



PLANK 3: **Ensure a right to effective counsel for all.**

The U.S. Constitution requires that people charged with a crime be represented by a lawyer, even if they cannot afford one. The current reality falls woefully short of this guarantee. [More than 80 percent of people](#) charged with felony offenses cannot afford a private lawyer and must rely on under-resourced systems of indigent defense, including overstretched public defenders with crushing caseloads, contract attorneys, or other forms of court-appointed counsel.

These indigent defense systems [exist in a state of crisis.](#) In some cases, people lack counsel entirely. In others, people are responsible for paying for counsel through fees they cannot afford. When counsel is provided, it is often in name only — lawyers who have too many cases, too little time, few resources for investigation and mitigation, and/or financial conflicts that make zealous advocacy impossible. These patchwork systems fail the most vulnerable in society and contravene the constitutional obligation to provide a lawyer to everyone accused of a crime. They lead to more jail time and less justice. It is important that prosecution does not take place without a system of public defenders' offices that have the resources and expertise to provide dedicated representation to anyone who is charged with a crime. Only then will the Constitution's guarantee of effective counsel be fully realized.

We must ensure prosecutions do not take place without a system of public defenders' offices that have the resources and expertise to provide dedicated representation to anyone who is charged with a crime.

MORE THAN 80 PERCENT

OF PEOPLE CHARGED

WITH FELONY OFFENSES

CANNOT AFFORD A PRIVATE

LAWYER AND MUST RELY

ON UNDER-RESOURCED

SYSTEMS OF

INDIGENT DEFENSE.

State Policy Priorities

Ensure access to high-quality counsel

- Ensure that no one is prosecuted without the presence of a robust, well-funded, independent, state-administered “right to counsel” system that includes:
 - An independent, statewide commission for standardization and oversight that sets standards and timing for the appointment process, attorney qualifications, workload maximums, and other items; and
 - Public defender offices in all communities that need them.
- Ensure that no one is prosecuted without provisions such that public defenders have manageable trial and appellate caseloads and resources to provide diligent, high-quality services for all clients at trial and on appeal; during probation and parole revocation hearings; and for youth in delinquency courts. These provisions also must ensure that public defenders have adequate resources for investigators, experts, mitigation, language access services, accessibility services, early representation (like the [Pretrial Release Unit](#) in San Francisco), and holistic defense practices that support public defenders with staff offering social and civil legal supports.
- Mandate adherence to maximum caseloads set by independent commissions.
- Ensure funding and salary parity between public defenders and prosecutors.
- Mandate early, automatic, and open file discovery, as discussed in [**Plank 5: Ensure accountability and transparency in prosecution.**](#)
- End the coercive effects of pretrial detention, including detention based on not paying money bail, by enacting the policy reforms that are described in [**Plank 2: Enact common sense pretrial justice.**](#)

Remove barriers to accessing counsel

- Prohibit charging low-income people fees for court-appointed or court-provided lawyers.
- Prohibit courts from practices and procedures that encourage children, youth, or adults to represent themselves.
- Create fair, transparent, and uniform criteria for determining indigence, such as the guidelines developed by the Fines and Fees Justice Center and a presumption that all youth are presumed indigent.

Federal Policy Priorities

Ensure that states have high-quality right to counsel systems

- Provide grants to states, provided that they conform their public defense systems to meet core principles set forth in the State Policy Priorities. Place data collection contingencies on states receiving funding to incentivize robust data collection and reporting; in addition, require states to produce data that are disaggregated by defendants' demographics and housing status, and that specify how much time was dedicated to each defendant's case. The funding should provide resources for a robust, independent, and statewide "right to counsel" system.
- Create financial incentives for states that meet performance goals, including adherence to caseload guidelines and enactment of policies that significantly reduce their overall number of cases. These reforms may include reclassification and decriminalization of certain offenses.
- Authorize the Justice Department to sue jurisdictions that violate the Sixth and 14th Amendments by denying people counsel with adequate resources and independence to mount a zealous defense.
- Require that states certify compliance with the Sixth and 14th Amendments before they receive federal funds related to the criminal-legal system, including adherence to caseload maximums and independence requirements.
- Use Section 5 of the 14th Amendment to allow civil legal claims to be brought for state and local government failures to meet their Sixth and 14th Amendment obligations.
- Create a federal Center for Defense Services that provides technical assistance, support, and oversight for state public defense services.

Ensure high-quality federal public defense

- Prohibit prosecutions unless all accused individuals have access to high-quality indigent defense, including representation at all pretrial proceedings and access to holistic defense services.
- Establish a federal public defender office for every federal district court.
- Support and promote efforts that ensure parity in funding, pay, attorney and investigator staffing, and resources for federal defender offices and Criminal Justice Act attorneys with funding for law enforcement and prosecution.
- Ensure parity in policy by consulting with experts in indigent defense in developing and promulgating federal criminal laws and policies.