

February 19, 2024

Louisiana State Senate
Judiciary Committee B
State Capitol
P.O. Box 94183
Baton Rouge, LA 70804-4183
Via Email to Senator Mike Reese, Chair, sen30@legis.la.gov

CC: Senate Judiciary B Committee:

- Vice Chair, Sen. Jimmy Harris, harrisj@legis.la.gov
- Sen. Joseph Bouie, bouiej@legis.la.gov
- Sen. Jean-Paul Coussan, sen23@legis.la.gov
- Sen. Royce Duplessis, Sen05@legis.la.gov
- Sen. Patrick McMath, sen11@legis.la.gov
- Sen. Kirk Talbot, talbotk@legis.la.gov

Re: Senate Bill 8

Dear Chairman Reese,

On behalf of the undersigned organizations, we write to voice our opposition to Senate Bill 8, a bill that would replace the multi-stakeholder Louisiana Public Defender Board with a state public defender selected by the Governor. If enacted, this legislation would significantly undermine the independence of the defense function in Louisiana, further eroding the community's trust in our legal institutions and negatively impacting public safety, while wholly failing to address the core need of the state's public defense system -- a stable and robust stream of funding to insure the provision of constitutionally effective representation.

Independence of the defense function is the cornerstone of a healthy, functional, and constitutional criminal legal system. Without an autonomous and robust defense, government power and abuses will remain unchecked, paving the way for wrongful convictions and other system failures. Indeed, as the American Bar Association's "Ten Principles of a Public Defense Delivery System" (ABA 10 Principles) makes clear:

Public Defense Providers and their lawyers should be **independent of political influence** and subject to judicial authority and review only in the same manner and to the same extent as retained counsel and the prosecuting agency and lawyers.¹

Senate Bill 8 will erode the independence of Louisiana's public defense system by removing any meaningful role of the existing, multi-branch Public Defense Board and

¹ [ABA Ten Principles of a Public Defense Delivery System](#), Principle 1: Independence. (Emphasis added) (Nov. 9, 2023).

concentrating power over public defense into a single branch of government. Such a shift undermines democratic principles, transparency, and our system of checks and balances.

Our nation's criminal legal system is founded upon the assumption that an adversarial system will best insure just outcomes.

"The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free."²

An independent defense system tempers the power and resources of the state and shields individual citizens from government overreach. As the American Legislative Exchange Council (ALEC) has highlighted, "effective and independent defenders can shine a light on government overreach and abuses of power, . . . protect the innocent from wrongful convictions, facilitate treatment, services and other outcomes that reduce recidivism, and help ensure fair trials."³

"[T]o ensure the defense may fulfill its role in the adversarial system, the defense should be insulated from undue influence, involvement, and control by actors whose interests are directly or indirectly adverse to the attorney-client relationship."⁴

To facilitate independence, the ABA calls for the use of a "nonpartisan board or commission" to oversee public defense, thereby helping to ensure the defense can act without fear of recrimination by the political institutions working to prosecute their clients.⁵

Currently Louisiana meets this core standard. Its Public Defender Board was created to redress decades of partisan, structural failings laid bare in the wake of Hurricane Katrina. The Board's representation from all 3 branches of government selects and appoints the State Public Defender and plays a critical role in setting policies and standards of practice, pursuing legislative changes to support and protect the defense function, advocating for system funding, and making funding allocation decisions relating to individual offices as well as case expenses, such as those associated with the use of experts in individual cases.

The Board is also subject to state rules regulating public meetings, helping to increase transparency and accountability to the community it serves, and has an express commitment to try to reflect the diversity of the communities it is serving. It also has a track record of success. While there is still much work to be done, including providing parity of pay and resources between defenders and prosecutors, under the Public

² *U.S. v. Chronic*, 466 U.S. 648, 655 (1984) quoting *Herrin v. NY*, 422 U.S. 853, 862 (1975).

³ ALEC [Resolution in Support of Public Defense](#), Approved Sept. 3, 2019.

⁴ *Id.*

⁵ ABA Ten Principles, Principle 1

Defender Board's stewardship, there has been steady growth of the defender budget, and an increase in the diversity of the defender community.

Senate Bill 8 would end these practices by giving the governor the power to select the state's public defense leader. It makes every individual, from line defenders to contract attorneys to the State Public Defender themselves, subject to the winds of political change. Moreover, the elimination of the Public Defender Board's role in anything but a purely advisory capacity also ends the requirement for public meetings and with it an important measure of transparency and oversight. As the state recognizes in its Open Meeting Law,

“It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.”⁶

However, Senate Bill 8 would render all but a very few aspects of public defense outside the public meeting structure, placing decision-making in the hands of a single individual who is answerable only to the governor. The Bill also eliminates express requirements for input from district and regional leaders, further isolating and insulating system decision-making.

