

**Crosswalk of the Full Report of the Ad Hoc Committee to Review the CJA
and the Interim Recommendations**

The CJA Review Committee unanimously recommends that Congress create an independent Defender Commission within the judicial branch of government, but outside the oversight of the Judicial Conference. The Commission would have sole authority to set policy and practices related to the provisions of federal defense.

The Committee realizes that the creation of an independent Federal Defender Commission cannot be implemented immediately. While Congress weighs the merits of this recommendation and determines how best to proceed, the judiciary can and should take important steps to give defenders more authority and autonomy.

INTERIM RECOMMENDATIONS	REPORT SECTION
Structural Changes	
1. The Defender Services Committee (DSC) should have:	Section 3
• Exclusive control over defender office staffing and compensation.	Section 3
• The ability to request assistance of Judicial Resources Committee (JRC) staff on work measurement formulas.	Section 3
• Control over development and governance of eVoucher in order to collect data and better manage the CJA program.	Section 4
• Management of the eVoucher program and the interface with the payment system.	Section 4
• Exclusive control over the spending plan for the defender services program.	Section 3
2. For any period during which AO and JCUS continue to have authority over the budget for the CJA program, when either the Budget or Executive Committee disagree with the budget request by the DSC, the matter should be placed on the discussion calendar of the full Judicial Conference.	Section 3
3. The composition of the DSC should include the co-chairs of the Defender Services Advisory Group, both as voting members.	Section 3
4. Defender Services Office (DSO) must be restored to a level of independence and authority at least equal to what it possessed prior to the reorganization of the AO. In particular, DSO should be empowered to:	Section 3
• Exclusively control hiring and staffing within DSO.	Section 3
• Operate independently from the AO Department of Program Services or any other department that serves the courts.	Section 3
• Retain exclusive control with NITOAD over defender IT programs.	Section 10
• Retain ultimate discretion with DSC in setting the agenda for DSC meetings—no requirement of approval from other AO offices.	Section 3
5. DSO should be made a member of the AO Legislative Counsel to consult on federal legislation	Section 3
6. Representatives from DSO should be involved in the Congressional appropriations process.	Section 3

INTERIM RECOMMENDATIONS	REPORT SECTION
Compensation and Staffing for Defenders and CJA Panel Attorneys	
7. The annual budget request must reflect the highest statutorily available rate for CJA panel attorneys.	Section 3 Section 7
8. To provide consistency and discourage inappropriate voucher cutting, the Judicial Conference: <ul style="list-style-type: none"> • Should adopt the following standard for voucher review – <i>vouchers should be considered presumptively reasonable, and voucher cuts should be limited to mathematical errors, instances in which work billed was not undertaken or completed, and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.</i> • In consultation with DSC, provide comprehensive guidance concerning what constitutes a compensable service under the CJA. 	Section 5
9. Every circuit should have available at least one case budgeting attorney and reviewing judges should defer to their recommendations in reviewing vouchers and requests for expert services.	Section 4 Section 5
10. To promote the stability of defender offices until an independent Federal Defender Commission is created: Circuit judges should establish a policy that federal defenders shall be reappointed absent cause for non-reappointment.	Section 6
11. A federal public or community defender should be established in every district which has 200 or more appointments each year. If a district does not have a sufficient number of cases, then a defender office adjacent to the district should be considered for co-designation to provide representation in that district.	Section 7
12. The Judicial Conference should develop a policy in which judges defer to DSO recommendations and accepted staffing formulas when setting staffing levels.	Section 6
13. Circuit court judges should implement DSO staffing formulas when approving the number of assistant federal defenders in a district	Section 6 Section 9
14. Modify the work measurement formulas to: <ul style="list-style-type: none"> • Reflect the staff needed for defender offices to provide more training for defenders and panel attorneys. • Support defender offices in hiring attorneys directly out of law school or in their first years of practice, so that the offices may draw from a more diverse pool of candidates. 	Section 7 Section 8
15. Form a committee, or designate a CJA supervisory or administrative attorney or a defender office, to manage the selection, appointment, retention, and removal of panel attorneys. The process must incorporate judicial input into panel administration.	Section 4 Section 7
16. Every district should have an appeal process for panel attorneys who wish to challenge any non-mathematical voucher reductions. <ul style="list-style-type: none"> • Every district should create a CJA Committee. They will determine how to process appeals. • Any proposed reasonableness reduction shall be subject to review by a CJA review committee that will issue a recommendation to the judge. 	Section 5

