at arraignment is not accompanied by additional funding, then the legislature will be adding an additional burden on counties and indigent defense providers, who are already struggling to satisfy current legal duties. To implement a state-wide change, the General Assembly must include an item in the budget funding public defense at arraignments, and the Pennsylvania Supreme Court must then implement a rule mandating this practice.⁵⁸

C. The General Assembly should commission a study of rural indigent defense in Pennsylvania.

Finally, the newly established Indigent Defense Advisory Committee should commission a study of indigent defense in rural counties like Schuylkill. It should examine qualitative and quantitative case outcomes while also examining the many issues that affect the quality of representation in rural counties.⁵⁹ Though we have highlighted some of the issues we learned about, they are not an exhaustive list of the challenges public defenders in Schuylkill County face, nor are they very detailed due to the lack of available data.

South Dakota recently created an indigent defense task force, which studied the state of public defense in South Dakota, including the cost imposed on counties. It then made several recommendations, including investing in a more in-depth study of the state of affairs and creating a state-wide appellate office funded by the state.⁶⁰ Pennsylvania should follow suit in order to understand best how to support poor people accused of crimes in rural areas.

Conclusion

Sixty years ago, the United States Supreme Court unanimously ruled that everyone had the right to have effective legal representation in a criminal proceeding. That right is elusive in Schuylkill County, as in many other rural parts of America. Unfortunately, the indigent defense system in rural counties like Schuylkill often flies under the radar of researchers, advocates, and policymakers. The Counties are rural, and their jails are small, even if they are filled to the brim. They lack advocates at the state house. But people who live in those places have the same Sixth Amendment rights as those who live in better-resourced, highly populated areas.

We should not premise one's access to justice on location or population size.

Endnotes

- ¹ VERA INSTITUTE OF JUSTICE, *OUT OF SIGHT: THE GROWTH OF JAILS IN RURAL AMERICA* (2017), <https://www.vera.org/downloads/publications/out-of-sight-growth-of-jails-rural-america.pdf>.
- ² *Id.* at 7.
- ³ Richard A. Opiel, *A Cesspool of a Dungeon*, N.Y. TIMES, Dec. 13, 2019, <https://www.nytimes.com/2019/12/13/us/rural-jails.html>.
- ⁴ *Id.*
- ⁵ *Quick Facts: Schuylkill County, Pennsylvania*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/schuylkillcountypennsylvania/PST045222>.
- ⁶ *Id.*
- ⁷ Thomas Carpenito, *State of Coal and Renewable Energy in Schuylkill County*, MEDIUM, Jul. 26, 2020, <https://medium.com/@thomascarpenito3/state-of-coal-and-renewable-energy-in-schuylkill-f8850fec3fa6>.
- ⁸ *Schuylkill County, Pennsylvania*, DATAUSA, <https://datausa.io/profile/geo/schuylkill-county-pa#:~:text=In%202022%2C%2017.4%25%20of%20the,%2C%20the%20indicator%20declined%203.7%25>.
- ⁹ It was challenging to capture the entire scope of the unhoused population in the county. We relied on the Department of Housing and Urban Development's *Point In Time Count*. According to HUD's *Point in Time Count*, unhoused persons in Schuylkill County numbered 46 in 2021, 68 in 2022, and 86 in 2023. See EASTERN PENNSYLVANIA CONTINUUM OF CARE, *HOUSEHOLDS/PERSONS COUNTED DURING THE ANNUAL POINT-IN-TIME COUNT 2021-2023*, https://pennsylvaniacoc.org/sites/default/files/attachments/2023-04/Eastern%20PA%20CoC%202023%20PIT%20Count%20Summary%20by%20County%20and%20RHAB_0.pdf.
- ¹⁰ Editorial, *Schuylkill County Has A \$10.2 Million Problem*, Coal Region Canary, Jan. 11, 2023, <https://coalregioncanary.com/2023/01/11/schuylkill-county-budget-shortfall-2023/>; Ed Mahon, *Huge Budget Cuts Could Hurt People with Mental Illness, Disabilities Most, Pa. Providers Fear*, SPOTLIGHT PA, Sept. 10, 2020, <https://www.spotlightpa.org/news/2020/09/pa-coronavirus-budget-human-services-mental-health-cuts-fear>.
- ¹¹ Amy Marchiano, *Schuylkill County Commissioners to Get Site Option Analysis for Prerelease Center*, REPUBLICAN & HERALD, May 10, 2023, https://www.republicanherald.com/news/schuylkill-county-commissioners-to-get-site-option-analysis-for-prerelease-center/article_c469e09e-04fc-5eda-b16f-b94c49db4b4f.html.
- ¹² *Id.*
- ¹³ In Schuylkill County, the county jail is called "Schuylkill County Prison."
- ¹⁴ CNTY. OF SCHUYLKILL, *2023 FINAL BUDGET (2022)*, https://cms8.revize.com/revize/schuylkillcountypa/Document_Center/Departments/Audit%20Report%20&%20Financial%20Statements/2023Budget.pdf.
- ¹⁵ *Id.*
- ¹⁶ *Id.*
- ¹⁷ Press Release, Gov. Josh Shapiro, *Governor Shapiro Signs into Law Commonsense Budget that Makes Historic Investments to Create a Stronger Economy, Safer and Healthier Communities, and Better Schools* (Aug. 3, 2023), <https://www.governor.pa.gov/newsroom/governor-shapiro-signs-into-law-commonsense-budget-that-makes-historic-investments-to-create-a-stronger-economy-safer-and-healthier-communities-and-better-schools/>.
- ¹⁸ *Indigent Defense Reform*, ACLU OF PA., <https://www.aclupa.org/en/issues/criminal-justice-reform/indigent-defense-reform>.

