

HOLISTIC DEFENSE, RECONSIDERED

WASHINGTON UNIVERSITY LAW REVIEW (forthcoming 2027)

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ABSTRACT

Many public defense providers now employ social workers to meet a broad range of their clients' needs, including access to substance abuse and mental health treatment, housing support, and government benefits. This "holistic defense" approach is intuitive and appealing: an opportunity to more comprehensively serve the needs of a vulnerable and persistently underserved population.

However, providing social services through public defenders has meaningful risks and limitations. This article draws upon empirical evaluations of holistic defense and related criminal legal system reforms, social science research, first-hand observations from the author's practice, and an examination of pre-Gideon legal services to identify and mitigate three risks. First, delivering social services through public defenders creates a risk of net-widening. Studies of treatment courts, high-intensity probation programs, and other relevant contexts show that courts tend to increase requirements—and, consequently, find more violations of those requirements—as the barriers to imposing them decrease. Second, there are structural barriers to providing effective long-term support within the time-limited and criminal case-oriented window of public defenders' engagement with their clients. Indeed, empirical evidence has not shown that holistic defense achieves its loftiest ambition of delivering long-term benefits to its recipients. Third, providing social services through holistic defenders may be unfair insofar as it fails to reflect community preferences for the allocation of scarce social services resources. Deference to community preference is particularly apt in contexts concerning communities disproportionately affected by, but underrepresented in shaping, criminal legal system policies.

* Thanks to the many people who contributed their time and wisdom to developing this idea over more than three years, including Laura Abelson, Matthew Clair, Andrew Crespo, Sam Friedlander, Bruce Green, Brooks Holland, Ben Levin, Evelyn Malavé, Sandy Mayson, Alexandra Natapoff, and Eileen Prescott. Thanks to participants at the ABA Criminal Justice Academic Workshop, including Daniel Ellman, Russell Gold, Eve Hanan, Athena Kheibari, and Alma Magaña, and participants at the Penn Carey Law fellows' workshop. Special thanks to my colleagues at the Quattrone Center for the Fair Administration of Justice at Penn Carey Law School, including Dana Bazelon, Lindsay Graef, Paul Heaton, Emily Leslie, and Tricia Rojo Bushnell.

These risks do not justify the wholesale abandonment of holistic defenders' social services units. Rather, public defenders should adopt risk-mitigating practices wherever feasible. They should monitor carefully for indications of net-widening. And in light of evidence that social services integration can improve clients' criminal case outcomes, public defenders should consider focusing their social services practice on that core objective. To responsibly serve the community's social services needs more broadly would require a fundamental shift in the public defender's institutional structure—potentially transforming the organization into one in which the social services unit outsizes the criminal defense practice. This inverted institutional structure, which has deep historical roots, reflects an approach in which access to resources, education, employment, and treatment—not arrest, prosecution, and incarceration—are the primary strategies to prevent and respond to crime.

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INTRODUCTION

Public defense providers at the cutting edge of the holistic defense movement now employ social workers in addition to the attorneys and support staff that make up a traditional legal practice. Social workers help their clients address needs common among defendants in the criminal legal system, such as substance use disorder, housing instability, and trouble accessing government benefits. These holistic defense organizations have become, in a sense, part law firm-part social services agency.

Where it has been discussed and studied, public defenders' provision of social services has been met with broad appreciation and acclaim. States and cities have poured resources into these initiatives in recent years with the result that, today, it is challenging to find a medium or large public defender that does *not* promote its dedication to intertwining social work and criminal defense.¹

This headlong commitment to transform public defense deserves scrutiny. Despite the model's explosive growth over the past two decades, almost no scholarship has engaged with its risks and benefits since the mid-2000s, when the model was in its infancy.² At the same time, the empirical evidence base remains thin: There is modest evidence that infusing social services helps criminal case outcomes but virtually no evidence that it effects positive long-term change among defendants.³ Given the sordid history of well-intentioned criminal justice reforms backfiring—unintentionally forming the foundation for a larger, more destructive system—more study, both empirical and conceptual, is needed.

This article provides the latter. It is the first to comprehensively articulate the limitations and risks of providing social services through public defenders, drawing upon empirical and theoretical examinations of related criminal legal system reforms, relevant social science research, and first-hand practice experience to do so.

The heart of this article identifies three risks of providing social services through public defenders. First and most concerning, it may lead to net-widening: broadening the reach of the criminal legal system in terms of the number of people it touches and the depth of its involvement in their

¹ See *infra* section I.A.

² See *infra* section I.E.

³ See *infra* section I.D.

lives.⁴ When holistic defenders initiate and support clients' participation in services, they remove barriers to courts and prosecutors *requiring* that participation as a condition of pre-trial release or non-custodial sentences. Evidence from evaluations of treatment courts, high-intensity probation programs, and other relevant contexts shows that courts tend to increase requirements—and, consequently, find more violations of those requirements—as the barriers to imposing them decrease. Moreover, supporters of an expansive carceral system can point to the services provided by public defenders, and any positive outcomes that result from them, as support for maintaining or expanding arrests and prosecutions.

Second, there are structural limitations to the effectiveness of providing social services through a public defender.⁵ Public defenders often provide social services to fill client needs that pre-exist, and outlast, a client's criminal case. When a client's relationship with the public defender dissolves at the end of her criminal case, however, the client's engagement with these services is set up to deteriorate. Studies in numerous contexts show the difficulty of clinical transitions. Intertwining the initiation and delivery of legal defense and social services sets clients up to disengage from those services prematurely or to struggle to re-engage with those services when needs reemerge in the future. Additionally, judges' contraindicated treatment preferences, legal ethics rules, and the incompatibility of court schedules and treatment programs strain the possibility of effective rehabilitation alongside an ongoing criminal case.

Third, providing social services through holistic defenders may be unfair insofar as it fails to reflect community preferences for the allocation of scarce social services resources.⁶ Many people in low-resource communities struggle with the same problems that holistic defenders help their clients address, including substance abuse, housing insecurity, and difficulty accessing government benefits. When a community's public defender provides uniquely beneficial support to its clients, or wins grants that would otherwise have gone to more broadly accessible organizations, it disadvantages—or creates the appearance of disadvantaging—community members who have similar needs but are not criminal system-involved. It might be the preference of the community as a whole—a community disproportionately affected by but underrepresented in shaping criminal legal system policies—that resources not be distributed in that way.

I do not identify these risks with the goal of ending public defenders' provision of social services. Rather, I hope to encourage the deliberate and responsible implementation of the practice—identifying pitfalls with the aim that practitioners and policymakers take steps to avoid them. To that

⁴ See *infra* section II.A.

⁵ See *infra* section II.B.

⁶ See *infra* section II.C.

end, and to promote maximally effective delivery of services to the people who need them, I propose a handful of risk-mitigating best practices.⁷ First, policing against net-widening begins with keeping and studying data on the conditions that judges and prosecutors demand of holistic defenders' clients. Public defenders themselves, with support from external research partners, are well positioned to keep and monitor these data—essentially taking a broader and more systematic approach to the familiar practice of monitoring the “going rate” to resolve cases of a given type.⁸ Second, public defenders should be especially cautious about providing social services as a means to facilitate change in the lives of their clients *beyond* improving their criminal case outcomes. In that expanded context, empirical support is at its weakest while the risks of ineffectiveness and unintended consequences are at their greatest.⁹ Organizations that nonetheless endeavor to promote benefits beyond improving criminal case outcomes should look to the well-developed literature on “warm handoffs,” among other strategies, to transition clients to new care settings and providers.¹⁰ Third, many risks that I highlight arise from the fact that when public defenders provide social services, they provide them conditional upon someone becoming a criminal defendant. What if that weren't true—if, instead, organizations opened access to their social services units to their communities writ large? Some holistic defenders already do so on a limited basis: for example, two days a week, as funding permits.¹¹

I conclude with more ambitious proposals.¹² Specifically, I consider the intriguing implications of extending open access to the public defender's social services unit to its logical end: The social services unit may grow to outsize, perhaps to vastly outsize, the organization's criminal defense practice. Instead of organizations providing social services incidental to their criminal defense missions, they could provide criminal defense incidental to their social service missions. One could imagine an organization primarily dedicated to providing substance abuse treatment or mental health treatment also providing criminal defense services to clients who needed it. A community or faith-based organization generally dedicated to serving the needs of low-income community members could provide criminal defense among an expansive menu of services. Unlike most maneuvers to change the structures of the criminal legal system, this one may be undertaken exclusively by community and defense-side advocates: It requires no buy-in from prosecutors, courts, or police. This approach

⁷ See *infra* section III.A.

⁸ See *infra* section III.A.1.

⁹ See *infra* section III.

¹⁰ See *infra* section III.A.2.

¹¹ See *infra* section III.A.3.

¹² See *infra* section III.B.

thereby marries the autonomous, grassroots nature of initiatives such as participatory defense and community bail funds with the in-court influence afforded by the defendant's right to counsel.

Inverting the institutional structure does something profound: It transforms the organization itself to reflect a model of the criminal legal system in which access to resources, education, employment, and treatment—not arrest, prosecution, and incarceration—are the primary strategies used to prevent and respond to crime. Constructing organizations such that criminal legal representation is subsidiary to a broader social mission conveys that powerful symbol.

Ultimately, the brilliance of holistic defense is that it attempts to redirect the criminalization of poverty and illness into a tool to identify and support people with acute unmet social needs. In its existing form, however, it attempts to do so as an institution within a criminal system oriented toward punishment rather than restoration. Shifting criminal defense to be situated within organizations primarily concerned with providing social services limits the criminal system's influence on the delivery of those services. It is a step toward the ideal of directing public resources to supporting people's needs rather than to criminalizing their poverty.

Intriguingly, this model has deep, though atrophied, roots in historical practice. In the late 19th and early 20th centuries, legal assistance was often provided by broadly purposed women- and social worker-led community organizations. These organizations integrated legal assistance, including criminal legal assistance, among a vast menu of services. The effect was not just symbolic but also instrumental: By virtue of an institutional orientation toward social work and the legal establishment's hostility to women, providers in these institutions looked first, and often successfully, to extra-legal solutions to many of their clients' legal problems. This model—smeared by misogynistic complaints against women “meddling” in the legal field—declined in favor of today's familiar law firm model of providing legal aid. Though dormant, it remains a viable template for innovative community leaders, policymakers, and defense providers to follow.

Part I of this article describes the origins and practices of holistic defenders' social services units. Part II identifies three risks associated with holistic defenders providing social services: It may lead to net-widening; it is predisposed to deliver suboptimal clinical outcomes; and it could fail to reflect the interests of the community at large. Part III catalogs proposals and imagines a different way forward: Situating criminal defense units within social services organizations—instead of the other way around—resolves many of the concerns raised in this article and reflects a social order in which involving the criminal system is but one, and a small, intervention to address harm-causing behavior. This model was deployed successfully in the past and has both symbolic and functional implications.

I. SOCIAL SERVICES IN PUBLIC DEFENSE

A. Origins and Evolution

In 1963, *Gideon v. Wainwright* guaranteed the right to legal counsel for all defendants in felony trials.¹³ Later Supreme Court cases extended the right to counsel to attach at various “critical stages” before trial.¹⁴ The “critical stages” analysis focused exclusively on protecting interests that the Court considered to be directly implicated by criminal prosecution—the accused’s possible criminal conviction and the severity of his or her resulting sentence. Then, in 2010, the Supreme Court amended its doctrine. *Padilla v. Kentucky* held that effective assistance of counsel to non-citizens includes advice on the risk of deportation associated with a guilty plea.¹⁵ The court refrained from announcing that *Padilla* broadened the constitutional right to counsel to advice concerning collateral consequences generally.¹⁶ And while some lower courts have extended *Padilla* or state law analogs to contexts beyond deportation, even the broadest interpretations of *Padilla* limit defense attorneys’ constitutional duty to advising their clients about the consequences of a conviction.¹⁷

Today, many institutional public defenders provide services well beyond even the most expansive interpretation of the constitutional minimum. As relevant to this article, many of these organizations—often

¹³ 372 U.S. 335 (1963).

¹⁴ *Missouri v. Frye*, 566 U.S. 134, 140 (2012) (identifying arraignments, postindictment interrogations, postindictment lineups, and the entry of a guilty plea as critical stages, and holding that assistance during plea negotiations must be effective to satisfy the constitutional right to counsel).

¹⁵ 559 U.S. 356, 374 (2010).

¹⁶ *Id.* at 366.

¹⁷ For example, some lower courts have ruled that effective assistance of counsel requires attorneys to advise their clients on the sex offender registry consequences of a conviction. Abigail E. Horn, *Wrongful Collateral Consequences*, 87 GEO. WASH. L. REV. 315, 362 nn.390–91 (2019). Others have extended *Padilla* to circumstances in which civil commitment and parole revocation may result from a conviction. McGregor Smyth, *From “Collateral” to “Integral”: The Seismic Evolution of Padilla v. Kentucky and Its Impact on Penalties Beyond Deportation*, 54 HOWARD L. J. 795, 810 n.72, 831 (2011). Scholars have proposed further extensions. See, e.g., Gabriel J. Chin, *What Are Defense Lawyers For? Links Between Collateral Consequences and the Criminal Process*, 45 TEX. TECH. L. REV. 151 (2012). However, to date, the Supreme Court has not extended the constitutional right to counsel beyond *Padilla*’s limited application to deportation consequences.

referred to as “holistic defenders”—now devote substantial resources to meeting the social services needs of their clients.^{18, 19} Writing in 2006, Robin Steinberg, Executive Director of the Bronx Defenders, identified four such “pioneering holistic defenders”: The Bronx Defenders, the Neighborhood Defender Service of Harlem, the Knox County Public Defender Community Law Office, and the Georgia Justice Project.²⁰ What twenty years ago was a “pioneering” practice is now commonplace among public defense providers across the country, especially in larger jurisdictions.²¹ State-run²² as well as

¹⁸ There is no singular definition of “holistic defense.” In this article, I use the term as shorthand for institutional public defense providers that endeavor to support their clients with in-house social services resources. However, in practice, organizations that label themselves “holistic defenders” or advertise that they offer “holistic representation” vary substantially in their offerings. *See* sources cited *infra* notes 21–31. Though not discussed in this article, some organizations consider legal assistance a central component of holistic defense. *See, e.g.,* Robin Steinberg, *Heeding Gideon’s Call in the Twenty-first Century: Holistic Defense and the New Public Defense Paradigm*, 70 WASH. & LEE L. REV. 961, 992 (2013) (each interdisciplinary team includes attorneys specializing in immigration, housing, employment, criminal records, and public benefits); *About Us*, THE LEGAL AID SOCIETY <https://legalaidnyc.org/about/> (last visited Oct. 29, 2025) (“The Legal Aid Society’s team of experts and staff work together across [Civil and Criminal Defense] practice areas to understand and address the intertwined challenges facing our clients.”)

¹⁹ For a more complete account of the doctrinal and historical roots of holistic defense, *see* Daniel Ellman & Athena Kheibari, *Holistic Deserts: The Intersection of Rurality and Holistic Defense*, 62 IDAHO L. REV. 1, 3–12 (forthcoming 2026). For an account of its popularization and the funding streams that facilitated its growth, *see* SARA MAYEUX, *FREE JUSTICE*, 185–86 (2020).

²⁰ Robin G. Steinberg, *Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers, and More Satisfied Clients*, 30 N.Y.U. REV. L. & SOC. CHANGE 625, 630 n.1 (2006); *id.* at 630 (describing a “slow but advancing movement toward holistic, client-oriented practice” that includes “crisis counseling, therapy, substance-abuse treatment, housing assistance, immigration advocacy, child welfare representation and a host of other services.” *See also* Sarah Buchanan & Roger M. Nooe, *Defining Social Work Within Holistic Public Defense: Challenges and Implications for Practice*, 62 SOC. WORK 333, 335 (2017) (describing the integration of social workers into criminal defense practice as “new and growing”).

²¹ Sarah Buchanan & John Orme, *Impact of Social Work Practice in Public Defense*, 45 J. SOC. SERV. RSCH. 336, 336 (2019) (“A sampling of states with websites identifying public defense social work services or programs include (but are not limited to) New York, Colorado, Kentucky, Maryland, Washington, California, Tennessee, Texas, Michigan, Georgia, and Massachusetts.”); Brian J. Ostrom & Jordan Bowman, *Examining the Effectiveness of Indigent Defense Team Services: A Multisite Evaluation of Holistic Defense in Practice*, U.S. DEPT. OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE 22 (2019), <https://www.ojp.gov/pdffiles1/nij/grants/254549.pdf> (studying social services provided by public defenders in Kentucky, Minnesota, and Rhode Island). More sparsely populated jurisdictions have been slower to adopt the holistic defense model. Ellman & Kheibari, *supra* note 19, at 25–45 (describing “holistic deserts” in rural parts of the United States).

²² *See, e.g.,* *Holistic Defense*, R.I. PUB. DEFENDER, <http://www.ripd.org/holisticrepresentation.html> (last visited Oct. 30, 2025); *New Jersey*

private non-profit institutional defenders²³ operating in both red²⁴ and blue states²⁵ proudly tout the social services support they provide to their clients.

There is, of course, substantial variation in the scope and procedures of public defenders' social services practices.²⁶ In this article, I am concerned with public defenders whose social services units resemble a full-service social services agency that aims to meet an expansive range of needs expressed at any point during the client's engagement with the office.²⁷ In a robustly staffed public defender's social services unit, the ratio of attorneys to social services workers ranges from 10:1 to 5:1.²⁸ The units are often

Office of the Public Defender Unveils Collaborative, Holistic Representation Model to Address the Complex Needs of Individuals in the Criminal Legal System, N.J. OFF. OF THE PUB. DEFENDER (Mar. 4, 2025), https://www.nj.gov/defender/media/press/20250304_NJOPD_Unveils_Collaborative_Holistic_Representation_Model.shtml.