INTERIM RECOMMENDATIONS	REPORT SECTION
<i>Standards of Practice and Training</i>	
17. The Defender Services Office (DSO) should regularly update and disseminate best practices.	Section 7
18. Compile and share best practices for recruiting, interviewing, and hiring staff, as well as the selection of panel members, to assist in creating a diversified workforce.	Section 8
19. All districts must develop, regularly review and update, and adhere to a CJA plan as per JCUS policy. Reference should be made to the most recent model plan and best practices. The plan must include: <ul style="list-style-type: none"> • Provision for appointing CJA panel attorneys to a sufficient number of cases per year so that these attorneys remain proficient in criminal defense work. • A training requirement to be appointed to and then remain on the panel. • A mentoring program to increase the pool of qualified candidates 	Section 4 Section 7 Section 8
20. Provide training for judges and CJA panel attorneys concerning the need for experts, investigators and other service providers.	Section 5 Section 7
21. Provide increased and more hands-on training for CJA attorneys, defenders, and judges on e-discovery. The training should be mandatory for private attorneys who wish to be appointed to and then remain on a CJA panel.	Section 4 Section 7 Section 9 Section 11
22. While judges retain the authority to approve all vouchers, provide training to them and their administrative staff on defense best practices, electronic discovery needs, and other relevant issues.	Section 5 Section 9 Section 11
23. Include <i>Criminal e-Discovery: A Pocket Guide for Judges</i> , which explains how judges can assist in managing e-discovery, in the bench book provided to every federal judge.	Section 11
<i>Capital Representation</i>	
24. Remove any local or Circuit restrictions prohibiting Capital Habeas Units (CHUs) from engaging in cross-district representation. Every district should have access to a CHU.	Section 9
25. Circuit courts should encourage the establishment of capital habeas units where they do not already exist and make Federal Death Penalty Resource Counsel and other resources as well as training opportunities more widely available to attorneys who take these cases	Section 9
26. Eliminate any formal or informal non-statutory budgetary caps on capital cases, whether in a death, direct appeal, or collateral appeal matter. All capital cases should be budgeted with the assistance of CBAs and/or resource counsel where appropriate.	Section 9
27. In appointing counsel in capital cases, judges should defer to recommendations by federal defenders and resource counsel absent compelling reasons to do otherwise.	Section 9

INTERIM RECOMMENDATIONS	REPORT SECTION
28. Modify work measurement formulas to: <ul style="list-style-type: none"> • Dedicate funding—that does not diminish funding otherwise available for capital representation—to create mentorship programs to increase the number of counsel qualified to provide representation in direct capital and habeas cases. • Reflect the considerable resources capital or habeas cases require for federal defender offices <u>without</u> CHUs. • Fund CHUs to handle a greater percentage of their jurisdictions’ capital habeas cases. 	Section 9
29. Provide additional judicial training on: <ul style="list-style-type: none"> • The requirements of § 2254 and § 2255 appeals, the need to generate extra-record information, and the role of experts, investigators, and mitigation specialists. • Best practices on the funding of mitigation, investigation, and expert services in death-eligible cases at the earliest possible moment, allowing for the presentation of mitigating information to the Attorney General. 	Section 9
Defender Information Technology	
30. Adequately fund and staff NITOAD in order to control and protect defender IT client information, operations, contracts, and management.	Section 3 Section 10
Resources: Litigation Support and Interpreters	
31. Increase staff and funding for the National Litigation Support Team, as well as increased funding for contracts for Coordinating Discovery Attorneys to be made available throughout the United States.	Section 11
32. Create new litigation support position(s) in <i>each district</i> or at the circuit level, as needed, to assist panel attorneys with discovery, evaluation of forensic evidence and other aspects of litigation.	Section 7 Section 11
33. Develop a national policy requiring the use of qualified interpreters whenever necessary to ensure defendants’ understanding of the process.	Section 7
Legislative Changes	
34. Amend 18 U.S.C. § 4285 to permit courts to order payment of costs in the limited circumstances where the defendant is unable to bear the costs and the court finds that the interests of justice would be served by paying necessary expenses.	Section 12
35. Congress must amend the Criminal Justice Act to eliminate circuit court review of attorney and expert fees exceeding current statutory caps.	Section 6

**Crosswalk of the Full Report of the Ad Hoc Committee to Review the CJA
and the Interim Recommendations
by Report Section**

In this crosswalk, the Interim Recommendations of the 2017 Ad Hoc Committee to Review the CJA have been re-organized to fall under the sections of the report from which they originated. Please note, some recommendations appear under more than one section.