- ¹⁹ Keisha Hudson, Commentary, *A \$10 Million Investment Is a Bold First Step, but Pa.'s Public Defenders Need More*, INQUIRER, Mar. 30, 2023, <https://www.inquirer.com/opinion/pennsylvania-funding-public-defenders-20230330.html>.
- ²⁰ *Quick Facts: Schuylkill County, Pennsylvania*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/schuylkillcountypennsylvania/PST045222>; Danielle Ohl, *Pa. Doesn't Fund Public Defense. Shapiro's Budget Would Change That*, SPOTLIGHT PA, Apr. 26, 2023, <https://www.spotlightpa.org/news/2023/04/pa-public-defense-gov-shapiro/>.
- ²¹ PA. GEN. ASSEM. LEGIS. BUDGET AND FIN. COMM, PENNSYLVANIA INDIGENT CRIMINAL DEFENSE SERVICES FUNDING AND CASELOADS (2021), <https://lbfc.legis.state.pa.us/Resources/Documents/Reports/701.pdf>.
- ²² Other cases are summary offenses, ungraded offenses, and indirect criminal contempt. The data does not include violations of probation and parole hearings or mental health commitment representation. See *id.* at 50, 71.
- ²³ NICHOLAS M. PACE, ET AL., NATIONAL PUBLIC DEFENSE WORKLOAD STUDY (2023), https://www.rand.org/pubs/research_reports/RRA2559-1.html.
- ²⁴ *Id.* at xii fn. 16.
- ²⁵ Kashmir Hill, *Imagine Being on Trial. With Exonerating Evidence Trapped on Your Phone*, N.Y. TIMES, Nov. 22, 2019, <https://www.nytimes.com/2019/11/22/business/law-enforcement-public-defender-technology-gap.html>.
- ²⁶ *Id.*
- ²⁷ *Dusky v. United States*, 362 U.S. 402 (1960).
- ²⁸ MICHIGAN INDIGENT DEFENSE COMMISSION, INVESTIGATION AND EXPERTS: A GUIDE TO IMPLEMENTATION OF THE MINIMUM STANDARDS FOR DELIVERY SYSTEMS (2017), <https://michiganidc.gov/wp-content/uploads/2017/03/White-Paper-3-Experts-and-Investigators.pdf>.
- ²⁹ *Id.*
- ³⁰ PA. GEN. ASSEM. LEGIS. BUDGET AND FIN. COMM, PENNSYLVANIA INDIGENT CRIMINAL DEFENSE SERVICES FUNDING AND CASELOADS (2021), <https://lbfc.legis.state.pa.us/Resources/Documents/Reports/701.pdf>.
- ³¹ *Id.*
- ³² *Padilla v. Kentucky*, 559 U.S. 356 (2010).
- ³³ Sarah Stillman, *When Deportation is a Death Sentence*, Jan. 8, 2018, THE NEW YORKER, <https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence>.
- ³⁴ Based on the lack of immigration consults, we believe there may be clients who have been deported or placed in deportation proceedings who were not made aware of the immigration consequences of their pleas.
- ³⁵ ACLU OF PA., BROKEN RULES: HOW PENNSYLVANIA COURTS USE CASH BAIL TO INCARCERATE PEOPLE BEFORE TRIAL 7 (2021), https://www.aclupa.org/sites/default/files/field_documents/broken_rules_statewide_bail_report.pdf.
- ³⁶ LÉON DIGARD AND ELIZABETH SWAVOLA, VERA INSTITUTE OF JUSTICE, JUSTICE DENIED: THE HARMFUL AND LASTING EFFECTS OF PRETRIAL DETENTION (2019), <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>.
- ³⁷ Stephen Koppel et al., *Examining the Causal Effect of Pretrial Detention on Case Outcomes: A Judge Fixed Effect Instrumental Variable Approach*, JOURNAL OF EXPERIMENTAL CRIMINOLOGY 2023, <https://link.springer.com/article/10.1007/s11292-022-09542-w>.
- ³⁸ ALLIE PRESTON, CENTER FOR AM. PROGRESS, 5 WAYS CASH BAIL SYSTEMS UNDERMINE COMMUNITY SAFETY (2022), <https://www.americanprogress.org/article/5-ways-cash-bail-systems-undermine-community-safety/>.