²³ See, e.g., *Social Services*, DEFENDER ASS'N OF PHILA., <https://phillydefenders.org/social-services/> (last visited Oct. 30, 2025); *About — Neighborhood Defender Service*, NEIGHBORHOOD DEFENDER SERVICE, <https://neighborhooddefender.org/about/> (last visited Jan. 15, 2026) ("Since we opened our doors in Harlem in 1990 [and in 2019, in Detroit], we have pioneered the holistic model as a way to address problems plaguing public defense"); Ellman & Kheibari, *supra* note 19, at 55 (describing Northeast Michigan Regional Defender, a 501(c)(3) organization providing holistic public defense services in rural Michigan).

²⁴ See, e.g., *Holistic Defense*, HARRIS CNTY. PUB. DEFENDER'S OFF., <https://hcpdo.org/holistic-defense/> (last visited Nov. 4, 2025); *Alternative Sentencing Worker Program*, KY. DEPT. PUB. ADVOCACY, <https://dpa.ky.gov/kentucky-department-of-public-advocacy/about-dpa/asw/> (last visited Oct. 30, 2025); *Join MSPD As An Americorps Holistic Advocate*, MO. STATE PUB. DEFENDER, <https://publicdefender.mo.gov/employment/amicorps/> (last visited Oct. 30, 2025); *Who We Are*, KAN. HOLISTIC DEFENDERS, <https://www.kansasholisticdefenders.org/about-khd> (last visited Oct. 30, 2025).

²⁵ See, e.g., *What We Do*, S.F. PUB. DEFENDER, <https://sfpublicdefender.org/about-us/about-us/> (last visited Oct. 30, 2025); Rex Dalton, *Public Defender Seeking Social Workers to Help With Prisoner Reentry*, VOICE OF OC (July 21, 2016), <https://voiceofoc.org/2016/07/oc-public-defender-seeking-social-workers-to-help-with-prisoner-reentry/>; R.I. PUB. DEFENDER, *supra* note 22; DEFENDER ASS'N OF PHILA., *supra* note 23.

²⁶ Ellman & Kheibari, *supra* note 19, at 13–14 (describing definitions and differences).

²⁷ Some offices more narrowly cabin their social services unit's involvement. For example, at the time of Ostrom & Bowman's study in Bowling Green, Kentucky, social services specialists were involved only to the extent of creating alternative to incarceration sentencing plans. Ostrom & Bowman, *supra* note 24, at 22. Other offices may employ, or partner with external organizations to provide limited extra-legal support to clients such as or complying with conditions of release or bail advocacy. See, e.g., Paul Heaton, *Enhanced Public Defense Improves Pretrial Outcomes and Reduces Racial Disparities*, 96 IND. L. J. 701, 713 (2021); Christine Kang et al., *Systems Navigators in Public Defense: Recommendations for Assisting Clients Pretrial*, 4 CT. LISTENING PROJECT 1, 3 (2025); *Home*, PARTNERS FOR JUST., <https://partnersforjustice.org/> (last visited Jan. 26, 2026). While related, these more limited offerings are not the focus of this article.

²⁸ James M. Anderson et al., *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 HARV. L. REV. 819, 840 (2019) (reporting an attorney-to-social worker ratio of 5-to-1

staffed by licensed professionals with graduate degrees in social work or other relevant fields.²⁹

A description of services provided by the Knox County Public Defender Community Law Office's social services unit includes assessing and assisting clients in obtaining substance abuse treatment, crisis intervention and stabilization, assistance obtaining or restoring driver's licenses, education and employment assistance, housing assistance, securing inpatient or outpatient mental health treatment, and therapeutic intervention including psychotherapy and counseling.³⁰ Studies of other holistic defenders' social services units describe support related to obtaining a broad array of public benefits, referrals for nutrition assistance or food pantries, support obtaining medical care, and more.³¹

The social services unit typically receives cases through attorney referrals. Criminal defense attorneys are trained to issue spot for social services needs beginning with their first client interview and make referrals to the social services unit when they suspect a client could benefit from its support.³² As a case progresses, attorneys refer clients to the social services

at the Bronx Defenders and 8.5-to-1 at the Legal Aid Society); Buchannan & Nooe, *supra* note 20, at 335–336 (5-to-1 attorney-to-social worker ratio at the Knox County Public Defender); Ostrom & Bowman, *supra* note 24, at 18 (8.3-to-1 in Hennepin County, Minnesota and 6.7-to-1 in Providence, Rhode Island).

²⁹ Buchannan & Nooe, *supra* note 20, at 336–37; Ostrom & Bowman, *supra* note 24, at 21 (noting that although not required in Hennepin County and Bowling Green, most have a master's degree in social work or a related field).

Id. at 21–22; *In House Social Workers*, L.A. CNTY. PUB. DEFENDER, <https://pubdef.lacounty.gov/services/in-house-social-workers/> (last visited Jan. 20, 2026) (describing social workers' "master's level training in mental health.").

Throughout this article, I use the term "social worker" generically to refer to someone employed by a public defender to support the social needs of that organization's clients. For an overview of the terminology used to describe social work and social workers, and the field's professional licensing scheme, see Michaela L. Zajicek-Farber, *Social Work Licensing: Then and Now*, 52 CLIN. SOC. WORK J. 368 (2024).

³⁰ See, e.g., Buchannan & Nooe, *supra* note 20, at 336, tbl. 2.

³¹ Anderson et al., *supra* note 28, at 837, 839, 845 (describing a broad range of support provided by the holistic defenders' social services units); Steinberg, *supra* note 18, at 982, 989; Cory R. Lepage, *Measuring Effectiveness of Holistic Defense: Social Service Provision and Justice System Outcomes*, 24 CRIMINOLOGY, CRIM. JUST., L. & SOC. 38, 44 (2023); Ostrom & Bowman, *supra* note 24, at 31–32; Heather M. Harris, *Building Holistic Defense: The Design and Evaluation of a Social Work Centric Model of Public Defense*, 31 CRIM. JUST. POL'Y REV. 800, 806 (2020).

³² See, e.g., Buchannan & Nooe, *supra* note 20, at 337 ("Attorneys are usually the first point of contact for clients. They assess each client to determine whether a referral to social services is appropriate"); Anderson et al., *supra* note 28, at 849 ("[C]riminal defense attorneys at the Bronx Defenders and Legal Aid address clients' legal and nonlegal needs through referrals to civil attorneys and social workers within their organizations and through relationships with community nonprofits"); Steinberg, *supra* note 18, at 988 ("In

unit with an eye toward identifying treatment options and mitigating circumstances for the court to consider in contexts including pre-trial release applications and sentencing.³³

B. Illustrations

The following hypothetical vignettes illustrate the social services referral process:

Michael was arrested for reckless endangerment, resisting arrest, and assaulting a police officer. The prosecution alleges that Michael stood in the middle of a busy road and threw rocks at motorists. When confronted by police, Michael threw rocks at the officers, evaded them when they pursued him along the side of the road, and flailed his arms when they attempted to handcuff him. At arraignment, Michael's attorney, Sarah, assessed that Michael may have untreated mental illness and/or substance use disorder and put in a referral to the social services unit. Michael has a lengthy criminal history with many bench warrants and convictions for charges similar to the present charges against him. Accordingly, the magistrate set Michael's bail at \$100,000, which he could not afford. Because Michael was detained pre-trial, Alice, a social worker in the public defender's social services unit, conducted an assessment via video call. She determined that Michael had a diagnosed mental illness for which he was not receiving treatment. She obtained records from his most recent psychiatrist indicating that he responded well to medication. Alice consulted several local residential mental health treatment facilities and found one, *Cornerstone Health*, that had an available bed. Sarah submitted a motion to change Michael's bail if he enrolled in residential treatment at *Cornerstone*. The judge granted Sarah's motion, releasing Michael on condition that he remain at *Cornerstone* while his criminal case remains open.

Janette was charged with larceny and possession of a controlled substance. She was caught on video stealing groceries and clothes from a local Target and found in possession of a small bag containing a white powdery substance. The theft offense was charged as a felony because Janette had previously been suspected of stealing from this store and issued a no trespass notice. Janette informed her attorney, Juan, that she began stealing after she lost her job. Because she lost her social security card and

arraignments, attorneys at The Bronx Defenders are trained to ask not just the names of witnesses or how the client was arrested, but also about the client's immigration status, children, public benefits, mental health, employment, housing, student loans, and more."); *Id.* at 995 (describing ideal training); Ostrom & Bowman, *supra* note 24, at 31–32.

³³ See, e.g., Anderson et al., *supra* note 28, at 839, 879; Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 429 (2001); Ellman & Kheibari, *supra* note 19, at 53.

birth certificate when she was subsequently evicted from her apartment, she could not register for public benefits. Juan put in a referral to the social services unit. Christian, a social worker, met with Janette several days later. They filed the paperwork to request a re-issued birth certificate and made an appointment at the local social security office (to which he accompanied her later that week). They used the public defender's office as Janette's mailing address because Janette had been couch surfing and staying at shelters since her eviction. Christian also enrolled Janette in the city's free transit program for low-income residents, reactivated her Medicaid, and referred her to a local food pantry while her SNAP benefits reenrollment was pending. Christian also found out that Janette was an occasional crack cocaine user. They discussed the possibility of her beginning substance abuse treatment but decided against making a referral on account of Janette not believing she had the capacity to meaningfully engage with it at the moment.

Mark was charged with assault with a deadly weapon. His long-term girlfriend and co-parent of a four-year-old child went to the hospital with bruising and abrasions on her face and arms. She told her doctor that Mark had struck her with a broken glass bottle and threatened to kill her after she criticized him for coming home drunk in the middle of the night. Hospital staff referred the case to police. Mark had a lengthy criminal history including three prior domestic assault arrests, one of which resulted in a misdemeanor conviction, as well as a prior conviction for criminal contempt after he failed to obey an order of protection in favor of his former partner. The judge set bail at \$200,000—an amount Mark could not afford to post—citing the seriousness of the allegations against Mark and his prior contempt conviction. Mark's attorney, believing the case was likely to result in a guilty plea, requested that Maria, a social worker in his office, meet with Mark with an eye toward preparing a sentencing mitigation report. Maria conducted a comprehensive psychosocial evaluation, acquired Mark's medical and treatment records, and interviewed several members of Mark's family. Her report indicated that Mark lost his father at a young age, lived with a verbally and physically abusive step-father for much of his youth, and likely had undiagnosed PTSD and ADHD. He also had a history of alcohol abuse dating back to his teens. However, he had entered treatment three years ago and, until a month ago when his mother died unexpectedly, had been sober since. Maria's report observed that Mark's three-year period of sobriety was the only time in his adult life in which Mark had no criminal system involvement. The report proposed a release plan in which Maria would facilitate Mark's enrollment in alcohol abuse and domestic violence counseling; included an affidavit from Mark's brother indicating that he could live with him until the conclusion of his treatment; and provided documentation that Mark was the primary breadwinner for his girlfriend and child and that his continued incarceration would cause them severe

economic hardship. Mark pleaded guilty, and his attorney submitted the report and treatment plan in support of his request that Mark be sentenced to probation with mandatory treatment and an order of protection in favor of his partner and child, with visitation and financial support to be determined by Family Court.

C. *Philosophy and Purpose*

Understanding the risks described at the heart of this article requires some exploration of the reasons that public defenders provide social services. Public defenders are notoriously resource constrained.³⁴ Why devote some of those scarce resources to activities beyond the scope of what is required of them?

One explanation is that providing social services is nothing more than a strategy to improve clients' criminal case outcomes. When social workers find treatment placements for a client incarcerated pre-trial, they facilitate his release, improving his likelihood of achieving a favorable sentence.³⁵ When the office provides a client with a cell phone, helps her enroll in public benefits, and connects her with a social worker who calls to check in every day, it decreases the likelihood that she misses a court date or commits another poverty-related offense before trial.³⁶ Courts, prosecutors, and jurors respond to mitigation evidence,³⁷ and, consistent with broad public sentiment, they also prefer community-based dispositions to jail, at least for low-risk offenders.³⁸ Public defenders' social services units

³⁴ See *infra* notes 159–161 and accompanying text.

³⁵ Will Dobbie, et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 AM. ECON. REV. 201, 203 (2018); Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, 60 J. L. & ECON. 529, 543 (2017). See also, *id.* at 532 (citing studies that reached similar conclusions).

³⁶ Some public defense providers employ “navigators” to support clients in this particular way. See Matthew Clair et al., *Dignifying Governance: How Public Defense Navigators Enhance Worth and Autonomy* (Working Paper, Stanford Department of Sociology, 2026); Home, PARTNERS FOR JUST., <https://partnersforjustice.org/> (last visited Jan. 26, 2026).

³⁷ John B. Meixner Jr., *Modern Sentencing Mitigation*, 116 NW. U. L. REV. 1395, 1453–57 (2022) (reporting results from an analysis of judicial sentencing decisions); *id.* at 1418–24 (summarizing results from prior studies); BRANDON L. GARRETT, END OF ITS ROPE: HOW KILLING THE DEATH PENALTY CAN REVIVE CRIMINAL JUSTICE 127–28 (2017); Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?*, 98 COLUM. L. REV. 1538, 1561–66 (1998).

³⁸ See, e.g., Allegra M. McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law*, 100 GEO. L. J., 1587, 1602, 1605 (2012); Alexandra Natapoff, *Gideon's Servants and the Criminalization of Poverty*, 12 OHIO ST. J. CRIM. L. 445, 453 (2015) (“Particularly in connection with low-level offenses such as drugs and quality-of-life, police,

exploit these tendencies and preferences to their clients' benefits. This is no different from other more traditional strategic decisions to allocate offices' funds to non-attorney resources—for instance, to hire investigators, experts, or support staff, or to purchase technology. In this view, insofar as social services benefit clients beyond the outcomes of their legal cases, that is an incidental positive externality. A public defender with this narrow instrumentalist view of providing social services—viewing it purely as a means to reduce exposure to criminal punishment and not an end in itself—evades many of the concerns discussed in the remainder of this article.³⁹

Many public defenders, however, do not cabin their objectives so narrowly. This is intuitive: When public defenders connect their clients with services they genuinely need, one would expect that they hope it helps beyond their criminal case's outcome. This is explicit in many organizations' discussions of their social services units. In an article tellingly titled *Beyond Lawyering*, Bronx Defenders founder Robin Steinberg wrote that “securing an acquittal, less jail time, or avoiding prison altogether will always be a core goal of any criminal defense lawyer . . . but the added goal in the holistic defense model is to make a long-term difference in the life of a client.”⁴⁰ Many other holistic defense supporters articulate a similarly broad vision.⁴¹

Why take on this added responsibility? Proponents of a broad vision of holistic defense cite all or many of the following justifications: Some take a broad view of the “defense” involved in public defense, viewing mitigation of any consequence of the criminal case itself, not just the formal legal consequences, as squarely within the organization's purview.⁴² Criminal

prosecutors, judges, and sheriffs are tempering their roles as purveyors of retributive punishment and embracing concerns and policies more typically associated with the social safety net.”); Jessica M. Eaglin, *The Drug Court Paradigm*, 53 AM. CRIM. L. REV. 595, 603–04 (2016).

³⁹ For example, services provided exclusively for the purpose of reducing the severity of criminal punishment should not provide justification for expanding arrests and prosecution. *See infra* notes 132–133 and accompanying text. Where services are designed to improve criminal case outcomes, rather than long-term life outcomes, barriers to long-term clinical effectiveness are not a concern. *See infra* section II.B. When services are provided exclusively to lessen the severity of criminal punishment, this limits the fairness concerns associated with giving exclusive access to criminal defendants. *Infra* section II.C.

⁴⁰ Steinberg, *supra* note 20, at 628.

⁴¹ *See, e.g.*, Cynthia G. Lee et al., *The Measure of Good Lawyering: Evaluating Holistic Defense in Practice*, 78 ALB. L. REV. 1215, 1216 (2015) (defining holistic defense as concerned with supporting clients beyond the instant criminal case); Buchannan & Nooe, *supra* note 20, at 336 (“The primary goal of the CLO social services department is to partner with clients in effecting change in their lives and environments in ways that promote self-responsibility and reduce recidivism.”); Harris, *supra* note 31, at 801 (contrasting a “case-centered” approach to public defense with a “client-centered” approach, and noting that social workers may be employed in support of either one).

⁴² Lee et al., *supra* note 41, at 1216; Steinberg, *supra* note 18, at 965–974; McGregor

charges, even relatively minor ones, are extraordinarily disruptive and, accordingly, this view sweeps a wide range of social and economic support into play. Some public defenders view themselves as broadly committed to pursuing the interests of their community: In this view, criminal defense is itself incidental to a broader community support mission.⁴³ Perhaps it is a matter of altruism: feeling that public defenders are situated at a place and time to help people in great need who would otherwise not receive it.⁴⁴ Perhaps the motivation is utilitarian, believing that community-based programming is the best path to reducing crime and promoting public safety.⁴⁵ Or, some proponents may be motivated by an interest in efficiency: As an organization already serving the social services needs of people in the context of their criminal cases, it would be more efficient for them to continue to do so than for another organization to intervene separately.⁴⁶ Finally, the motivation may be political: seeking to demonstrate the effectiveness of a rehabilitation-focused approach as a proof of concept in support of broader anti-carceral policy change.⁴⁷

I raise the question of why public defenders provide social services to build out a rudimentary framework for identifying which risks are borne by which organizations: For example, an organization that provides social services with the goal of mitigating clients' needs beyond the end of their criminal cases should concern itself with structural limitations to the client

Smyth, "Collateral" No More: *The Practical Imperative for Holistic Defense in a Post-Padilla World . . . Or, How to Achieve Consistently Better Results for Clients*, 31 ST. LOUIS UNIV. PUB. L. REV. 139 (2011).

⁴³ Kim Taylor-Thompson, *Tuning Up Gideon's Trumpet*, 71 FORDHAM L. REV. 1461, 1509 (2003); Steinberg, *supra* note 18, at 978–984 (describing "Community-Oriented Defense"); Lara A. Bazelon, *The Long Goodbye: After the Innocence Movement, Does the Attorney-Client Relationship Ever End*, 106 J. CRIM. L. & CRIMINOLOGY 681, 704 (2016).