Additionally, the Bill eliminates positions that bring critical expertise such as the role of the state's Juvenile Defender. With increasing attention and focus being placed on Louisiana's youth, it is essential that this vulnerable and unique group have a distinct voice in the state's public defense leadership structure. The issues for youth involved in the criminal legal system are unique and distinct from those facing adults. Any leadership structure for state public defense must include a prominent voice for youth needs in shaping legislative policies, determining agency funding and budget needs, and developing and enforcing standards of performance.

With nearly 90% of those charged with crimes in Louisiana relying on public defense representation, this legislation means that in a single fell swoop, the governor would consolidate the power of the criminal court process, placing himself squarely at the head of both the state's prosecution (Attorney General) and defense agencies. This blended responsibility would create inherent conflicts of interest and compromise the constitutional rights of those accused of crimes.

The role of attorney general is part of the state's executive branch leadership. Working in concert with the governor, the role includes participating in criminal investigations and prosecutions, advising district attorneys and law enforcement entities, and assisting the

⁶ Louisiana Open Meeting Law, Title 42, Chapter 1-A, sec. 11 et. seq

state in appellate cases. This often places the AG's office in direct opposition to the defense function.⁷

The Governor is an outspoken proponent of increasing penalties and limiting legal defenses; he has made clear his intent to “defend and uplift” the state’s law enforcement officers and “deliver true justice” for victims of crimes. These can be laudable goals that a community may want and need, but that same voice cannot also speak for the defense function, and their needs to ensure justice by acting as a shield between their clients and the state. Placing oversight of defense decisions to pursue certain defenses, engage experts, or challenge state enforcement practices under the same umbrella as those leveling the charges, challenging the defense experts, and engaging in the questioned practices would undoubtedly dilute the strength of the defense function and compromise its independence.

The consolidation of prosecution and defense oversight into the executive branch not only undermines public confidence, but it raises the risks of wrongful convictions. The harms of such mistaken convictions are manifold, from robbing the defendant of years if not decades of their lives to placing communities in harm’s way of ongoing victimization. According to data from the Innocence Project, in nearly 40% of DNA exonerations a true perpetrator was identified. Those individuals went on to commit additional crimes, including homicides and sexual assaults, while the innocent person remained incarcerated. Public defense helps protect the community from such grievous and catastrophic errors. To do so, they must be free to operate without concern of reprisal, political retaliation, or divided loyalties.

The defense must operate fully able to challenge, question, and confront the actions of the state. However, when its leadership is a single individual, who is selected by and beholden to the governor, its role as a meaningful check on the state is compromised. Defense leaders must be free to challenge practices that increase penalties, limit legal defenses, or roll back reforms. They must be able to contest the actions of law enforcement officers, the positions of prosecutors, and the policies of executive branch leadership. When the defender’s leadership is directly controlled by the state’s chief law enforcement officer, conflicts of interest are manifest and undermine the administration of justice.

Across the country, Americans are losing faith in their government institutions. Mistrust of the criminal legal system leads to a reluctance on the part of witnesses and communities to cooperate with law enforcement agencies, report crimes, and to appear in court to testify. Practices such as those called for in Senate Bill 8 only further fuel that

⁷ Louisiana Attorney General’s Office, Criminal Division, <https://www.ag.state.la.us/Criminal>, last visited Feb. 14, 2024.

Chris Welty, “[Landry says AG’s office will prosecute more New Orleans criminal cases](#),” Fox 8 News, Nov. 29, 2023.

mistrust by demonstrating that their government is more concerned with exercising power than ensuring justice and fairness.

Senate Bill 8 will not bring Louisiana closer to justice, closer to fiscal responsibility, or closer to fairness. As other states march forward toward a more independent, and thus more effective defense, Louisianans risk being left behind.

Our democracy is founded on a system of checks and balances, designed to prevent any one branch from consolidating power. In government, it is the interdependence of the three branches-- executive, legislative, and judicial—that shields us from abuses. In the legal system, it is the operation of three independent components -- prosecution, defense, and judiciary – that prevents any one component from seizing control. Senate Bill 8 would put an end to that balance, relegating the legislative and judicial branches to little more than bystanders. To place public defense leadership solely in the hands of the governor will deprive people of constitutional rights to zealous representation by their public defender and further strangle a defense function that Louisiana has continuously and systematically starved for decades.

For these reasons we urge you to vote NO on Senate Bill 8.

Sincerely,

Alaina Bloodworth, Executive Director,
Black Public Defender's Association

April Frazier Camara, President and CEO,
National Legal Aid and Defender Association

Lori James-Townes, Executive Director,
National Association for Public Defense

Mary Ann Scali, Executive Director,
The Gault Center

Lisa Wayne, Executive Director,
National Association of Criminal Defense Lawyers

Zanele Ngubeni, Executive Director,
Gideon's Promise