- ³⁹ Shamena Anwar et al., RAND Corp., *The Impact of Defense Counsel at Bail Hearings*, SCIENCE ADVANCES 9 (18), <https://www.science.org/doi/pdf/10.1126/sciadv.ade3909>.
- ⁴⁰ Lisa Pruitt & Beth Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ L. REV. 219, 227-8 (2010).
- ⁴¹ Chris Parker, *Schuylkill Oks Tax Reassessment*, TIMES NEWS ONLINE, May 12, 2022, <https://www.tnonline.com/20220512/schuylkill-oks-tax-reassessment/>.
- ⁴² Eric Wodahl, *The Challenges of Prisoner Reentry from a Rural Perspective*, 7(2) W. CRIM. REV. 32 (2006), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=5aff0d15cc7ada7cf2e26087598e3cdfd22bb863>.
- ⁴³ *Id.*
- ⁴⁴ Ethan Corey and Puck Lo, *The "Failure to Appear" Fallacy*, Jan. 9, 2019, THE APPEAL, <https://theappeal.org/the-failure-to-appear-fallacy/>.
- ⁴⁵ Peter Charalambous, *Less Staff, Longer Delays and Fewer Options: Rural America Confronts a Health Care Crisis*, Mar. 18 2023, ABC NEWS, <https://abcnews.go.com/Health/staff-longer-delays-fewer-options-rural-america-confronts/story?id=97911613>;
- ⁴⁶ Cassie Miller, *Staff Shortages, "Burdensome" Regulations among Top Hurdles for Addiction Treatment Providers*, PA. CAPITAL-STAR, Mar. 9, 2023, <https://www.penncapital-star.com/government-politics/staff-shortages-burdensome-regulations-among-top-hurdles-for-addiction-treatment-providers/>.
- ⁴⁷ *Id.*
- ⁴⁸ Metzger, Pamela R., *Rural Criminal Justice Reform, in TRANSFORMING CRIMINAL JUSTICE: AN EVIDENCE-BASED AGENDA FOR REFORM* (Jon B. Gould and Pamela R. Metzger, eds., NYU Press 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4234575#.
- ⁴⁹ Paula Reed Ward, *For the first time, Pa. will provide counties with funding to help indigent defendants*, TRIB LIVE, Dec. 14, 2023, <https://triblive.com/news/pennsylvania/for-the-first-time-pa-will-provide-counties-with-funding-to-help-indigent-defendants/>.
- ⁵⁰ Danielle Ohl, *Pennsylvania Doesn't Fund Public Defense. Shapiro's Budget Would Change That*, PENNSYLVANIA SPOTLIGHT, Apr. 26, 2023, <https://www.spotlightpa.org/news/2023/04/pa-public-defense-gov-shapiro/>.
- ⁵¹ Chris Parker, *Schuylkill County Details Pandemic Fund Spending*, TIMES NEWS ONLINE, Jan. 27, 2023, <https://www.tnonline.com/20230127/schuylkill-co-details-pandemic-fund-spending/>.
- ⁵² *Id.*
- ⁵³ Ed Palattella, *In passing budget, Erie County Council OKs more funds for lawyers who represent the poor*, ERIE TIMES-NEWS, Nov. 29, 2023, <https://www.goerie.com/story/news/local/2023/11/29/erie-county-council-approves-800000-boost-for-lawyers-for-the-poor-bob-catalde-terry-scutella/71738618007/>.
- ⁵⁴ A robust annual immigration training could come from an organization like the Defender Association of Philadelphia or the Immigrant Defense Project.
- ⁵⁵ IMMIGRANT LEGAL RESOURCE CENTER, PROTOCOLS FOR ENSURING EFFECTIVE DEFENSE OF NONCITIZEN DEFENDANTS IN CALIFORNIA (2015), https://www.ilrc.org/sites/default/files/resources/protocols_for_ensuring_effective_defense_of_noncitizen_defendants_in_ca_oct_2015.pdf.
- ⁵⁶ Only 5.7% of residents of Schuylkill County speak a language other than English at home. See *Quick Facts: Schuylkill County, Pennsylvania*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/schuylkillcountypennsylvania/PST045222>. From 2013-2021, the most recent data available, 103 individuals were