⁴⁴ *Id.*; Steinberg, *supra* note 20, at 627 ("there is no greater moment of need or desperation than in the hours and days after arrest.").

⁴⁵ Bazelon, *supra* note 43, at 707 (discussing the portrayal of holistic defenders as "crime fighter[s]"); Steinberg, *supra* note 20, at 533 ("holistic defense is both a criminal justice issue and—in spite of its name and function—a crime prevention tool"); Brooks Holland, *Holistic Advocacy: An Important but Limited Institutional Role*, 30 N.Y.U. REV. L. & SOC. CHANGE 367, 368–69 (2006) (discussing holistic defender's role in "preventative lawyering.").

⁴⁶ Buchannan & Nooe, *supra* note 20, at 334 ("The holistic approach that emerged in the 1990s encompasses the belief that ignoring the consequences of poverty and other risk factors is shortsighted."); Brian J. Ostrom & Jordan Bowman, *The Evolving Character of Public Defense: Comparing Criminal Case Effectiveness and Outcomes Across Holistic Defense, Traditional Defense, and Privately Retained Counsel*, 30 S. CAL. INTERDISC. L.J. 611, 615 (2021).

⁴⁷ Bazelon *supra* note 43, at 704 ("Defense counsel are encouraged to combat the race- and class-based portrayal of clients in the media and to challenge the popular perception of criminal defendants as 'guilty anyway' and beyond redemption."); Natapoff, *supra* note 38 at 461–62 (describing holistic defenders' efforts to influence policymaking).

receiving long-term benefits from those services.⁴⁸ An organization invested not only in the interests of its clients but in the community at large should take care to honor that community's preferences about how scarce resources are distributed.⁴⁹

At a more nuanced and perhaps more controversial level, I raise this point to emphasize that public defenders' pursuit of lofty goals is not costless or riskless. When a public defender endeavors to intervene not only in their clients' criminal cases, but in their lives or community more broadly, they do not do so in a vacuum. As tempting as it is to regard public defenders' unbounded ambition to mitigate their clients' social needs as a well-meaning bonus to good case-level advocacy—if it works, great, if it does not, no harm no foul—there are many reasons why that might not be the case.⁵⁰ Actions, even well-meaning ones, have consequences. Public defenders' decisions to provide extended social services support should be made as deliberately as their decisions to call a witness, hire an expert, or file a motion.

D. Empirical Evidence

The ascendancy of the holistic defense model generated calls for empirical analysis of its effects.⁵¹ A number of studies followed.⁵² The largest

⁴⁸ See *infra* section II.B.

⁴⁹ See *infra* section II.C.

⁵⁰ See *infra* section II.A.

⁵¹ See e.g., Cait Clarke & James Neuhard, *Making the Case: Therapeutic Jurisprudence and Problem-Solving Practices Positively Impact Clients, Justice Systems and Communities They Serve*, 17 ST. THOMAS L. REV. 781, 805 (2005); Lee et al., *supra* note 41, at 1237.

⁵² Anderson et al., *supra* note 28; Dana DeHart et al., *Improving the Efficacy of Administrative Data for Evaluation of Holistic Defense*, 43 J. SOC. SERV. RES. 169 (2017) (comparing criminal justice outcome data before and after the implementation of a holistic defense system in a jurisdiction in the southeastern U.S. and finding largely undesirable effects including decreases in dismissals, guilty verdicts, pre- and post-trial incarceration); Harris, *supra* note 31 (comparing outcomes for clients randomly assigned to receive robust holistic defense versus those who had limited access to social services support and finding substantial effects on reduction in likelihood of conviction and jail sentence, but no statistically significant effects on recidivism six months after the end of the case); Buchanan & Orme, *supra* note 21 (comparing Knoxville public defense clients who received social services to those who didn't and finding a statistically significant reduction in misdemeanor charges over the next two years, but no reduction, or even a slight increase in felony charges); Lepage, *supra* note 31 (studying a pilot program in rural Alaska in which some criminal defendants were randomly assigned to receive social services support and finding found no statistically significant effects on future criminal system involvement); Ostrom & Bowman, *supra* note 46 (comparing criminal case outcomes for holistic defense clients in Hennepin County, Minnesota, to comparable clients represented by traditional public defenders in neighboring counties). I exclude studies that lack the control or comparison group needed to infer causality. See, e.g., Andreea Matai et al., *Assessing a Social Worker Model of Public Defense*, URB. INST. (Mar. 2021), https://www.urban.org/sites/default/files/publication/103811/assessing-a-social-work-model-of-public-defense_1.pdf.

and most methodologically sound study analyzed outcomes for defendants in the Bronx, New York.⁵³ In the Bronx, most defendants are randomly assigned to one of two institutional public defenders—the Bronx Defenders and the Legal Aid Society.⁵⁴ During the study period, the Bronx Defenders supported a robust holistic defense model including an expansive social services unit, while the Legal Aid Society provided far more modest, if any, social services support.⁵⁵ The study found measurably better criminal case outcomes for Bronx Defenders clients, including higher rates of pre-trial release and lower rates of sentences involving incarceration.⁵⁶ However, the authors found no statistically significant differences in post-case arrests—their measure for recidivism.⁵⁷ They did not measure for any other long term, post-case outcomes.

Other studies' results are mixed.⁵⁸ Of three other studies that measured criminal case outcomes,⁵⁹ one (Harris) found that holistic defense was associated with improved case results, one found largely negative effects (DeHart et al.), and one found no effects (Ostrom & Bowman).⁶⁰ Of three

⁵³ Anderson et al., *supra* note 28, at 822.

⁵⁴ *Id.* at 851–53.

⁵⁵ *Id.* at 822.

⁵⁶ *Id.* at tbl. 2. The study also found that, counting non-custodial sentences as zero, holistic defense clients received custodial sentences on average 9.5 days shorter than other defendants. *Id.* It is worth noting that the Bronx Defenders, the organization at the heart of the Anderson et al. study, is something of an outlier among holistic defense providers. It is widely regarded as an early innovator and contemporary leader in the holistic defense movement. *Id.* at 883; Ellman & Kheibari, *supra* note 19, at 13; Steinberg, *supra* note 18, at 963. Additionally, it is exceptionally well resourced: during the study years 2000 to 2014, the Bronx Defenders consistently received between \$500,000 and \$1,300,000 in private donations (typically 5% to 10% of its annual revenue). The Bronx Defenders, *Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/133931074> (consolidating the organization's Form 990 filings). Insofar as the Bronx Defenders' social services unit caused better case outcomes, it is not clear whether less robustly resourced units would have similar effects.

⁵⁷ Anderson et al., *supra* note 28, at (measuring future arrests one, two, three, five, and ten years after the initial case's arraignment). However, the authors did find that holistic defense clients were arrested and received bench warrants at significantly higher rates during the period in which their case was open. *Id.* at 863.

⁵⁸ I describe these studies together because, compared to the Anderson et al. study they are far smaller in scale, which invites caution in interpreting their findings alone. *See, e.g.*, Lepage, *supra* note 31, at 44 (81 participants and thirteen month follow-up period to determine recidivism); Harris, *supra* note 31, at 809 (366 participants and six month follow-up period); Buchanan & Orme, *supra* note 21, at 340 (1,925 participants, two year follow-up period). By contrast, the Anderson et al. study studied hundreds of thousands of participants with up to a ten-year follow-up period. Anderson et al., *supra* note 28 at 869 tbl. 4.

⁵⁹ In other words, the outcome of the criminal case in which the defendant was assigned to be represented by the holistic defense provider.

⁶⁰ Harris, *supra* note 31, at 817–19; DeHart et al., *supra* note 52, at 6–7; Ostrom &

studies measuring future criminal system involvement, two joined Anderson et al. in finding no statistically significant effects (Lepage; Harris) while one found a statistically significant reduction in future misdemeanors but no reduction, or even a slight uptick, in future felonies (Buchanan & Orne).⁶¹

Overall, empirical evidence on the effects of providing social services through public defenders is still nascent.⁶² There is modest evidence that it improves criminal case outcomes such as likelihood of pre-trial detention, conviction, and incarceration. However, empirical support for the proposition that providing social services through criminal defense attorneys benefits clients after the conclusion of their criminal cases is plainly lacking: Three out of four studies found no statistically significant effects on future recidivism and the fourth had mixed results. No study to date has measured other possible long-term effects such as changes in income or education, persistence in treatment, or maintenance of sobriety.

E. Critiques, Risks, and Drawbacks

Critical examination of holistic defense, insofar as it exists at all in the literature, appeared almost entirely in the early years of its implementation. Three main critiques percolated: first, that expanding public defenders' social services practice would require diverting resources away from attorneys;⁶³ second, that a public defender's institutional emphasis on social issues threatens to distract defense attorneys, their clients, prosecutors, and judges from the core question of whether the

Bowman, *supra* note 46, at 654.

Preliminary, not yet published or peer-reviewed results from of a study in Delaware County, Pennsylvania, find positive effects on criminal case outcomes. Paul Heaton & Noor Tarif, *Enhancing Public Defender Holistic Services: Evidence from Partners for Justice* (results presented at the Am. Soc'y of Criminology Ann. Meeting, Washington, D.C., Nov. 12, 2025) (working paper available upon request to the author).

⁶¹ Harris, *supra* note 31, at 819; Lepage, *supra* note 31, at 46; Buchanan & Orme, *supra* note 21, at 344, tbl. 9. Certain specifications of Buchanan & Orne's analysis find a statistically significant increase in future felonies while other specifications show no statistically significant effects. *Id.*

⁶² Ellman & Kheibari, *supra* note 19, at 21 (reviewing sources and arriving at the same conclusion).

⁶³ Holland, *supra* note 45, at 643–44; Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 FORDHAM URB. L.J. 1067, 1090–91 (2004); Mae C. Quinn, *An RSVP to Professor Wexler's Warm Therapeutic Jurisprudence Invitation to the Criminal Defense Bar*, 48 B.C. L. REV. 539, 585–86 (2007). *But see* Kyung M. Lee, *Reinventing Gideon v. Wainwright: Holistic Defenders, Indigent Defendants, and the Right to Counsel*, 31 AM. J. CRIM. L. 367, 406–08 (2004) (proposing that holistic defenders fund their social services units using different sources than the grants that fund their defense attorneys and citing examples of offices that have done so successfully).

prosecution can prove its case beyond a reasonable doubt;⁶⁴ and third, that public defense focused on optimizing clients' life outcomes rather than their criminal case outcomes is paternalistic and ethically compromising.⁶⁵

These prior critical analyses focused on the first-order effects of holistic defense: namely, how shifting resources and institutional focus to social services would affect clients' criminal case outcomes. They all but ignored potential second-order effects, including how holistic defense might extend the scope and reach of the criminal legal system and whether holistic defenders' provision of social services is, in fact, likely to advance their clients' and communities' interests writ large.⁶⁶ The narrowness of these critiques, and the lack of recent critical discussion of the potential risks, pitfalls, and shortcomings of holistic defense, is striking given the model's explosive growth in recent years. Since scholars engaged in critical discussion about holistic defense in the mid-2000s, the intertwining of social services with public defense has progressed from the margins to the mainstream.⁶⁷

This article aims to refresh the scholarly dialogue—engaging with empirical evidence and a far wider range of holistic defenders than existed twenty years ago. Specifically, I identify three additional risks that were heretofore absent from prior scholarly discussions, each inspired by my own observations from practice in a holistic defense office.

II. RISKS

A. Net-Widening

Over the past seventy years, the U.S. criminal legal system exploded in size, measured by the number of people it involves and the scope of its intervention in the lives of those people.⁶⁸ Many policies intentionally brought about this expansion, including statutes expanding the number of substantive criminal offenses, making sentences more punitive, reducing

⁶⁴ Bazelon *supra* note 43, at 707–08; Holland, *supra* note 45, at 644–46; Quinn, *supra* note 63, at 588–89.

⁶⁵ Holland, *supra* note 45, at 646–50; Lee, *supra* note 63, at 422, 426–27; Quinn, *supra* note 63, at 571; Cait Clarke & James Neuhard, *From Day One*, 29 N.Y.U. REV. L. & SOC. CHANGE 11, 38–46 (2004).

⁶⁶ See *supra* notes 42–47 and accompanying text (discussing holistic defenders' objectives).

⁶⁷ See *supra* notes 20–25 and accompanying text.

⁶⁸ COMM. ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION, NAT'L RESEARCH COUNCIL OF THE NAT'L ACAD., *THE GROWTH OF INCARCERATION IN THE UNITED STATES* 13 (JEREMY TRAVIS, ET. AL. EDS. 2014) [hereinafter *GROWTH OF INCARCERATION*]; Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1803–06 (2012).

judicial discretion to grant leniency, abandonment of support for rehabilitation programming, and enforcing “tough on crime” initiatives such as broken windows policing, compulsory arrest policies, and directions to prosecutors to always seek maximum sentences.⁶⁹

A different set of policies, described by scholars as “net-widening” policies, had the effect of expanding the footprint of the criminal legal system even when that was not their intent.⁷⁰ Many net-widening policies were designed to do the opposite: to *reduce* the burdens of the criminal legal system on defendants, their families, and their communities.

In this subsection, I propose that providing social services through public defenders may have unintended net-widening effects. In support of that claim, I review four policies previously associated with net-widening: Studies have found robust empirical evidence of net-widening resulting from “intensive” probation programs and treatment courts. Scholars have also raised credible concerns related to the decriminalization of low-level offenses and in certain applications of bail reform, though empirical confirmation of net-widening in these domains remains limited.

Taken together, these case studies map onto a typology of three varieties of reform-induced, criminal legal system net-widening.⁷¹ *Front-end* net-widening occurs when a reform causes people to be arrested or prosecuted who, absent the policy, would not have been. *Conditions* net-widening arises when a reform subjects justice-involved people to more supervision, reporting obligations, or burdensome release conditions than they would have faced otherwise. *Carceral* or *back-end* net-widening occurs when a reform results in the incarceration of defendants who, but for the reform, would not have been incarcerated. I conclude that the expanded use of social services in public defense has the potential to effect each of these three types of net-widening.

Before proceeding, it is critical to note that some amount of undesirable net-widening may be offset by a reform’s successes.⁷² In this

⁶⁹ See Rachel E. Barkow, *Categorical Mistakes: The Flawed Framework of the Armed Career Criminal Act and Mandatory Minimum Sentencing*, 133 HARV. L. REV. 200, 210–11 (2019); William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 519–520, 537 (2001); Alice Ristroph, *An Intellectual History of Mass Incarceration*, 60 B.C. L. REV. 1949, 1991–93 (2019); Erin R. Collins, *Status Courts*, 105 GEO. L. J. 1481, 1490 n.36 (2017) McLeod, *supra* note 38, at 1607; see generally GROWTH OF INCARCERATION, *supra* note 68.

⁷⁰ Viet Nguyen & Lindsay Graef, *The Net-Narrowing Potential of Diversion*, 64 CRIMINOLOGY XX, 14–15 (forthcoming, 2026) (reviewing the literature on net-widening); Scott H. Decker, *A Systemic Analysis of Diversion: Net Widening and Beyond*, 13 J. CRIM. JUST. 207, 207 (1985) (discussing early scholarly uses of the term); Collins, *supra* note 69, at 1524 (discussing contemporary applications).

⁷¹ My terminology borrows in part from Nguyen & Graef, *supra* note 70, at 15.

⁷² Bail reform is a salient example. Though some bail reform policies have resulted in net widening, that does not necessarily render these policies failures—they may also have meaningfully reduced the harms of wealth-based pre-trial detention. See *infra* section II.A.4.

article, I do not determine that the net-widening risks associated with offering social services through public defenders necessarily outweighs the benefits. I raise the concern so that holistic defense providers, along research partners and concerned policymakers, may monitor for, and police against, the materialization of these net-widening risks.⁷³

1. Intensive Probation

Beginning in the 1990s, several jurisdictions created “intensive” probation designed to offer a non-carceral sentence for people who would otherwise have been sentenced to prison.⁷⁴ Compared to traditional probation, intensive probation involves more invasive supervision, more program requirements, and lower thresholds for violations.⁷⁵ The intensiveness was meant to assuage judges’ and the public’s concern about allowing otherwise prison-bound people to return to the community.⁷⁶

Professor Michelle Phelps’s review of studies of intensive probation programs show that they resulted in two types of net-widening. First, she observes that people put on intensive supervision were predominantly people who, absent the availability of intensive probation, would have been sentenced to traditional probation, rather than, as intended, people who would otherwise have been sentenced to prison.⁷⁷ For these individuals, the reform designed to reduce the weight of the criminal legal system had the effect of *intensifying* its burdens: replacing ordinary probation, or no probation at all, with intensive probation—an example of *conditions* net-widening.⁷⁸ Second, and in turn, the added supervision and requirements meant that intensive probationers had added opportunities to violate the terms of their probation.⁷⁹ The policies resulted in increased rates of probation revocations, subsequently raising, rather than reducing, prison levels—an example of *carceral* net-widening.⁸⁰

⁷³ See *infra* section III.A.1.

⁷⁴ Joan Petersilia & Susan Turner, *Intensive Probation and Parole*, 17 CRIME & JUST. 281, 282 (1993); Michael Tonry & Mary Lynch, *Intermediate Sanctions*, 20 CRIME & JUST. 99, 100–101 (1996); Michelle S. Phelps, *The Paradox of Probation: Community Supervision in the Age of Mass Incarceration*, 35 LAW & POL’Y 51, 56–57 (2013).

⁷⁵ *Id.*

⁷⁶ Petersilia & Turner, *supra* note 74 at 286–287; Tonry & Lynch, *supra* note 74 at 100–101.

⁷⁷ Phelps *supra* note 74, at 56–57, 70. See also, Tonry & Lynch, *supra* note 74 at 116 (finding the same).

