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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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July 27, 2010

The Honorable Gene L. Dodaro  
Acting Comptroller General  
U.S. Government Accountability Office  
441 G Street, NW, Room 700  
Washington, DC 20548

Dear Mr. Dodaro:

The Sixth Amendment to the Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right to . . . the assistance of counsel for his defense." Although the right to effective counsel is well established, all available evidence suggests that state and local governments have fallen well short of their obligation to provide legal representation to indigent defendants, and that the federal government has failed to adequately fulfill its responsibilities to protect the Sixth Amendment rights of indigent defendants. In the current economic climate, chronically underfunded indigent defense systems across the nation have been strained to the point of crisis.

One of the primary challenges to Congress as it considers its role in addressing this emergency is a lack of objective data. Accordingly, we request that the Government Accountability Office examine the current state of indigent defense within the states, and identify direct federal funding or other support the federal government provides to states to assist them in meeting their constitutional obligations to provide counsel. Specifically, we request that for fiscal years (FY) 2005, 2006, 2007, 2008 and 2009 the GAO collect and report information regarding the following:

1. Expenditure of funds by state, local and tribal jurisdictions under the Edward Byrne Justice Assistance Grant (Byrne JAG) formula grant program that were used for each of the following purposes:
  - a. Indigent defense, including, but not limited to expenditures for hiring, training, and equipment for public defender offices, juvenile defender services, retaining private attorneys to represent indigent defendants, retaining experts, investigators and other non-attorney personnel to aid in the representation of indigent defendants or the administration of public defender offices;

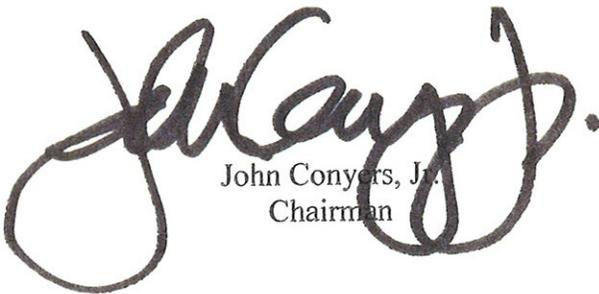
- b. Prosecution of criminal defendants, including, but not limited to expenditures for hiring, training, and equipment for prosecutor offices, retaining experts, investigators and other non-attorney personnel to aid in the prosecution of criminal defendants or the administration of prosecutor offices;
  - c. Law enforcement, including, but not limited to expenditures for hiring, training, administration, and equipment for police departments and sheriffs' offices, forensic science and crime labs, border control, and other law enforcement activities;
  - d. Corrections, including, but not limited to prison construction, administration, community correction programs, alternatives to incarceration, drug and substance abuse prevention and treatment, and reentry;
  - e. Court improvements and specialty courts; and
  - f. Victims' services and witness protection and support.
2. Federal funds available under the Byrne JAG competitive grant program for state, local, and tribal indigent defense programs. This should include the amount of such funds awarded to state, local and tribal indigent defense programs and the amount of such funds available exclusively for state, local, and tribal indigent defense programs.
3. Other than funds distributed through the Byrne JAG formula and competitive grant programs, the amount of any other federal funding available for general criminal justice system support to state, local, and tribal jurisdictions. This should include the amount of such funds awarded to state, local and tribal indigent defense programs and the amount of such funds available exclusively for state, local, and tribal indigent defense programs.
4. For items 1 through 3 above, the extent to which availability and expenditure of federal funding has or will change for FY 2010 and 2011.
5. Identify the metrics, if any, by which the DOJ evaluates the effectiveness of state, local, and tribal jurisdictions' indigent defense systems. Based on these metrics, identify the most effective indigent defense systems and describe the design and implementation of such programs, including, but not limited to, the extent of independence from other government agencies, the extent of funding from federal, state, and local sources, and whether such systems operate public defender offices, private legal services offices, or use funding to retain private counsel for indigent defendants.
6. The extent to which the Department of Justice (DOJ) has engaged in analysis or study of the effectiveness of state, local, or tribal indigent defense programs or best practices in the provision of indigent defense using the metrics described above. The extent to which grant applicants for any federal criminal justice funding must demonstrate a program's effectiveness based on these metrics and any other the reporting requirements grant applicants must fulfill.

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7. Based on the data collected through the inquiries above and any other available, relevant data, identify any disparity between funding provided for indigent defense programs and funding provided for law enforcement, prosecution, and other criminal justice activities, and whether any such disparity has grown between FY 2005 and 2009. Describe the impact of any such disparity on the availability and quality of representation for indigent criminal defendants. Given the high percentage of state, local, and tribal criminal defendants who are indigent, identify the effect, if any, additional federal funding for law enforcement and prosecutors in state, local, and tribal jurisdiction, has on increasing the number of indigent defendants within a jurisdiction's criminal justice system.
8. Identify efforts DOJ has undertaken, if any, to make state, local, and tribal providers of indigent defense aware of federal grant and other support opportunities.
9. Identify efforts DOJ has undertaken, if any, to encourage states to involve state, local, and tribal providers of indigent defense in decisions regarding the crafting of proposals and the allocation of grants for support of state and local criminal justice system activities, including, but not limited to, indigent defense providers' participation as members of state administering agencies. Identify the extent to which state, local, and tribal jurisdictions engage indigent defense providers in these decision-making processes or exclude them.

Thank you for your attention to this matter. If you have any questions regarding this request, please contact Bobby Vassar or Aaron Hiller at 202-225-3951.

Sincerely,



John Conyers, Jr.  
Chairman



Robert C. "Bobby" Scott  
Chairman  
Subcommittee on Crime,  
Terrorism, and Homeland  
Security



Jerrold Nadler  
Chairman  
Subcommittee on the  
Constitution, Civil Rights,  
and Civil Liberties

cc: The Honorable Lamar Smith