held on an Immigration and Customs Enforcement (ICE) detainer at the Schuylkill Prison. See *Latest Data: Immigration and Customs Enforcement Detainers*, TRAC Immigration, <https://trac.syr.edu/phptools/immigration/detain/>. An ICE detainer is a request from ICE to a jail to notify ICE when the person will be released from criminal custody so that ICE can pick them up, and the detainer also asks the facility to keep the person in the facility after they are released for up to 48 hours. A detainer is vital information for a defense counsel so that they can appropriately advise their client on potential immigration consequences.

- ⁵⁷ Sup. Ct. of Pa. Crim. Pro. R. Comm., Not. of Proposed Rulemaking, <https://www.pacourts.us/Storage/media/pdfs/20230623/173849-publicationreportrebail.pdf>; see also *Publication Report*, 52 Pa.B. 205 (2022), <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol52/52-2/47a.html&d=reduce>.
- ⁵⁸ Sup. Ct. of Pa. Crim. Pro. R. Comm., Not. of Proposed Rulemaking, <https://www.pacourts.us/Storage/media/pdfs/20230623/173849-publicationreportrebail.pdf>.
- ⁵⁹ No such study has been commissioned in Pennsylvania. The 2021 LBFC report, *supra* note 30, looks at statewide data such as spending, caseloads, and case outcomes, but does not do an in-depth investigation of any of these offices.
- ⁶⁰ John Hult, *Task Force Recommends Creation of State Public Defender's Office*, SOUTH DAKOTA SEARCHLIGHT, July 31, 2023, <https://southdakotasearchlight.com/2023/07/31/task-force-recommends-creation-of-state-public-defenders-office/>.



THE WREN COLLECTIVE

© The Wren Collective, January 2024. All Rights Reserved.