⁷⁸ Phelps *supra* note 74, at 56–57, 70.

⁷⁹ *Id.* See also Tonry & Lynch, *supra* note 74 at 101 (finding the same).

⁸⁰ Phelps *supra* note 74, at 56–57, 70.

2. Treatment Courts

Treatment courts emerged in the 1990s and early 2000s as an effort to avoid traditional criminal justice sanctions like probation and incarceration in favor of needs-based rehabilitative interventions.⁸¹ Drug courts are a type of treatment court that work with defendants charged with drug possession, thefts, or other crimes that appear to be related to their struggles with addiction. The more than 2,700⁸² drug courts around the country take different shapes, but by and large, they depart from the traditional adversary model of criminal adjudication, with prosecutors, defense attorneys, judges, court staff, and treatment providers collaborating in a courtroom setting to provide treatment that “stops the cycle of drug use and associated criminal behavior.”⁸³ Defendants’ either agree to delay adjudication of their case or plead guilty, and the court withholds sentencing pending their participation in the drug court.⁸⁴ Successful completion of the program results in conviction on lower charges, a non-carceral sentence, or dismissal of the charges altogether.⁸⁵ Non-compliance with the court’s requirements, such as positive drug tests, missed treatment, or missed court sessions results in graduated sanctions up to sentencing to the maximum allowable punishment on the original charges.⁸⁶

Drug courts have facilitated net-widening in several forms. Many drug courts restrict eligibility to low-level non-violent drug offenders without a substantial criminal history.⁸⁷ In the absence of the drug court, these types of cases would often not have entered the criminal system at all (*front-end* net-widening).⁸⁸ In a comprehensive study of mid- to large-sized

⁸¹ McLeod, *supra* note 38, at 1590–91; Erin Collins, *The Problem of Problem-Solving Courts*, 54 U.C. DAVIS L. REV. 1573, 1582 (2021); Eaglin, *supra* note 38, at 606.

⁸² *Id.* at 606 n.71.

⁸³ *Id.* at 603.

⁸⁴ Collins, *supra* note 81 at 1601–02.

⁸⁵ Eaglin, *supra* note 38, at 603.

⁸⁶ *Id.* at 604.

⁸⁷ *Id.* This may be to minimize the program’s “failure rate,” by allowing only the participants most likely to be successful. *Id.* Or for political reasons: providing leniency only to the most sympathetic defendants. *Id.*

⁸⁸ Eric J. Miller, *Embracing Addiction: Drug Courts and the False Promise of Judicial Interventionism*, 65 OHIO ST. L.J. 1479, 1561 (2004) (“diversion works to ‘widen the net’ by providing the police and prosecutor with a costless alternative to dismissal for those cases that would not go to court.”) Josh Bowers observed that the criteria of New York City’s felony drug courts also tended to sweep in the “wrong” people—rather than people with severe substance abuse disorder, these courts typically admitted dealers without severe addiction or lengthy criminal histories. Josh Bowers, *Contraindicated Drug Courts*, 55 UCLA L. REV. 783, 797 (2008); JEFFREY A. BUTTS & JOHN ROMAN, JUVENILE DRUG COURTS AND TEEN SUBSTANCE ABUSE, 92 (“The enhanced supervision and sanctioning organized by drug courts is very attractive to juvenile justice decisionmakers, especially for youthful

cities between 1990 and 2006, Lilley et al. found that the existence of a drug court in the city was associated with a statistically significant 16.8% increase in minor drug arrests during every year of operation.⁸⁹

Drug courts also facilitate *conditions* net widening: The burdens of complying with drug court’s mandates can be substantial. Compliance often involves frequent appointments, intensive supervision, frequent testing, and monetary costs.⁹⁰ Even short of failing the program, many participants spend intermittent stints in jail for violating program rules.⁹¹

Finally, on the back end, for the many participants who do not succeed in completing treatment courts, their carceral sentence is far longer than it would have been had they accepted the “going rate” sentence offered in plea deals to similarly situated non-drug court participants. In a study of New York City’s drug courts, Professor Josh Bowers found that, depending on the county, between 25% and 48% of felony drug court participants failed to complete the program. Those who failed received sentences 1.2x to 5.3x longer than the comparison group of non-drug court participants (*carceral* net-widening).⁹² Especially troubling, in some drug courts, the harsh penalties doled out to failures combined with the high rate of failure means that the average drug court participant spent more time incarcerated than a similarly situated person who did not attempt drug court.⁹³

offenders that would not otherwise get much attention from the court and juvenile probation staff. As word spreads in a community that the juvenile drug court employs a rigorous schedule of graduated sanctions, it becomes tempting for referring agencies to send a broader segment of the juvenile justice population to drug court. As long as the youth is involved with drugs or alcohol in some way—which is true in many juvenile delinquency cases—the referral may seem justified. This practice, however, exposes a much wider array of young offenders to the relatively intense methods and severe sanctions available in juvenile drug court.”)

⁸⁹ David R. Lilley, et al., *Drug Courts and Net-Widening in U.S. Cities: A Reanalysis Using Propensity Score Matching*, 31 CRIM. JUST. POL’Y REV. 287, 300 (2020). The Denver Drug Court in particular is often cited for having this net-widening effect. McLeod, *supra* note 38, at 1629 (“Judge Morris Hoffman of the Denver criminal court reported that the Denver Drug Court ‘caused police to make arrests in, and prosecutors to file, the kinds of ten- and twenty- dollar hand-to-hand drug cases that the system simply would not have bothered with before’”) (internal quotations omitted).

⁹⁰ Amy F. Kimpel, *Paying For a Clean Record*, 112 J. CRIM. L. & CRIMINOLOGY 439, 457 (2022); McLeod, *supra* note 38, at 1617, 1619, 1621–22; Evelyn Malavé, *Distorted Narratives in the Treatment Program Complex*, 93 FORDHAM L. REV. 843, 880 (2024).

⁹¹ *Id.* at 865; McLeod, *supra* note 38, at 1629 (“[people get] trapped in a never-ending series of criminal supervisory sentences, such that these minor law breakers end up “doing life in prison, thirty days at a time.” (quoting Alex Calabrese, Presiding Judge, Red Hook Community Justice Center)).

⁹² Bowers, *supra* note 88, at 793. *See also*, McLeod, *supra* note 38, at 1615–16, 1621.

⁹³ Bowers, *supra* note 88, at 793; KERWIN KAYE, ENFORCING FREEDOM DRUG COURTS, THERAPEUTIC COMMUNITIES, AND THE INTIMACIES OF THE STATE 10–11.

3. Decriminalization

In *Misdemeanor Decriminalization*, Professor Alexandra Natapoff argues that the decriminalization of misdemeanor offenses such as marijuana possession, driving with a suspended license, and disorderly conduct can result in net-widening.⁹⁴ Decriminalizing conduct while still penalizing it through civil infractions or summary citations reduces the systemic costs associated with penalizing the conduct. Non-jailable offenses do not require assigning counsel and avoid time, financial, and other resource costs associated with formal arrest, judicial hearings, and the adversarial process more generally.⁹⁵ Professor Natapoff posits that these reduced costs lead to classic *front-end* net widening: expanding the range of people swept into the criminal system, “permit[ting] police and prosecutors to convict those who might otherwise never have been arrested or charged under the old regime.”⁹⁶ While many of these charges result in trivial or no formal sanctions, some carry fines, programming requirements, supervision, and collateral consequences, examples of *conditions* net-widening.⁹⁷ For some people, decriminalization may even lead to *carceral* net-widening: People who are not “able to pay the fines, or to find time for and transportation to the meetings and treatment programs characteristic of decriminalized supervision” are lawfully sent to jail as a consequence of committing a nominally non-jailable offense.⁹⁸ Especially concerning, Natapoff cites evidence that these burdens fall disproportionately on racial minorities.⁹⁹

4. Bail Reform

In the past two decades, many jurisdictions implemented policies to reduce the use of cash bail as the primary means of ensuring defendants’ return to court.¹⁰⁰ Recognizing the immensely harmful impacts of pre-trial detention—resulting in both worse case outcomes and later-life effects related to missed work, trauma, and family burdens¹⁰¹—these policies aimed to reduce the degree to which the burdens of pre-trial detention were

⁹⁴ Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 VANDERBILT L. REV. 1056, 1070–71 (2015).

⁹⁵ *Id.* at 1097 (“decriminalization reduces the costs of counsel, prosecution, court time, and incarceration. It is also institutional, as decriminalization eliminates traditional procedural hurdles that constrain law enforcement actors—the need for formal arrest, judicial hearings, and the adversarial process more generally.”)

⁹⁶ *Id.* See also, McLeod, *supra* note 38, at 1627.

⁹⁷ Natapoff, *supra* note 94, at 1086–94.

⁹⁸ *Id.* at 1081–86.

⁹⁹ *Id.* at 1097.

¹⁰⁰ Sandra Mayson, *Dangerous Defendants*, 127 YALE L. J. 490, 507–08 (2018) (describing the contemporary, “third wave” of bail reform).

¹⁰¹ See sources cited *supra* note 35.

determined on the basis of defendants' financial means.¹⁰² Jurisdictions that eliminated or curtailed the use of cash bail typically created or expanded mechanisms to supervise people who were released as substitutes for the security that cash collateral would, at least theoretically, have provided.¹⁰³ Scholars sounded alarms about the risk of *conditions* net-widening—that people who, pre-reform, would have been released with no conditions would now be given conditions, and people who would have been released with limited conditions would now be given more onerous conditions.¹⁰⁴ Release conditions are both substantively burdensome—requiring, for example, check-ins with an officer, drug screenings, or mental health treatment—and create the risk of *carceral* net-widening as some people inevitably fail to comply with them.¹⁰⁵

Empirical studies have found evidence of *conditions* net-widening in several jurisdictions that adopted bail reforms.¹⁰⁶ First, Eife et al. observed that following Chicago's 2017 bail reform measures, judges increased the rate at which they set no monetary condition of release, but imposed non-monetary conditions such as periodic check-ins, drug testing, and curfews at more than double the rate of that increase.¹⁰⁷ Especially concerning, the authors found racial bias in the rates at which judges assigned defendants to pre-trial electronic monitoring, with the greater burden falling on Black defendants.¹⁰⁸ Second, a study of New York City's expansion of a supervised release program for pre-trial defendants estimated that 44 percent of the people released under supervision under the expanded program would have been released on their own recognizance but-for the reform.¹⁰⁹ Third,

¹⁰² Mayson, *supra* note 100, at 507.

¹⁰³ Lauryn P. Gouldin, *Disentangling Flight Risk from Dangerousness*, 2016 B.Y.U. L. REV. 837, 853–55 (2016); Jenny E. Carroll, *Beyond Bail*, 73 FLA. L. REV. 143, 184 (2021).

¹⁰⁴ Alexa Van Brunt & Locke E. Bowman, *Toward a Just Model of Pretrial Release: A History of Bail Reform and a Prescription for What's Next*, 108 J. CRIM. L. & CRIMINOLOGY 701, 759 (2018) ("The third wave reform position also risks trading away the right to release on recognizance for release subject to other conditions that, while not involving money, are nonetheless restrictive and damaging."); Brook Hopkins, et al., *Principles of Pretrial Release: Reforming Bail Without Repeating its Harms*, 108 J. CRIM. L. & CRIMINOLOGY 679, 688–89 (2018).

¹⁰⁵ Hopkins et al., *supra* note 104, at 688–89; Gouldin, *supra* note 103, at 853–55; Carroll, *supra* note 103, at 185–91.

¹⁰⁶ It is important to highlight that these findings do not constitute an indictment of any particular bail reform policy or of bail reform generally: the net-widening effects of a policy change may be justified by concomitant improvements in pre-trial incarceration rates, racial disparities, or other objectives.

¹⁰⁷ Erin Eife et al., *The Hidden Harms of Bond Reform: Examining the Impact of Bond Reform on Restrictive Conditions of Release*, 99 J. CRIM. J. 1, 6–7, table 1 (2025).

¹⁰⁸ *Id.* at 9.

¹⁰⁹ Melanie Skemer et al., *Pursuing Pretrial Justice Through an Alternative to Bail*, MDRC 51–52 (Sep. 2020), https://www.mdrc.org/sites/default/files/Supervised_Release_Final_

Professor Prithika Balakrishnan’s review of studies measuring the impacts of *in re Kenneth Humphrey*, a California Supreme Court decision holding the state’s pre-trial detention policies unconstitutional, found that in many instances, “GPS monitoring was being applied to individuals who would have been released on their own recognizance prior to *Humphrey*.”¹¹⁰

5. Net-Widening Concerns in Holistic Defense

Holistic defenders’ provision of social services creates the risk of each of the three types of net widening. In this subsection, I begin with the risk of *conditions* net widening—expanding burdens for holistic defenders’ clients. This in turn contributes to the risk of *carceral* net-widening as the clients fail to abide by the expanded conditions placed on them. I conclude by discussing the potential for *front-end* net-widening.

Holistic defenders often enroll their clients in services such as drug treatment, mental health treatment, and parenting and anger management courses proactively, before the court mandates it or prosecutors request it. They may do so consistent with their freestanding commitment to meet their clients’ needs as comprehensively as they are able to.¹¹¹ Or they may do so strategically—aware that their jurisdiction’s courts and prosecutors look favorably upon their clients who proactively demonstrate a commitment to, and capability of, redressing issues that underlay their alleged criminal activity.¹¹² Additionally, enrollment in services during the pendency of a case creates a new disincentive to a judge considering a carceral sentence: Incarceration threatens to undo rehabilitative progress the client has made while at liberty.¹¹³ These practices provide valuable benefits to many holistic defense clients.

The net-widening problem arises, however, when the court¹¹⁴ co-opts the public defenders’ social services capabilities. Once made aware that a defendant has been assessed and found to have needs, and in fact has proactively enrolled in services to address those needs, the court may *require* that the defendant continue to participate in the services as a condition of

Report.pdf. However, the program was also successful in that it resulted in a substantial decline in pre-trial incarceration. *Id.*

¹¹⁰ Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 UCLA L. Rev. 478, 490–94 (2024).

¹¹¹ See *supra* notes 40–47 and accompanying text.

¹¹² See *supra* notes 35–38 and accompanying text.

¹¹³ It may also present a clinical advantage: some scholars have posited that arrest and looming criminal charges can create an intervention window. See Lee, *supra* note 63, at 396–98; Steinberg, *supra* note 20, at 627.

¹¹⁴ In jurisdictions where judges customarily defer to prosecutors’ sentencing and pre-trial detention recommendations, prosecutors are the more directly responsible institutional actor.

his release or in order to receive the benefit of a reduced sentence.¹¹⁵ In these circumstances, *conditions* net-widening manifests in the status change of defendants' activities from voluntary to mandated. Alternatively, a court, familiar with the holistic defender's offerings and capabilities, can require programming and services of defendants whom it determines, *sua sponte*, could benefit from them—programming it not have required had the holistic defender not facilitated it.¹¹⁶ Importantly, this risk of co-optation is not limited to treatment courts: Non-custodial sentences and conditions of release in generalist, non-treatment courts can attach conditions such as compliance with drug treatment programming, continued enrollment in a GED class, or completing an anger management course.¹¹⁷

This concern is consistent with scholars' observations that the criminal legal system will seize opportunities to enhance its control over defendants when doing so is costless or low-cost to the system itself.¹¹⁸ In the absence of public defenders' social services units, the court must assume substantial costs associated with requiring that a defendant participate in services as a condition of release or sentence: The court must conduct an assessment of the defendant's needs, match him to appropriate

¹¹⁵ Anderson et al., *supra* note 28, at 839 (“[A]n assistant district attorney may accept a defendant’s spending twelve weeks in anger management in place of jail or probation, or if a defendant does well in a treatment program, the judge might consider a nonincarceration disposition.”)

¹¹⁶ The judge may correctly identify that the client has a problem, but the holistic defender’s social work unit determines that programming is not appropriate. For example, the client may not be interested in or ready to enroll in treatment or may have conflicting responsibilities that makes completing programming unfeasible. *See supra* section I.B (hypothetical scenario involving Janette). Alternatively, judges—who do not have access to complete information about the defendants before them—may wrongly assess the defendant’s needs and assign them inappropriate programming. *See infra* notes 164–167 and accompanying text.

¹¹⁷ Malavé, *supra* note 90, at 865–866 (“it is now common in many general jurisdiction courtrooms for a defendant to be able to pursue a treatment alternative plea without ever being accepted into drug court or mental health court.”); *id.* at 847, n. 14 (citing sources); Tamar M. Meekins, *Specialized Justice: The Over-Emergence of Specialty Courts and the Threat of a New Criminal Defense Paradigm*, 40 SUFFOLK U. L. REV. 1, 21 (2006) (noting that judges often rotate through specialty court and then back to regular judicial assignments); Anderson et al., *supra* note 28, at 839.

¹¹⁸ Richard A. Bierschbach & Stephanos Bibas, *Rationing Criminal Justice*, 116 MICH. L. REV. 187, 189 (2017) (“Unhinged from cost, actors overuse the most punitive and immediately rewarding criminal justice tools (like stop and-frisks, pretrial detention, and prison beds).”); *id.* at 196–197 (reviewing empirical evidence); Stuntz, *supra* note 69, at 526 (proposing that legislatures expand criminal codes and sentencing severities because they come with no immediate monetary cost); Ethan Lowens, *Resource Attacks on the Criminal Legal System*, 47 N.Y.U. REV. L. & SOC. CHANGE 479, 491–502 (proposing that the criminal legal system reliably shrinks in size in response to resource restrictions).

programming, and monitor his compliance.¹¹⁹ These process costs are amplified by the fact that they occur within an adversarial process—each decision must be reviewed by various stakeholders, and typically only at court appearances, which happen periodically, further drawing out the process. In many instances, the defendant is incarcerated while the assessment and matching phases play out, adding costs and logistical complexity.¹²⁰ By contrast, when a public defender enrolls a defendant in programming or services, the court system bears none, or far fewer, of these costs.

Indeed, I witnessed both forms of *conditions* net-widening—the conversion of voluntary services into mandated services and from-the-bench prescription of services to individuals who otherwise had not enrolled in them—first-hand while practicing at a public defender that expanded its social services unit shortly before my arrival. The most vivid illustration came in first appearance court, where judges arraigned defendants and determined whether and upon what conditions they would be released pending trial. When I first began, my colleagues and I frequently proposed that judges should release certain clients because upon their release, our office’s social work staff would evaluate them and connect them with needed services. I argued that these services¹²¹ would help our clients avoid reoffending and assure they would return to court. By the end of my time in practice, it was not uncommon for judges at arraignment to *require* that certain clients meet with a social worker from my office as a condition of their release. In some circumstances, the judge would go further and make diagnoses from the bench: mandating that as a condition of his release, the client return for his next court date with documentation showing that he began drug treatment or enrolled in a parenting class, knowing that my office could and would facilitate the enrollment.

¹¹⁹ See Collins, *supra* note 69, at 1508 (noting that treatment court is typically more costly on a per-case basis); Malavé, *supra* note 90, at 880 (describing ways in which drug courts monitor participants); McLeod, *supra* note 38, at 1620 (describing treatment court’s intensive monitoring of participants and noting that participants may be required to attend court several times per week)

¹²⁰ One of the greatest hurdles is that incarcerated defendants are frequently not produced to scheduled court dates. See, e.g., Lindsay Graef, et al., *Systemic Failure to Appear in Court*, 172 U. Pa. L. Rev. 1, 22 (2024) (defendants not brought to court in 7% to 10% of cases); Matt Katz, *1 in 4 People Jailed in NYC Are Not Being Brought to Court on Time*, GOTHAMIST (Feb. 20, 2023), <https://gothamist.com/news/1-in-4-people-jailed-in-nyc-are-not-being-brought-to-court-on-time> (“just 72.2% of those detained from September through December last year were brought to court on time”).

¹²¹ Which might include referral for treatment for someone suffering from substance abuse disorder, enrollment in an anger management class for someone charged with a domestic violence offense, help receiving public benefits, or providing them a cell phone. See *supra* notes 30–33 and accompanying text (describing services holistic defenders provide).

When the court co-opts holistic defenders' social services practices, it complicates the benefits that these units provide. First, when treatment and services become court mandated, defendants take on additional burdensome reporting and compliance requirements.¹²² It may also add substantial stress to the defendant for whom staying in school, keeping a job, or going to treatment is no longer a self-motivated project, but now carries the risk of jail time. Second, judicial involvement, especially in the form of clinical assessments made from the bench, reduces the degree to which social services referrals are clinically informed.¹²³ Studies of treatment courts consistently indicate that under the court's supervision and mandate, treatment requirements diverge from clinical assessments and needs: Courts typically assign longer treatment periods, or more requirements, than are clinically supported.¹²⁴ Courts also tend to overuse negative incentives, in particular incarceration, despite it being clinically inadvisable.¹²⁵ Converting the defendant's treatment plan into a court-ordered requirement also limits flexibility to change the plan, which might become clinically advisable over time.¹²⁶ Third, courts may adjust their baseline expectations as defendants enroll in programming and services at higher rates. Over time, instead of rewarding enrollment as a mark of exceptionalism, the court may come to expect it as the norm and penalize those who do not. Fourth, adding more requirements creates more opportunities for defendants to fail to comply with those requirements, leading to *carceral* net widening. As courts and prosecutors transition to requiring compliance with services and penalizing non-compliance with incarceration, it may well claw back any case-outcome gains achieved from public defense social services. This is especially likely if—as it has been shown to be in the treatment court context—people conditionally released who then violate the conditions of their release are treated more harshly than if they never accepted conditional release in the first place.¹²⁷

The Anderson et al. study discussed above suggests cracks in the ice of this nature. The study found that Bronx Defenders' clients had statistically significantly longer case lengths, had bench warrants issued at

¹²² See sources cited *supra* note 90.

¹²³ See *infra* notes 164–167 and accompanying text.

¹²⁴ Malavé, *supra* note 90, at 880; Bowers, *supra* note 88, at 798–802.

¹²⁵ Malavé, *supra* note 90, at 893; McLeod, *supra* note 38, at 1612–20.

¹²⁶ For example, an individual receiving mental health treatment may decide, in consultation with her therapist, that switching from two weekly group therapy sessions to one weekly individual therapy session would better suit her needs. The court's order, as issued, requires two sessions weekly to remain in compliance. Her insurance covers only one weekly individual session, so two weekly individual sessions would not be possible. The court's order therefore precludes the clinically advisable option. Attempting to modify the order could be an arduous, even infeasible undertaking.

¹²⁷ Bowers, *supra* note 88, at 793. See also, McLeod, *supra* note 38, at 1615–16, 1621.

higher rates, and were re-arrested pre-trial at higher rates.¹²⁸ This is consistent with judges' releasing the Bronx Defenders' clients at higher rates than people represented by traditional public defenders, but also assigning the Bronx Defenders' clients more restrictive conditions and monitoring, which leads to longer times to disposition and higher rates of violations and arrests.¹²⁹ In addition, by the last three years of the eleven-year study period, the decarceral effects associated with Bronx Defenders' representation evaporated.¹³⁰ Over time, a confluence of the factors discussed above—courts growing accustomed to and therefore awarding lesser benefits to defendants who enrolled in services; courts converting voluntary programming into mandatory requirements and adding clinically inadvisable conditions thereby increasing the risk of negative consequences—may have offset the marginal benefits of holistic defense.¹³¹

Finally, in addition to the *conditions* and *carceral* net widening risks discussed above, providing social services through public defenders also presents a risk of *front-end* net-widening: pulling people into the criminal justice system who would have, otherwise, been free from its grasp. As police, prosecutors, and other criminal justice system stakeholders become aware that public defenders will connect criminal defendants to services, and do so at limited cost to their own institutions, they may arrest more people they believe to be in need of those services, and they may lobby for laws and policies that expand arrests and charges for those people. Ironically, the more seamlessly and effectively holistic defenders can provide social services to their clients, the greater this risk becomes.

We have observed this phenomenon elsewhere. Scholars across numerous disciplines posit that creating a forum to provide treatment or services for criminal defendants can lead to policies and practices that make

¹²⁸ Anderson et al., *supra* note 28, at 863 tbl. 2.

¹²⁹ The authors observe that “one possibility is that holistic defenders strategically delay case resolution for some clients in order to allow them to begin drug treatment, secure employment, or engage in other positive actions that might lead to more lenient sentences.” *Id.* at 864. They also speculate that holistic defense clients' higher rates of release and longer time to disposition could, by virtue of exposure alone, help explain higher pre-trial arrest rates. *Id.*

¹³⁰ Anderson et al., *supra* note 28, at 875, tbl. 7; *id.* at 880 (“while there are performance differences between the holistic and traditional defenders in the early period, these differences become minimal in the latest period (2012–2014)”).

¹³¹ The authors of the study suggest three additional explanations for this pattern: that competing public defense providers began adopting holistic defense practices over time, that Bronx Defenders' attorney quality deteriorated, and that structural changes in the criminal legal system, such as reduced prosecution of minor drug offenses, reduced the benefits of holistic defense. *Id.* at 876. They note that “the data do not provide a clear means of adjudicating across these possibilities, and reality may involve some combination of these possibilities or none at all.” *Id.*

more people who need treatment or services *into* criminal defendants.¹³² In exactly this manner, defense-provided social services could motivate increased arrests and charges.

These shifts are predictable: People and institutions with an interest in upholding the size and scope of the criminal system point to the availability of treatment as justification for maintaining or expanding its scope. These stakeholders include police, prosecutors, probation officers, and politicians.¹³³ They also include institutions with a financial stake in this status quo, such as drug treatment facilities that receive the vast majority of

¹³² Lilley et al., *supra* note 89 at 299 (“drug court implementation was associated with a 16.8% overall increase in minor drug arrests”); *Id.* at 298 (“These trends suggest that local police may have consciously chosen to increase arrests for misdemeanor drug use and possession offenses rather than focusing on sales or other offenses.”); McLeod, *supra* note 38, at 1614 (“in promoting itself as a useful treatment approach, it may cause other criminal justice system actors—particularly police and prosecutors—to likewise view the court as a treatment outlet. This may lead relatively minor cases to go forward, offenses that perhaps ought not to be prosecuted in the first instance . . . these cases come to the court for extended court proceedings rather than just being dropped, or the defendants simply referred for treatment because the court itself, rather than the social service organization conducting therapeutic treatment, is understood to be a central part of the therapeutic process.”); Eaglin, *supra* note 38, at 635 (“drug courts may have incentivized police and prosecutors to expand the number of individuals processed within the system for drug offenses due to the well-meaning belief that the justice system would offer better treatment.”); Decker, *supra* note 70, at 212 (“These results seem to indicate that an additional category of referrals for the police leads to increased aggressiveness in all categories. . . . In addition to the fact that police activity was up by a considerable degree for status offenses, other crimes showed higher levels of referral.”); Jane M. Spinak, *Romancing the Court*, 46 FAM. CT. REV. 258, 268 (2008) (“Schools, police, and parents are more predisposed to use status offenses to control a child if they know that the court is an available resource.”) *See also, supra* notes 88–81 and accompanying text.

¹³³ ELEANOR HINTON HOYTT ET AL., PATHWAYS TO JUVENILE DETENTION REFORM: REDUCING RACIAL DISPARITIES IN JUVENILE DETENTION, 23 (“many of these officials often believe that a minority youth’s best chance to receive services may be in the detention system. As one chief probation officer puts it, ‘the courts incarcerate kids for help. Judges think that incarcerating them is the only way to get them treatment. The judges cannot order CPS [Child Protective Services] or mental health to do anything, but they can order me to do it.’ ”); Lilley et al., *supra* note 89 at 289 (“there is evidence that some drug court officials directly encouraged law enforcement officers to intensify their focus on drug offenses with one spokesperson noting, ‘if a cop makes five more arrests’ because drug courts are available, that officer has ‘increased public safety’ and is helping the community and families of the user”) (internal quotations omitted); Rick McCrabb & Lauren Pack, *Middletown Police Chief Wants to Charge Addicts Who OD in Public*, JOURNAL-NEWS (Mar. 27, 2017), <https://www.journal-news.com/news/crime-law/middletown-police-chief-wants-charge-addicts-who-public/YDaGCRjvHfoBaLXbkbIEI/> (quoting Middletown, Ohio Police Chief Rodney Muterspaw “ ‘[I]t is t]ime to hold people more accountable. We have to force them into treatment.’ ” And observing that “[H]e would like to charge [people who overdose in public] with inducing panic, then withdraw the charge if they’re treated for the drug addiction.”)

their referrals through the criminal system.¹³⁴ This is a substantive policy problem—lawmakers appear to be swayed by, and adopt, these arguments in supporting pro-carceral legislation¹³⁵—and a rhetorical one, shaping the debate over the best way to reduce antisocial behavior. Ironically, if public defenders succeed in enhancing the rates at which their clients receive treatment, secure housing, and pursue employment and education, they may fuel policy changes and rhetoric they strenuously oppose.

I conclude this subsection by emphasizing that I do not doubt—and, indeed, I observed first-hand—that the availability of social services meaningfully benefits many public defense clients. Nor is the addition of requirements and conditions per se problematic: It is not net-widening if both a) a court imposes conditions for defendants to remain at liberty as a substitute for incarcerating them and b) the conditions it imposes are reasonable. Net-widening materializes only if the policy results in burdens that exceed, on net, its benefits—either on an individual level, or on aggregate.¹³⁶

Recognizing the risk of net-widening should not be misinterpreted as a call to abandon public defenders’ valuable and innovative holistic defense practices. Rather, as explained more in Part III, it should sound alarms for vigilance in monitoring for and policing against net-widening, and it should raise the urgency for empirical research that measures both the benefits and drawbacks of providing social services through public defenders.

¹³⁴ KAYE, *supra* note 93 at 16 (“Although these treatment facilities are private institutions, it is common for many to receive 80 percent or more of their clients through the drug courts and other parts of the criminal justice system, making them more properly conceived of as adjuncts to criminal justice rather than completely distinct entities.”)

¹³⁵ Sammy Caiola, ‘A Big Carousel Ride’: Philly Leaders Want to “Triage” People Using Drugs in Kensington to Treatment – or Incarceration., KENSINGTON VOICE (Jan. 31, 2024), <https://www.kensingtonvoice.com/philly-triage-drugs-kensington-treatment-incarceration/> (“[Philadelphia] Councilmember Driscoll suggested police arrest people for crimes, including open-air drug use and prostitution, and then bring them in. Squilla said services would be offered first before criminal justice consequences would be presented.”) Scott Greenstone, *Washington’s New Drug Law Was ‘Designed to Fill Our Treatment Centers.’ Experts Say It Won’t*, KNKX (June 29, 2023), <https://www.knkx.org/law/2023-06-29/washingtons-new-drug-law-was-designed-to-fill-our-treatment-centers-experts-say-it-wont>. (“The law makes possessing small amounts of drugs a gross misdemeanor . . . It creates a pre-trial diversion program and a framework for judges or prosecutors to send drug users to treatment programs rather than jail. It funds crisis centers, and expands medication-assisted treatment in jails. Last month when he signed the Blake bill, Governor Jay Inslee insisted that the new law would push people to get help. ‘This bill was not designed to fill our jails. It was designed to fill our treatment centers.’”)

¹³⁶ This is equally true in the other contexts discussed above. Expanded use of conditional release as part of bail reform is not net-widening where unaffordable cash bail would have been set but-for the availability release conditions. Intensive probation is not net-widening where the individuals sentenced to intensive probation would have been sentenced to prison but-for the availability of intensive probation.

B. Suboptimal Clinical Outcomes

Structural features of delivering social services through a public defender threaten to compromise the effectiveness of these services. First, the end of the criminal case abruptly interrupts a client's access to services they continue to need. Second, providing services in the context of a criminal case invites non-clinicians to shape key decisions. These factors limit the degree to which social services delivered through public defenders can benefit their clients beyond improving their criminal case outcomes.¹³⁷

1. Premature End to the Relationship

Public defense clients' social services needs frequently pre-exist and outlast their criminal cases.¹³⁸ Even when holistic defenders adopt a "once a client, always a client" policy,¹³⁹ we should expect that the end of a criminal case will, in many instances, disrupt the client's ongoing social services relationship with the organization. First, the end of the criminal case will typically affect the time, place, and frequency of meetings. Public defenders' offices are usually located in close proximity to courthouses, which makes meeting before or after court appearances a natural meeting time, and at the public defender's office or the courthouse a natural meeting location.¹⁴⁰

¹³⁷ Insofar as the holistic defender provides social services exclusively as a means to improve criminal case outcomes, this is less of a concern. *See* discussion of the philosophies supporting holistic defense, *supra* section I.C.

¹³⁸ Substance use disorder is a lifelong disease, mental health disorders require lengthy courses of treatment, people experiencing homelessness frequently require numerous placements before finding permanent housing, and the difficulties of navigating poverty in America do not abate at the end of a criminal case. *See* Quinn, *supra* note 63, at 572, 583–584; Harris, *supra* note 31, at 809, 811, 822; DeHart et al., *supra* note 52, at 2; Lepage, *supra* note 31, at 39. Bowers, *supra* note 88, at 801–802. *See also Patient Profile for Individuals in the New York City Jail System*, NYC CORRECTIONAL HEALTH SERVICES (Sep. 2025), <https://hhinternet.blob.core.windows.net/uploads/2025/10/correctional-health-services-patient-profile-metrics-september-2025.pdf>, (documenting high rates of substance abuse, mental health, and homelessness needs among incarcerated individuals in New York City).

¹³⁹ *See, e.g.,* Douglas Ammar & Tosha Downey, *Transformative Criminal Defense Practice: Truth, Love, and Individual Rights—The Innovative Approach of the Georgia Justice Project*, 31 FORDHAM URB. L.J. 49, 57 (2003) (describing Georgia Justice Project's long term commitment to supporting clients' social services needs); Bazelon *supra* note 43, at 703–04 ("practitioners of the holistic model . . . collapse the distinction between 'current' and 'former' clients"); Harris, *supra* note 31, at 806 ("even after their criminal cases resolve, the social worker continues working with clients.").

¹⁴⁰ *See, e.g.,* Ellman & Kheibari, *supra* note 19, at 43 (discussing "the village" in Kalamazoo, Michigan, a shared space housing social services providers and the public

Without court dates, which brought the client to a location near the public defender's office at predictable times, the client and holistic defender must affirmatively work to set places and times to meet. Second, the focal point of the relationship changes. Whereas during the client's criminal case, the criminal case and the client's criminal attorney were likely the central focus of the client's relationship with the organization, that shifts once the criminal case concludes.¹⁴¹ The makeup of the client's team and the focus of their efforts necessarily shift to being dominated by social services needs and providers, changing the dynamic and personnel. At the same time, the end of the criminal case removes structural scaffolding around the client's relationship with the public defender and the client's liberty interest in maintaining it.¹⁴²

Adding obstacles to maintaining a care relationship—even ones that may seem insignificant—can be especially disruptive for low-income and high-needs individuals.¹⁴³ People in poverty experience psychological strain that makes marginal demands on their time and mental resources especially challenging.¹⁴⁴ Beyond poverty, many holistic defense clients suffer from mental health or substance abuse disorders that make it challenging for

defender's office, located walking distance from the courthouse); Anderson et al., *supra* note 28, at 834 (“Legal Aid operates through a network of twenty-five offices in neighborhood- and courthouse-based locations across all five boroughs of New York City”). The author also reviewed an informal sample of the locations of the primary public defender's office in ten other cities and found that all are located within a short walk of the courthouse. San Francisco, California; Sedgwick County (Wichita), Kansas; Milwaukee, Wisconsin; Harris County (Houston), Texas; Phoenix, Arizona; Duval County (Jacksonville), Florida; New Orleans, Louisiana; King County (Seattle), Washington; Fort Collins, Colorado; Concord, New Hampshire.

¹⁴¹ See, e.g., Harris, *supra* note 31, at 809 (“By their own admission, attorneys rarely have time to address these types of postconviction problems.”). See also sources cited *supra* note 32.

¹⁴² Professor Emily Murphy explains that, for someone operating under highly resource scarce conditions, more immediately urgent problems “capture the limited attention of a decision-maker, with the consequence that they neglect other, less urgent problems: today's grocery cart obscures consideration of next month's utility payment.” Murphy, *supra* note 144, at 730.

¹⁴³ See, e.g., Linda E. Guzman et al., *Understanding Treatment Barriers for Major Depressive Disorder in the Latino Community: A Qualitative Study Stratified by Language Preference*, 62 *TRANSCULTURAL PSYCHIATRY* 683, 694 (2025) (finding that transportation and needing to schedule appointments during traditional business hours were barriers to attending therapy for a group of low and middle income Hispanic-Americans diagnosed with major depressive disorder).

¹⁴⁴ Anandi Mani et al., *Poverty Impedes Cognitive Function*, 341 *SCIENCE* 976 (2013); Emily R.D. Murphy, *Brains Without Money: Poverty as Disabling*, 54 *CONN. L. REV.* 699, 730 (2022) (discussing the application of “scarcity theory” to low-income people navigating the legal system). *Id.* at 744 (describing “the complex policies and procedures, appointments, and requirements that a [marginalized] person must fulfill” as “analogous to how a person who uses a wheelchair is ‘disabled’ by the architecture of a building that only has stairs.”).

them to negotiate scheduling and transportation logistics.¹⁴⁵ For these reasons, one of the main services offered by holistic defenders' social workers and navigators is to help clients comply with the many scheduling, behavioral, and appearance requirements the court imposes on criminal defendants.¹⁴⁶ It is ironic, and potentially self-defeating, to impose additional burdens on these same individuals in order to retain access to this support.

No existing studies measure how the termination of a holistic defense client's criminal case affects the continuity of their relationships with the holistic defender's social services unit or their attrition in services that had been facilitated by that unit. However, research on the effects of relationship shocks analogous to those experienced by public defense clients at the end of their cases suggests that these shocks are likely to impact continued engagement.

Across numerous therapy domains, difficulty scheduling is reported as the most common reason for patient dropout.¹⁴⁷ Low-income mothers whose post-birth gynecological visits are scheduled automatically attend those visits at far higher rates than those who must take affirmative steps to schedule them after discharge.¹⁴⁸ People whose mental healthcare setting transitions from inpatient to outpatient disengage with services at staggeringly high rates: Studies of Medicaid reimbursement records indicate that 51% of Medicaid patients overall,¹⁴⁹ and 40% of Medicaid

¹⁴⁵ See sources cited *supra* note 138.

¹⁴⁶ See Clair, *supra* note 36, at 15, 38 (describing the support provided); Heaton, *supra* note 27, at 738 (same). See also, Murphy, *supra* note 144, at 744, 751 (noting the challenges of navigating bureaucracies under the strains of poverty). See also, sources cited *supra* note 144.

¹⁴⁷ C.O. Hawker et al., *Understanding Dropout during Psychological Treatment for Gambling: A Scoping Review*, 122 CLINICAL PSYCH. REV. 1, 13 (2025); Claude Bélanger et al., *Predictors of Dropout from Cognitive-Behavioral Group Treatment for Panic Disorder with Agoraphobia: An Exploratory Study*, 41 BEHAVIOR MODIFICATION 113, 129 (2017). See also Guzman et al., *supra* note 143, at 693–94.

¹⁴⁸ Mark A. Clapp et al., *Postpartum Primary Care Engagement Using Default Scheduling and Tailored Messaging: A Randomized Clinical Trial*, 7 JAMA NETWORK OPEN 1, 6 (2024); Sarah Polk et al., *Bridging the Postpartum Gap: A Randomized Controlled Trial to Improve Postpartum Visit Attendance Among Low-Income Women with Limited English Proficiency*, 2 WOMENS HEALTH REPORTS 381, 386 (2021).

¹⁴⁹ Bradley D. Stein et al., *Predictors of Timely Follow-Up Care Among Medicaid-Enrolled Adults After Psychiatric Hospitalization*, 58 PSYCH. SERVICES 1563, 1566 (2007).

schizophrenia patients,¹⁵⁰ fail to receive follow-up care of any sort within 30 days¹⁵¹ of inpatient discharge.¹⁵²

Research in other treatment domains elucidates how changes in the structure of, and individuals involved in, a client's treatment team are associated with decreased participation and outcomes.¹⁵³ For example, a study of a community mental health center in Philadelphia found that the likelihood that a youth receiving treatment would miss a therapy session was 86% higher following a change in therapist.¹⁵⁴ A study of people being treated for borderline personality disorder showed that patients whose therapist changed during the course of their treatment were more than four times as likely to drop out than those whose therapist remained.¹⁵⁵ Students in mentorship programs whose mentor changed mid-program fared significantly worse than those whose mentor stayed constant throughout the three-to-six-month program.¹⁵⁶ Similar results have been observed in the domains of substance abuse treatment and pain management.¹⁵⁷

¹⁵⁰ Mark Olfson et al., *Continuity of Care After Inpatient Discharge of Patients With Schizophrenia in the Medicaid Program: A Retrospective Longitudinal Cohort Analysis*, 71 J. CLINICAL PSYCH. 831, 833 (2010).

¹⁵¹ Follow-up care within 30 days is clinically recommended according to the industry standards for follow-up after hospitalization for mental illness. *Id.* at 832.

¹⁵² Both referenced studies indicate that patients who received outpatient care before hospitalization were far more likely to receive outpatient care after, further underscoring the importance of continuity in care. Stein, et al., *supra* note 149, at 1567; Olfson et al., *supra* note 150, at 836.

¹⁵³ Babbar et al., *Therapist Turnover and Client Non-Attendance*, 93 CHILD. & YOUTH SERV. REV. 12, 14 (2018).

See also Ben Hoi-Ching Wong et al., *Association between Continuity of Care and Attendance of Post-Discharge Follow-up after Psychiatric Emergency Presentation*, 3 NPJ MENTAL HEALTH RESEARCH 1, 3 (2024) (finding that the attendance rate of young people hospitalized with a psychiatric condition at a follow-up appointment increased by a factor of 3.66 when the follow-up appointment was offered by the same clinician who saw the patient in the hospital).

¹⁵⁴ Babbar et al., *supra* note 153, at 14.

¹⁵⁵ Carolin Steuwe et al., *Impact of Therapist Change after Initial Contact and Traumatic Burden on Dropout in a Naturalistic Sample of Inpatients with Borderline Pathology Receiving Dialectical Behavior Therapy*, 4 BORDERLINE PERSONALITY DISORDER & EMOTION DYSREGULATION 1, 6 (2017).

¹⁵⁶ Jean B. Grossman et al., *The Test of Time in School-Based Mentoring: The Role of Relationship Duration and Re-Matching on Academic Outcomes*, 49 AM. J. CMTY. PSYCH. 43, 51–52 (2012).

¹⁵⁷ Bryan R. Garner et al., *The Relationship between Clinician Turnover and Adolescent Treatment Outcomes: An Examination from the Client Perspective*, 44 J. SUBSTANCE ABUSE TREATMENT 444, 446–47 (2013) (finding that youth enrolled in substance abuse treatment had a significantly higher percentage of days using alcohol or other drugs relative to adolescents who did not receive any clinician turnover during their course of substance abuse disorder treatment); Amanda C. Williams & Henry W. Potts, *Group Membership and Staff Turnover Affect Outcomes in Group CBT for Persistent Pain*, 148 PAIN 481, 484 (2010).

Relationships are important. Removing the attorney from the client's team—the first person the client engaged with and the one they are most likely to see as the focal point of their relationship with the organization¹⁵⁸—is a significant, and potential destabilizing, change to the client's relationship to the holistic defender.

Finally, public defense organizations, not just their clients, face headwinds to continuing the relationship after the conclusion of the criminal case. Public defenders are near-universally resource constrained and operate in a triage environment.¹⁵⁹ Clients whose criminal case has resolved must be deprioritized at the expense of more urgent, active matters.¹⁶⁰ Moreover, many public defenders' funding is tied to the volume of criminal cases they handle, creating a financial incentive to prioritize clients with active criminal cases.¹⁶¹ A “once a client, always a client” policy without substantial

¹⁵⁸ See sources cited *supra* note 32 and accompanying text.

¹⁵⁹ Paul Heaton, *Gideon's Promise Versus Gideon's Reality: Resource Shortfalls in Pennsylvania Public Defense*, QUATTRONE CTR. FOR FAIR ADMIN. JUST. (May 2024), <https://www.law.upenn.edu/live/files/13057-gideon-promise-vs-reality>; Nicholas M. Pace et al., *National Public Defense Workload Study*, RAND CORPORATION 114 (2023), https://www.rand.org/content/dam/rand/pubs/research_reports/RRA2500/RRA2559-1/RAND_RRA2559-1.pdf; L. Song Richardson, *Implicit Racial Bias in Public Defender Triage*, 122 YALE L.J. 2626 (2013); Irene Oritseweyinmi Joe, *Systematizing Public Defender Rationing*, 93 DENV. L. REV. 389 (2016); Bruce A. Green, *Criminal Neglect: Indigent Defense from a Legal Ethics Perspective*, 52 EMORY L.J. 1169, 1169, 1181 (2003).

¹⁶⁰ Pinard, *supra* note 63, at 1091 (“Already, institutional defenders tend to allocate their resources by prioritizing cases within their caseloads: ‘Serious’ cases may take priority over ‘less serious’ cases; cases that are likely to go to trial may take priority over those that are likely to result in guilty pleas; ‘winning’ cases may take priority over ‘losing’ cases. Likewise, in a given situation, a reentry matter, because it rests at the very end of the criminal process, may assume a lesser priority for the defense attorney than the urgent pre-dispositional matter.”); Green, *supra* note 159, at 1180 n.45. See also Bazelon at 727 (expressing concern about public defenders’ ability to adequately devote resources to pursuing past clients’ wrongful conviction claims under ABA guidelines requiring they do so.); Harris at 806 (“By their own admission, attorneys rarely have time to address these types of postconviction problems.”)

¹⁶¹ Ronald Wright & Jenny Roberts, *Expanded Criminal Defense Lawyering*, 6 ANN. REV. CRIMINOLOGY 241, 245 (2023); Holland, *supra* note 45, at 642 (“some public defender offices operate under contracts that include institutional efficiency requirements, such as a minimum number of cases handled each year”); Eve Brensike Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 MICH. L. REV. 207, 214–36, (2023) (describing the problematic financial incentives created by flat-fee contracts and assigned counsel programs). See also, e.g., *Review of the Municipal Court Indigent Defense Service Delivery, Eugene, Oregon*, NAT’L LEGAL AID & DEFENDER ASS’N (SEP. 2020), https://www.nlada.org/sites/default/files/pictures/NLADA_indigent_defense_service_delivery_Eugene_OR_11_17_20.pdf (describing Oregon’s fee-per-case scheme for institutional providers); *Request for Proposals—Public Defender Services*, CITY OF CAMAS, WASH., 1, 5 (June 18, 2024), https://www.cityofcamas.us/sites/default/files/fileattachments/public_works/page/29785/2024_camas_indigent_defense_rfp_-

resources and institutional supports devoted to maintaining social services relationships with clients after the end of their criminal cases faces long odds of success.

Abruptly ending the supportive relationship at *best* puts clients back where they began—with needs and without access.¹⁶² These include clients with substance abuse disorder who received help finding treatment through their public defender and then later relapsed, clients struggling with homelessness who received temporary housing support through the public defender and later required resettlement, and clients who struggle to apply for and stay in compliance with public benefits programs that require periodic recertification. For many high-needs clients, a primary value-add of the holistic defender is basic logistical support.¹⁶³ The public defender may offer to keep the client's important documents and records, provide a stable mailing address to associate with public benefits or job applications, or assist with understanding and filling out government forms. Insofar as the holistic defender provided meaningful support to these individuals, it is a shame to deliver it in such a way that it is predisposed to being taken away.

2. Predisposition to Clinically Suboptimal Treatment

The influence of the legal case threatens the social services team's ability to provide clinically optimal treatment, especially in support of clients with substance abuse disorder and mental illness. In metaphorical terms, the criminal case is a large mass at the center of the client's relationship with the public defender that exerts a corrupting gravitational force on the client's receipt of social services.

_final.pdf ("The City will pay ... on a price-per-case basis or a total yearly/monthly fee," open to firms, private offices, nonprofits, and public agencies); *Trial-Level Indigent Criminal Defense Services: Concept Paper 2*, N.Y.C. MAYOR'S OFFICE OF CRIM. JUST. (Aug. 2, 2016), <https://www.nyc.gov/assets/criminaljustice/downloads/pdfs/Concept%20Paper%20-%20Indigent%20Criminal%20Defense%20Publish%208.2.16.pdf> ("annual funding will be distributed according to the negotiated caseload for each provider"). *Request for Proposal—Public Defender Services*, OGDEN CITY, UTAH 1–3 (May 10, 2025), https://www.ogdencity.gov/DocumentCenter/View/33465/Public-Defender-Services-RFP_FINAL-05-08-2025 (request for proposals for institutional contracts in Justice Court; notes that typical Utah municipal practice includes per-case pricing in proposals).

¹⁶² For others, it may leave them worse off than they were before—with scars and confusion of another failed relationship and the opportunity cost of having not spent this period finding longer term support. *Cf.* McLeod, *supra* note 38, at 1634–35 (describing results from a long term longitudinal study of young men that identified the presence or absence of stable support structures strongly predicted whether the men went on to have criminal justice system contacts later in life).

¹⁶³ See sources cited *supra* note 146.

Professor Evelyn Malavé identifies three ways in which judges favor treatment modalities that conflict with clinical best practices.¹⁶⁴ First, courts tend to assess defendants' treatment needs as proportional to the severity of the crime charged against them, regardless of clinicians' assessments of their needs.¹⁶⁵ Second, courts view defendants with both mental health and substance abuse needs as less appropriate for treatment dispositions, regarding them—without evidence—as too high risk, too hard to place with a treatment provider, or potentially violent.¹⁶⁶ Third, many courts look unfavorably upon, and often categorically prohibit, medication-assisted treatment for substance use disorders, even though it is proven to be highly effective.¹⁶⁷

Defense attorneys may resent these judicial preferences but nonetheless encourage their social work colleagues to develop treatment plans that conform to them. Even when social workers develop treatment plans for clients on a voluntary, proactive basis—well before the court and prosecutors consider a defendant's eligibility for diversion or favorable treatment at sentencing—the defense team will consider the effects of any potential treatment on the criminal case's outcome. In anticipation that the case *might* have the potential for diversion or reduced sentencing, the defense attorney, as a matter of strategy, may recommend that a client engage in more (or less) intensive treatment, discourage her from enrolling simultaneously in mental health and substance abuse treatment, or refrain from trying medication-assisted treatment despite contrary clinical recommendations, knowing that these are the judge's preferences. In this way, while voluntary treatment assessments and referrals through a defendant's public defender may seem like a way to sidestep the contraindicated preferences of judges and prosecutors, by operating in the shadow of the criminal legal system, even this process becomes subject to its corrupting influence.¹⁶⁸

Even if the defense team commits to a treatment plan without any regard for the court's preferences, the co-existence of a criminal case still complicates the execution of that plan. Consider these hypothetical scenarios:

¹⁶⁴ Though her analysis focuses on the tendencies of judges sitting in treatment courts, Professor Malavé, along with other scholars, notes that that treatment court-style programming requirements are now common in courts of general jurisdiction as well. *See* sources discussed *supra* note 17.

¹⁶⁵ Malavé, *supra* note 90, at 880.

¹⁶⁶ *Id.* at 869–71.

¹⁶⁷ *Id.* at 886–88.

¹⁶⁸ *See* Lee, *supra* note 63, at 423 (“To the extent that holistic defenders are the masters of their own destinies and can worry less about prosecutors or judges muddling the agenda, defenders will have to try harder to gain, and maintain, legitimacy in the community”); Quinn, *supra* note 63, at 579.

Client A has tried and failed to achieve sobriety through substance abuse treatment three times in the past. Her public defender's social worker suggests, and she agrees, that she may fare better at a facility far away from the people and places around whom she is accustomed to using drugs. The caseworker finds a suitable residential treatment program in a rural location that is a five hour drive from Client A's home. However, she has appearances at the courthouse near her home every two weeks.

Client B experienced a near-fatal overdose shortly after each of the last three times he detoxed. His public defender's social worker recommends that, following detox, he immediately enter a program that prohibits contact with the outside world for ninety days. However, the court is eager to move his case along and will not permit an adjournment longer than thirty days.

Client C speaks only Haitian Creole. Her public defender's case worker finds a linguistically appropriate program in her community that suits her therapeutic needs. However, the program involves group therapy sessions in which the members of the group reflect on how addiction has affected their lives. It also involves writing apology notes to people they have harmed. Doing so honestly would involve Client C confessing to crimes that she is currently litigating.

In each of these scenarios, adherence to the recommended treatment plan is at tension with litigation in the client's criminal case.¹⁶⁹ It puts defense counsel in an ethical bind that all but requires deviating from the clinically recommended course of treatment, even if the client wished to prioritize her treatment over her criminal case.¹⁷⁰

An attorney could not ethically endorse a treatment plan that required the defendant's willful failure to appear in court.¹⁷¹ A defense attorney would be hard pressed to ask the court for an adjournment so she could receive substance abuse treatment when the client's drug use is a contested aspect of the prosecution's case.¹⁷² Similarly, it is difficult to

¹⁶⁹ *Id.* at 579 (criticizing practices that “might undermine the presumption of innocence.”).

¹⁷⁰ Though not discussed at length here, this also creates ethical concerns for social workers, whose rules of professional conduct prioritize the clients' wellbeing and self-determination. NASW CODE OF ETHICS, NAT'L ASS'N OF SOCIAL WORKERS, R.1.01, 1.02 (2021). As a matter of law and formal professional discipline, social workers are insulated by virtue of operating within a law firm and at the direction of attorneys. See Jacquelyn Greene, *Social Workers in North Carolina Public Defender Offices: Ethical and Legal Issues Involving Mandatory Reporting Laws*, UNC SCHOOL OF GOVERNMENT, (Feb. 20, 2025), https://sog.unc.edu/sites/default/files/reports/2025-02-20_AOJB_2025-02.pdf. But being required to deviate from professional norms and standards doubtless creates tension and discomfort for social workers, nonetheless.

¹⁷¹ MODEL RULES OF PROF'L CONDUCT R. 1.2(d).

¹⁷² For instance, in a drug possession case, or in a case where the prosecution alleges that the defendant stole cars in order to finance a drug habit. Nor could the attorney lie about the defendant's location. *Id.* R. 3.3.

imagine a defense attorney endorsing her client's admission to crimes she is actively litigating (or has not yet been charged with).¹⁷³ Any of these courses of action could expose the attorney to charges that she violated attorney ethics rules, committed malpractice, or provided ineffective representation.¹⁷⁴

Voluntary treatment plans created through a defendant's public defender might appear to be a way to sidestep the coercive atmosphere of treatment court and contraindicated treatment preferences of judges and prosecutors.¹⁷⁵ However, as this subsection illustrates, even treatment plans formulated by the defense can be corrupted by the ongoing criminal case. When the defense seeks to leverage the defendant's treatment to achieve a favorable case outcome, they must defer to the court's perspectives on what constitutes acceptable treatment. Even treatment administered fully independent of the criminal case can run into practical and ethical problems where the demands of treatment and litigation conflict.

C. Fairness

Many people in low-income communities struggle with the same problems that holistic defenders help their clients address, including substance abuse disorder, homelessness, and trouble accessing government benefits.¹⁷⁶ However, community members who are not charged with a crime, or who are charged with a crime but assigned counsel other than their jurisdiction's holistic public defender,¹⁷⁷ ordinarily do not have access to the

¹⁷³ *Id.* R. 1.1, 1.3.

¹⁷⁴ See Quinn, *supra* note 63, at 588–89 (proposing that defense counsel's overcommitment to treatment dispositions would lead to prosecutors and law enforcement interpreting defense counsel's actions as signals of their clients' guilt).

¹⁷⁵ Lepage, *supra* note 31, at 42 ("It should be noted, though, that holistic defense models differ from the mental health court principles in that the services offered and provided are not court mandated or coercive. As such, in a holistic defense model, service provision is done without court oversight.").

¹⁷⁶ See, e.g., MATTHEW DESMOND, POVERTY, BY AMERICA, 28–54 (2023) (substance abuse and housing); Pamela Herd et al., *Tackling Administrative Burdens: The Legal Framework and Innovative Practices*, 76 ADMIN. L. REV. 243, 264 (2024) (difficulty accessing government benefits).

¹⁷⁷ Assigned counsel typically do not have access to supportive personnel including social workers and even investigators. Eve Primus, *The Problematic Structure of Indigent Defense*, 122 MICH. L. REV. 205, 217–18 (2023).

Jurisdictions with an institutional public defender must have independent counsel available for cases that the public defender cannot take. See Wright and Roberts, *supra* note 161, at 245 (assigned counsel must be available for cases in which the public defender has a conflict of interest); David Hernandez, *S.F. Court Crisis: Public Defender's Office Must Take on New Felony Cases, Judge Says*, S.F. CHRONICLE (Jan. 12, 2026), <https://www.sfchronicle.com/sf/article/sf-court-attorney-crisis-21291149.php> (independent counsel assigned cases when the public defender was overburdened).

public defender's social services units. Assuming a scarcity of social services resources, there is a risk that allocating those limited resources to holistic defense clients is inconsistent with preferences in the community in which the holistic defender operates—a risk that is particularly disquieting given the troubling history of excluding marginalized communities from input into criminal legal system policies that disproportionately affect them.¹⁷⁸

Funding is the most concrete possible inequity. Public defenders are formidable grant applicants: Attorneys are by definition highly educated, trained in advocacy, and experienced in persuasive writing. A church, community center, or public school competing against a public defender for a grant to hire a social worker may lack these advantages. The social services themselves also create a potential inequity. For example, the social work units¹⁷⁹ at public defenders monitor which of the Medicaid-accepting substance abuse treatment centers in the area has bed space at any given time. When a public defense client is interested in substance abuse treatment, the social workers use their internal list to efficiently arrange a referral and placement. By contrast, a non-client community member interested in substance abuse treatment would likely have to reach out many facilities individually to determine which had availability—a daunting and resource-intensive undertaking. The social work unit similarly monitors the availability of beds at local shelters and uses it to make informed referrals.

There are strong arguments in support of allocating scarce resources to public defense clients. One argument is moral: that people charged with crimes likely have greater needs than those who don't, and thus should receive priority for limited social services resources. Another argument is utilitarian: It is in the community's interest to prioritize individuals who

¹⁷⁸ Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2067 (2017) (“at both an interactional and structural level, current regimes can operate to effectively banish whole communities from the body politic.”); Janet Moore, et al., *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALB. L. REV. 1281, 1283 (2015) (“the people who have disproportionately high system contact [have had] disproportionately little voice in system creation and administration.”); Monica C. Bell, *The Community in Criminal Justice*, 16 DU BOIS REVIEW 197, 199 (observing that “[t]he overarching relationship between marginalized communities in the United States and the criminal justice system has been one of race-class domination and subjugation” and contrasting the relationship of subjugation with a modality in which the community “harnesses democratic power to shift leadership . . . [and] change policies and budgets.”).

¹⁷⁹ The same critique could be leveled with respect to providing legal services beyond those needed to ameliorate the effects of a client's criminal case. For example, pursuant to the Supreme Court's decision in *Padilla v. Kentucky*, defense attorneys must advise non-citizen clients on the potential immigration consequences of a resolution to their criminal cases. However, holistic defenders may provide other forms of civil legal assistance, including housing and family law assistance in-house as well. Steinberg, *supra* note 18, at 992. Community members with civil legal needs lack the same direct access to this free assistance.

have caused harm to others in order to reduce the risk that they cause harm in the future. But other arguments support the opposite conclusion: Why should these services be available to only a subset of the local population? And, not just any subset—a subset that disproportionately causes harm and disruption to local community members?

This resource allocation problem is premised upon social services resources being fixed and insufficient. It should not be ignored that growing the pie is the most direct path to alleviating these fairness concerns.¹⁸⁰ Assuming scarcity, however, both approaches have merit. I posit only that in the context of the criminal legal system, where the communities most affected by criminal law enforcement have historically had little autonomy and self-determination to shape public safety policies and resource distribution, these communities should have a voice in deciding how the resources to mitigate the effects of overcriminalization and prevent future crime are allocated.¹⁸¹ Critically, the preferences of these communities will not always align with public defenders' leadership, policymakers, and grantmaking foundations, whose demographic composition often differs markedly from that of the communities they serve and support.¹⁸²

¹⁸⁰ *Infra*, section III.B.

¹⁸¹ See Bell, *The Community in Criminal Justice*, *supra* note 178 at 208 (“System participants . . . should cede power to those directly affected not only because it may make the system more just, but also because it will enable directly affected individuals and communities to better meet their own societal obligations.”); Moore et al., *supra* note 178 at 1283.

¹⁸² In *Public Defenders as Gatekeepers of Freedom*, Professor Alma Magaña establishes that public defenders are more likely to be white and privileged than the people they represent and shows that “[t]hese racial dynamics are directly and inescapably connected to the implications of gatekeeping.” Alma Magaña, *Public Defenders as Gatekeepers of Freedom*, 70 UCLA L. REV. 978, 992, 1019 (2023). In a particularly poignant example, Professor Magaña describes how the leadership of a large public defender supported bail policies that conflicted with their clients' preferences. *Id.* at 1007. Empirical evidence supports Professor Magaña's assessment of the demographics of public defenders and their leadership. See *Public Defense Attorneys' Perceptions of Race and Bias*, CTR. FOR JUST. INNOVATION 12 (last visited Jan. 23, 2026), https://www.innovatingjustice.org/wp-content/uploads/2024/07/Public-Defense-Attorneys-Perception-of-Race-and-Bias_07232024.pdf (“Nearly 3 out of 4 public defense attorneys (72%) reported that management positions were held mainly by white attorneys in their office”); *id.* at 11 (“[most] public defense attorneys . . . are not racially/ethnically representative of the populations they serve.”). An example of a gap between progressive leaders' and low-income people's preferences for resource allocation emerged in debates concerning public benefits for Central American migrants in New York City in 2023 and 2024. Low-income and working-class Black and Hispanic U.S.-born New Yorkers vocally opposed certain benefits programs for migrants expressing outrage that these programs expanded at the same time that the City reduced support for other disadvantaged New Yorkers. See, e.g., Ariama C. Long, *Harlem Building Will Not Be Used to House Migrants After Pushback*, N.Y. AMSTERDAM NEWS (Feb. 22, 2024), <https://amsterdamnews.com/news/2024/02/>

III. PROPOSALS

In Part II, I identified three risks of providing social services through public defenders. However, identifying that the practice has risks should not be confused with a call to abandon it. Doing so would be imprudent in light of the empirical evidence that supports holistic defense as a means to improve criminal case outcomes, anecdotal support (including my own observations), and a lack of empirical evidence measuring the degree to which these risks have been realized.

Caution against overcommitment to a still-unproven model, however, is appropriate. This is especially the case when it comes to delivering social services through public defenders as a means to facilitate long-term positive change in the lives of their clients. In that context, empirical support is at its weakest—virtually nonexistent¹⁸³—while the risks—of ineffectiveness and even negative consequences—are at their greatest.¹⁸⁴ Holistic defenders, policymakers, and funders should adjust their expectations and objectives accordingly. They should consider explicitly cabining the goal of traditionally structured public defenders’ social services units to improving clients’ criminal case outcomes and no further. This clarity and expectation setting, while perhaps unintuitive and even disappointing, may better serve their interests in the long run.¹⁸⁵

In subsection A of this Part, I lay out a number of other steps that holistic defenders can take to measure, monitor for, and combat the materialization of the risks associated with providing social services. None is a panacea. In fact, defending against one risk may increase exposure to another: Increasing the effectiveness of public defenders’ social services delivery exacerbates fairness concerns; opening up access promotes fairness

22/harlem-building-will-not-be-used-to-house-migrants-after-pushback/ (describing fierce community opposition to the prospect of converting an abandoned luxury condominium building into a migrant shelter in Harlem); *Transcript: Mayor Adams Appears on POWER 105.1 FM’s “The Breakfast Club”*, OFFICE OF THE MAYOR OF NEW YORK CITY (Mar. 29, 2024), <https://www.nyc.gov/office-of-the-mayor/news/240-24/transcript-mayor-adams-appears-power-105-1-fm-s-the-breakfast-club-> (last visited Oct. 28, 2025) (quoting prominent local radio personality RaaShaun “DJ Envy” Casey: “People are saying, people are feeling like, you know, they never have money for us, but as soon as migrants come into the country, they find money.”).

¹⁸³ See *supra* section I.D.

¹⁸⁴ The most compelling case for expanding arrests and prosecution as a means to get people services (*front-end* net widening) is made when those services promise to effectuate long-term positive change, not just to mitigate the effects of the criminal system’s punishment. The headwinds to providing effective long-term treatment through a public defender are especially concerning when long-term results are the goal. Fairness concerns become more pronounced as the breadth and depth of the benefits provided by a relationship with the holistic defender grow.

¹⁸⁵ See discussion of the philosophies and purposes animating holistic defense *supra* section I.C.

but might facilitate net-widening. Public defenders, policymakers, and community advocates should consider these potential solutions in light of their assessment of the needs and risks applicable to their particular circumstances.

In subsection B, I recognize that to comprehensively address the risks and pathologies identified in Part II would require fundamental changes to the ways we address the needs of people in our society, including overhauling the model of indigent public defense and social services delivery. I sketch out a vision of what this may look like, modeled on a historical case study, while acknowledging that such wholesale reform is a lodestar, not an immediate action plan.

A. Near-Term Proposals

1. Vigilantly Defend Against Net-Widening

A major challenge to combatting the net-widening described above is detecting that it is happening. It is extremely difficult for external researchers—myself included—to identify shifts in programming requirements. Criminal justice administrative data typically do not track the precise programming requirements associated with pre-trial release or non-custodial sentences or indicate that there were programming requirements at all.¹⁸⁶

Practitioners, with the help of research partners, are best positioned to gather these data—essentially, to systematize and document the well-established practice of monitoring the “going rate” for types of cases in their jurisdiction.¹⁸⁷ Attorneys are well attuned to, anecdotally, when the going rate shifts: if, for example, in response to a rash of retail thefts, prosecutors begin offering plea deals requiring three days community service in addition to the anti-theft class they had previously required. The challenge is turning these anecdotal observations into citable data.

Given the net-widening concerns created by holistic defenders’ reducing the barriers to their clients enrolling in treatment, programming,

¹⁸⁶ The author has reviewed data kept by New York’s courts and determined that it does not record the programming conditions associated with non-custodial sentences. Same for data kept by Pennsylvania’s courts. (Supporting documentation is available upon request to the author.). *See also* Primus, *supra* note 185, at 264 (discussing deficiencies in administrative data collection).

¹⁸⁷ In contemporary practice, these going rates include not only probation and lengths of time in jail, but programming requirements. For instance, the going rate for a non-domestic misdemeanor assault charge might include an anger management program; for a retail theft, a theft awareness class. *See* Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STANFORD L. REV. 656 (2014) (describing the going rates for misdemeanor cases in New York City).

and services, they should keep and analyze data on the conditions their clients are required to complete.¹⁸⁸ Public defenders, with guidance and support from research partners, should use this data to track whether, over time, they observe indications of net-widening.¹⁸⁹ An indication of *conditions* net-widening could include a rise in the number of clients with programming requirements in their sentences without a concomitant decline in other sentencing burdens (for example, a reduction in fines or days in custody). Another indication of *conditions* net-widening might include, among clients released pre-trial with programming requirements, the requirements becoming more burdensome, measured in the length, intensity, or number of programs they are required to complete. Indications of *carceral* net-widening include a rise in the number of clients remanded to custody (either pre-trial or as a sentence) as a consequence of failing to abide by their programming conditions.¹⁹⁰

Tracking these data would allow public defenders to offer principled objections to judicial and prosecutorial attempts to free-ride on their organization's expanded access to services. They may partner with researchers to analyze these data and provide independent support for their findings. Finally, public defenders should monitor patterns in their case mix to detect *front-end* net-widening—changes in policing and prosecution designed to sweep more people into the criminal legal system as a means to connect them with social services.¹⁹¹ At the same time, it is incumbent upon researchers to continue to develop studies measuring the effects of holistic defense, to solicit partnerships with public defenders in order to facilitate that research, and to search for data that already exists but has so far escaped examination.¹⁹²

¹⁸⁸ The most digitally sophisticated offices are likely doing so already. Others may be writing down the conditions of clients' sentences in paper files but not noting them in online case management systems.

¹⁸⁹ This support may include technical guidance and, likely, financial and/or personnel support given public defenders' budgetary constraints. *See* sources cited *supra* note 159.

¹⁹⁰ A more nuanced analysis must account for a potentially offsetting rise in the number who received favorable outcomes after successfully complying with the expanded conditions. I propose that public defenders are best positioned to collect data and monitor for shifts while research partners can assist with more detailed methodological concerns of this sort.

¹⁹¹ *See supra* notes 132–133 and accompanying text.

¹⁹² Cf. Hena Rafiq et al., *Communicating and Sharing Data with Judges During the Pretrial Process*, HARV. KENNEDY SCHOOL GOV'T PERFORMANCE LAB (Sep. 30, 2025), <https://govlab.hks.harvard.edu/insight/communicating-and-sharing-data-with-judges-during-the-pretrial-process/> (finding that pretrial services agencies maintain, but insufficiently share and promote access to, valuable data).

2. Mitigate Transition-Related Lapses

Holistic defenders that (notwithstanding the additional risks of doing so¹⁹³) endeavor to effect long-term changes through their social services unit must take deliberate steps to facilitate long-term engagement with their clients, commensurate with the long-term nature of those clients' needs.¹⁹⁴ Adopting a "once a client, always a client" policy that permits the social services team to continue supporting a client after her case ends is not sufficient on its own. Serving these expanded needs will require additional, and likely discrete, funding. The organization must provide its social services unit with sufficient resources to be able to serve both former and current clients. The bandwidth required to service former criminal defense clients may be even greater, in some cases, than current clients, because of the increased friction required to meet and schedule appointments. To help manage this problem, some holistic defenders have created dedicated re-entry teams within their social services units tasked with supporting clients after their case concludes.¹⁹⁵

Holistic defenders without specialized re-entry teams should ensure that their clients' engagement with their social services units includes explicit transition planning. This begins with steps to position the client's social work point of contact on equal footing with her criminal defense attorney. For example, the internal referral model that holistic defenders typically follow is one in which the client's relationship with the organization begins with a one-on-one meeting with her criminal defense attorney focusing on the criminal case, and only later, following an internal referral, meets the social work team and discusses social services needs. However, this model reinforces the criminal case and criminal defense attorney's centrality in the client's relationship with the organization.¹⁹⁶ Organizations should consider ways to foreground the social services unit, including having social workers accompany attorneys to initial client

¹⁹³ See *supra* note 184.

¹⁹⁴ See *supra* section II.B.1.

¹⁹⁵ See, e.g., *What We Do*, NEW YORK COUNTY DEFENDER SERVICES, <https://nycds.org/about/what-we-do/> (last visited Nov. 7, 2025) ("NYCDS's holistic defense does not end at the termination of the case. . . . The Reentry Unit employs specialized social workers who craft and implement personalized discharge plans addressing reentry needs..."); *Probation, Parole, and Alternative Sentencing*, PHILLY DEFENDERS, <https://phillydefenders.org/ppas> (last visited Nov. 7, 2025) ("The Alternative Sentencing unit represents clients vertically through our pre-trial diversionary programs to post trial, early parole [and] to unique re-entry programs. We continue to work with our clients once paroled to alleviate any social service or legal challenges throughout the duration of their sentence.").

¹⁹⁶ See *supra* notes 32–33 and accompanying text. This workflow sets up a potentially destabilizing break when the criminal case ends and the criminal defense attorney is no longer the client's primary point of contact. See *supra* section II.B.1.

interviews, or at least be on site in order to facilitate immediate introductions rather than later follow ups.

Organizations should also borrow from the well-developed literature on “warm handoffs” to incorporate strategies that facilitate the transition from one provider to another.¹⁹⁷ These strategies include identifying and introducing clients to their new provider and, where resources permit, even accompanying them to their first appointment (rather than merely offering a phone number and instructing the client to make the transition herself).¹⁹⁸

For holistic defenders that plan to continue to support clients internally, the transition plan should include strategies to overcome the logistical hurdles associated with the end of the criminal case, including establishing places and times to meet and a plan to reactivate communication following lapses.

3. Offer Limited Open Access

Each of the risks discussed above arises at least in part from public defenders’ conditioning access to their social services unit on the recipient’s becoming a criminal defense client. Offering some, if limited, public access to the holistic defender’s social services is a substantial step

¹⁹⁷ Daniel B. Herman et al., *Randomized Trial of Critical Time Intervention to Prevent Homelessness After Hospital Discharge*, 62 PSYCHIATRIC SERVICES 713, 716–17 (2011) (finding in a randomized controlled trial that homeless adults departing inpatient psychiatric treatment who were given the opportunity to develop a relationship with their post discharge services coordinator while in the hospital fared significantly better than others who were not); R. Morgan Taylor & Cynthia S. Minkovitz, *Warm Handoffs for Improving Client Receipt of Services: A Systematic Review*, 25 MATERNAL & CHILD HEALTH J. 528, 535 (2021) (meta-study of care transitions involving high-needs and drug-using individuals finds a majority of studies in which warm-handoffs had statistically significant positive effects on persistence in care); Steffanie A. Strathdee et al., *Facilitating Entry into Drug Treatment among Injection Drug Users Referred from a Needle Exchange Program: Results from a Community-Based Behavioral Intervention Trial*, 83 DRUG & ALCOHOL DEPENDENCE 225, 228 (2006) (needle exchange participants transitioned to substance abuse treatment at significantly higher rates when a case manager stayed in contact with them to facilitate the transition); Nicholas Young et al., *Warm Handoff, or Cold Shoulder? An Analysis of Handoffs for Primary Care Behavioral Health Consultation on Patient Engagement and Systems Utilization*, 8 Clinical Practice in Pediatric Psychology 241 (2020) (behavioral health appointment attendance improved with warm handoff from pediatric primary care provider). *But see* Christine A. Pace et al., *Warm Handoffs and Attendance at Initial Integrated Behavioral Health Appointments*, 16 ANNALS OF FAMILY MEDICINE 346 (2018) (finding warm handoffs associated with lower attendance)

¹⁹⁸ Or, alternatively, having the new provider visit the client in the previous care setting. Mark Olfson, et al., *Linking Inpatients with Schizophrenia to Outpatient Care*, 49 PSYCHIATRIC SERVICES 911 (1998); Herman et al., *supra* note 197, at 716; Wong et al., *supra* note 153, at 4.

in the right direction.¹⁹⁹ The Bronx Defenders offers a relatively low barrier-to-entry version of this policy: two days a week, the office provides “Open-Door Community Intake and Public Benefits Assistance,” which includes “receiving an in-person meeting with one of our non-attorney advocates, an assessment of your issues and needs, and a meaningful referral for services.”²⁰⁰

Even this limited public access approach, assuming it is undertaken in such a way that provides a meaningful number of non-criminal defense clients access to the public defender’s social services, relieves many concerns.²⁰¹ Specifically, it largely relieves fairness concerns, eases transition frictions by reducing the degree to which social services are oriented exclusively toward serving criminal defense clients, and undercuts the net-widening reasoning that people should be arrested and prosecuted as a means to provide them priority access to benefits.²⁰² The more broad and robust the public access, the more it does to alleviate these concerns.

B. Comprehensive Reform

The suggestions offered above are pragmatic and actionable in the near term. However, it is important to not lose sight of the true problem at hand. Holistic defenders provide social services to their clients—help accessing food, healthcare, housing, treatment, and government services to which they are entitled—because their clients need these services and struggle to access them on their own.²⁰³ If food insecurity, housing insecurity, lack of access to healthcare, and substance use disorder were not widespread, and if our social safety net were broader, more reliable, and more accessible, there would be no need for public defenders to play this

¹⁹⁹ Of course, for public defenders, resource availability is always a challenge, and even a marginal increase in service availability threatens to constrain services elsewhere. Organizations interested in this approach could pursue separate revenue streams to support this endeavor. *See* Lee, *supra* note 63, at 406–48 (proposing that holistic defenders fund their social services units from different sources than grants that fund their defense attorneys and citing examples of offices that have done so successfully); Ellman & Kheibari, *supra* note 19, at 59 (“Creative institutional structuring, such as [Northeast Michigan Regional Defender]’s 501(c)(3) status, demonstrates the potential to add additional monetary streams to supplement state and local funding.”). However, doing so implicates fairness concerns. *Supra* section II.C.

²⁰⁰ *Clients & Community - Need Legal Help?*, BRONX DEFENDERS, <https://www.bronxdefenders.org/clients-community/help/> (last visited Nov. 7, 2025). *See also*, Steinberg, *supra* note 18, at 999.

²⁰¹ This is especially the case if it is combined with a robust “once a client always a client” policy, sources cited *supra* note 139, and/or careful transition planning to mitigate the risk of transition lapses, *supra*, section III.A.2.

²⁰² *See supra* notes 132–133 and accompanying text.

²⁰³ Natapoff, *supra* note 38, at 445–46.

role.²⁰⁴ Holistic defenders also commonly serve clients with such dire social services needs in part because our legal system criminalizes poverty and illness.²⁰⁵ Even viewing the objective of this criminalization as rehabilitative and not strictly punitive, it is at the very least inefficient to connect people to help by first arresting, caging, stigmatizing, and imposing further burdens upon them.

Accordingly, the truest way to avoid the problems created by public defenders' attempts to meet the extra-legal needs of their clients is to reduce the degree to which their clients have these needs. Rethinking the distribution of wealth or the social safety net in our society is, while a worthy exercise, obviously beyond the scope of this article.

A narrower, though still exceptionally ambitious, proposal reconceptualizes the institutions that provide indigent defense and social services. Public defenders' continued expansion of their social services units arises from the grim reality that the unmet social services needs of the clients they serve and the communities in which they operate are immense. Though it is true that the criminal system disproportionately involves people experiencing poverty and illness, the number of people struggling with homelessness, substance abuse, mental health disorders, the Kafkaesque bureaucracy of public benefits, or the overwhelming logistical burdens of poverty still greatly outnumbers criminal defendants.²⁰⁶

If a public defender were to make its social services unit fully and equally open to everyone in its community, we might imagine that the social services unit would need to quickly outgrow the criminal defense practice. The organization would transform from a law firm with a small social services unit to an immense social services organization with a boutique law firm within it. Alternatively, the same institutional structure could be achieved by general or specialized social services providers—such as substance abuse clinics, mental health providers, tenants' associations, LGBTQ youth centers, churches, community centers—offering criminal legal defense for their clients who need it.

The inverted organizational structure transforms the institution of the public defender itself to reflect the type of transformative change that many advocates wish to see in the criminal legal system as a whole: one in which the resources devoted to preventing and redressing the harms of crime should be allocated first to addressing the needs of poor, vulnerable,

²⁰⁴ Cf. Collins, *supra* note 69, at 1511 (“It cannot be a mere coincidence that problem-solving courts began to gain widespread popularity in the 1990s at the same moment that the welfare state was essentially dismantled . . .”).

²⁰⁵ Natapoff, *supra* note 38, at 449 (“We have made [public defenders] advocates for the socially dispossessed at the bottom of the criminal justice pyramid where a client’s problems can range from personal poverty and drug addiction to structural exclusion from housing and labor markets.”) *Id.* at 446.

²⁰⁶ See sources cited *supra* notes 138, 176.

and marginalized people and, a distant second, to the retributive criminal system.²⁰⁷ This restructuring is at the very least a powerful symbol: The organization would structure itself consistent with the vision of criminal justice that it wishes to see, rather than comporting to the dominant model it wishes to deconstruct.²⁰⁸ It may also have instrumental effects. Holistic defenders' current organizational structure—in which the social services team is responsive to, and ultimately subsidiary to, the legal team—undergirds many of the pathologies discussed above. Judges and prosecutors tend to pervert the treatment and services process, demanding that defendants enroll in different (and usually more) programming than clinically recommended.²⁰⁹ They are facilitated by lawyers whose training, ethical code, and professional ethos are oriented toward achieving the best legal outcome for their clients. By contrast, we might expect that a social services-led institution, concerned with the holistic needs of the client and community, would be less susceptible to the corrupting influence of the criminal legal system.²¹⁰

This institutional structure would not be a modern invention, but in fact, a return to a tradition with deep roots in historical practice. In *Women and Justice for the Poor: A History of Legal Aid 1863–1945*, Professor Felice Batlan shows that social services organizations dedicated to supporting marginalized groups—among them women, children, immigrants, and Jews—were the first to offer free legal assistance, including, on occasion, criminal legal assistance.²¹¹ They did so as part of a broad mission to support their clients and did not draw bright lines among their agencies' functions,

²⁰⁷ It could be seen as at the very least a symbolic, and perhaps a material, step to bridging the chasm between the contemporary reality of the criminal legal system and the abolitionist ideal to which many public defenders subscribe, in which enhanced support for society's most vulnerable abrogates the need for the carceral system. See Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1225 (2015); Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 UCLA L. REV. 1544, 1557 (2022).

²⁰⁸ The concept of deliberate institutional reconstruction in the image of a desired systemic structure borrows from the literature on *participatory* reconstruction of the criminal legal system's institutions. See Jocelyn Simonson, *The Place of 'the People' in Criminal Procedure*, 119 COLUM. L. REV. 249, 286–94; K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679 (2020); Moore et al., *supra* note 178.

²⁰⁹ *Supra* section II.B.2.

²¹⁰ This reconstruction is not, itself, riskless or costless. Funding concerns are inherent to any endeavor of this nature. Additionally, a proposal to reduce the public defender's size and institutional profile invites criticisms that doing so will negatively impact quality of representation. See Primus, *supra* note 185, at 243–252 (discussing benefits of consolidation in public defense).

²¹¹ FELICE BATLAN, *WOMEN AND JUSTICE FOR THE POOR: A HISTORY OF LEGAL AID 1863–1945* (2015).

services, and objectives.²¹² The Protective Agency for Women and Children in Chicago, for example:

did not distinguish its legal work from its other work, such as providing financial aid, locating lodgings, finding employment, and seeking medical services for its clients. It would have made little sense to the women of the agency to treat legal assistance as separate from a concern with substantive justice or material well-being.²¹³

Batlan attributes both the breadth of the needs the organizations served, and their mixed-methods approach, to the fact that they were led and staffed primarily by social workers. They approached issues that today would be regarded as purely legal—wage theft, divorce, child support, and mortgage disputes²¹⁴—as social issues first and foremost.²¹⁵ This had not just symbolic, but instrumental, effects: inviting social, interpersonal, and political, rather than just legal, resolutions to their clients’ problems.²¹⁶

The social work-led model of legal assistance deteriorated in the 1930s and 1940s, following an ideological debate in which:

one side believed that a legal aid society was a law office for poor people and should function like any other law office. The other side believed that legal aid was part of social services and had a duty to the community and the client that extended beyond providing legal services.²¹⁷

The victorious side deployed misogynistic tropes about social work-led organizations, portraying them as “meddling women.”²¹⁸ They sought to sever the provision of legal assistance from “the world of women, lay

²¹² Batlan describes many such organizations, among them: The Bureau of Personal Service, an organization that provided a wide range of social services, including legal aid, to Chicago’s Jewish community, *id.* at 151, The Seaman’s Branch of the Legal Aid Society in New York which provided an array of legal and nonlegal services to mostly immigrant sailors in New York and was partially driven by a Christian understanding of brotherhood, *id.* at 101, and the Chicago Legal Aid Society, which, in 1919, merged with United Charities, because it saw “legal aid to be part of a continuum of services that United Charities provided, and that social workers had a significant role to play in providing legal aid, *id.* at 153.

²¹³ *Id.* at 66.

²¹⁴ *Id.* at 62, 63, 70, 104.

²¹⁵ *Id.* at 51 (“The breadth of the agency’s work is striking. Equally significant is that its leaders did not make lawyerlike distinctions between civil and criminal cases, lobbying for new legislation, enforcing laws, or providing personal, legal, or other advice. All of these efforts were part of its mission to “protect” women.” See also, *id.* at 62, 105, 142.

²¹⁶ *Id.* at 27; 63; 69; 70; 78.

²¹⁷ *Id.* at 158.

²¹⁸ *Id.* at 215.

lawyers, and social workers” and move it into “the masculine realm of lawyers and law.”²¹⁹

All contemporary public defense offices follow the “law office” model. But Batlan’s research suggests that this is not the only viable model. Indeed, the misogynist roots of the model’s dominance invite skepticism of its ubiquity.

The inverted holistic defense structure I describe above—one in which criminal legal defense forms a small part of an umbrella organization more broadly dedicated to advancing the interests and meeting the needs of a community—closely resembles organizations that thrived in the late 19th and early to mid-20th centuries.²²⁰ Though dormant, it remains a viable template for innovative community leaders and defense providers to follow.

CONCLUSION

Resolving social problems through the institutions of the criminal legal system is a perilous endeavor. Public defenders, though perhaps the least pernicious of the criminal system’s institutions, are still one of them. However well meaning, their initiatives to provide social services to their clients, especially as a means not just to reduce their exposure to criminal punishment but to improve their lives and communities writ large, deserve careful scrutiny.

So far, that scrutiny has been lacking. Though social services’ integration into public defense proliferated rapidly in the past two decades, scholarship examining the phenomenon has not kept up. This article contributes to a limited literature examining the contemporary landscape of holistic defense, and an even more scant literature considering its potential flaws, risks, and drawbacks.

There are, indeed, reasons for concern. The modern history of the U.S. criminal legal system’s explosive growth is paved with policies intended to limit that growth and its destructive consequences. Many of these well-meaning, often intuitive policies and practices inadvertently produced net-widening rather than shrinking. Holistic defense shares many

²¹⁹ *Id.* at 143. *See also*, MAYEUX, *supra* note 19, at 50–51.

²²⁰ In addition to the organizations discussed in Batlan’s book, *see, e.g.*, Nora Freeman Engstrom & James Stone, *Auto Clubs and the Lost Origins of the Access-to-Justice Crisis*, 134 YALE L.J. 123, 145–49 (2024) (describing auto clubs like AAA providing criminal defense to members prosecuted for driving-related crimes); *Mobilizing for Justice Since 1963*, MFY LEGAL SERV’S, INC. 2–3 (2013), <https://mobilizationforjustice.org/wp-content/uploads/MFY-History-50th-Anniversary1.pdf> (describing the history of Mobilization for Youth, an anti-poverty organization serving New York City’s Lower East Side and originally offering criminal defense among its portfolio of social and legal services.). Police unions provide a contemporary example: the national Fraternal Order of Police has created a legal defense plan as a union benefit for members accused of crimes. *Legal Defense Plan*, FRATERNAL ORDER OF POLICE, <https://fop.net/legal-defense-plan/>.

features with these problematic initiatives. At the same time, there are substantial headwinds to bringing meaningful, long-term changes to struggling people through services delivered by a holistic defender. The contemporary U.S. criminal legal system is not designed to promote healing, rehabilitation, or restoration. Delivering effective treatment in the shadow of a criminal case therefore presents an irreconcilable conflict. At the same time, the end of the criminal case creates a different obstacle: forcefully, and often irreparably, shocking the client's relationship with the institution. Finally, no matter how well intentioned, public defenders' leadership should take care not to fall into the trap of foisting their resource allocation preferences onto the communities they purport to serve but do not reflect demographically. These communities have, for far too long, lacked sufficient input into policies that affect them most.

For sure, some risks are worth taking. For the public defenders that accept the risks associated with providing social services alongside criminal legal defense, this article provides a roadmap of the pitfalls to avoid and several affirmative, risk-mitigating practices to adopt. The article also underscores the need for further empirical evaluations, especially of the longer-term impacts of the holistic defense model. Much of the evidence relied upon here is indirect, inferring the possible consequences of holistic defense based on observations made in other domains. The only way to truly assess the costs, risks, and benefits of holistic defense is to study it directly and in its many permutations. The practice is now widespread and entrenched enough to warrant that robust attention.

Ultimately, identifying the risks of holistic defense is a reminder that the safest—and perhaps the only—way to limit the criminal system's influences is to operate outside of it. The brilliance of holistic defense is that it leverages the criminalization of poverty and illness to identify and support people with acute unmet social needs. But that mechanism is not uniquely available to public defenders. We can recognize that people enmeshed in the criminal legal system disproportionately lack stable housing, health care, treatment, and other supports—and we can meet those needs through institutions that are not so tightly bound to criminal prosecution and punishment. For public defenders, community leaders, and policymakers who believe that addressing social needs merits far greater resources and attention than delivering criminal punishment does, they should build institutions that embody that commitment not only in their mission statements, but also in their institutional structure.