Section 3: National Administration of CJA

The Committee realizes that the creation of an independent Federal Defender Commission cannot be implemented immediately. While Congress weighs the merits of an independent Federal Defender Commission, the Committee makes the following interim recommendations:

1. The Defender Services Committee (DSC) should have:
 - Exclusive control over defender office staffing and compensation.
 - The ability to request assistance of Judicial Resources Committee (JRC) staff on work measurement formulas.
 - Exclusive control over the spending plan for the defender services program.
2. For any period during which AO and JCUS continue to have authority over the budget for the CJA program, when either the Budget or Executive Committee disagree with the budget request by the DSC, the matter should be placed on the discussion calendar of the full Judicial Conference.
3. The composition of the DSC should include the co-chairs of the Defender Services Advisory Group, both as voting members.
4. Defender Services Office (DSO) must be restored to a level of independence and authority at least equal to what it possessed prior to the reorganization of the AO. In particular, DSO should be empowered to:
 - Exclusively control hiring and staffing within DSO.
 - Operate independently from the AO Department of Program Services or any other department that serves the courts.
 - Retain ultimate discretion with DSC in setting the agenda for DSC meetings—no requirement of approval from other AO offices.
5. DSO should be made a member of the AO Legislative Counsel to consult on federal legislation.
6. Representatives from DSO should be involved in the Congressional appropriations process.
7. The annual budget request must reflect the highest statutorily available rate for CJA panel attorneys.

30. Adequately fund and staff NITOAD in order to control and protect defender IT client information, operations, contracts, and management.

Section 4: Local CJA Panel Administration

The Committee strongly recommends that each district remove the burden of panel management from the judiciary. Until changes can be made to address those concerns in the entirety, the Committee makes the following interim recommendations:

1. The Defender Services Committee (DSC) should have:
 - Control over development and governance of eVoucher in order to collect data and better manage the CJA program.
 - Management of the eVoucher program and the interface with the payment system.
9. Every circuit should have available at least one case budgeting attorney and reviewing judges should defer to their recommendations in reviewing vouchers and requests for expert services.
15. Form a committee, or designate a CJA supervisory or administrative attorney or a defender office, to manage the selection, appointment, retention, and removal of panel attorneys. The process must incorporate judicial input into panel administration.
19. All districts must develop, regularly review and update, and adhere to a CJA plan as per JCUS policy. Reference should be made to the most recent model plan and best practices. The plan must include:
 - Provision for appointing CJA panel attorneys to a sufficient number of cases per year so that these attorneys remain proficient in criminal defense work.
 - A training requirement to be appointed to and then remain on the panel.
20. Provide increased and more hands-on training for CJA attorneys, defenders, and judges on e-discovery. The training should be mandatory for private attorneys who wish to be appointed to and then remain on a CJA panel.

Section 5: Compensation System Under the CJA

After considering all of the testimony, written submissions, and data collected, the Committee concludes that the current structure of the CJA's compensation system should be changed. Until the final recommendations of this Committee can be implemented, the Committee makes the following recommendations to improve the current CJA compensation system.

8. To provide consistency and discourage inappropriate voucher cutting, the Judicial Conference:
 - Should adopt the following standard for voucher review – *vouchers should be considered presumptively reasonable, and voucher cuts should be limited to mathematical errors, instances in which work billed was not undertaken or completed, and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.*
 - In consultation with DSC, provide comprehensive guidance concerning what constitutes a compensable service under the CJA.
9. Every circuit should have available at least one case budgeting attorney and reviewing judges should defer to their recommendations in reviewing vouchers and requests for expert services.
14. Every district should have an appeal process for panel attorneys who wish to challenge any non-mathematical voucher reductions.
 - Every district should create a CJA Committee. They will determine how to process appeals.
 - Any proposed reasonableness reduction shall be subject to review by a CJA review committee that will issue a recommendation to the judge.
21. Provide training for judges and CJA panel attorneys concerning the need for experts, investigators and other service providers.
22. While judges retain the authority to approve all vouchers, provide training to them and their administrative staff on defense best practices, electronic discovery needs, and other relevant issues.

Section 6: Circuit Court Oversight

The Committee has determined that the courts of appeal should not be involved in reviewing or approving attorney vouchers in excess of case maximums, nor should they be involved in determining the staffing of the federal defender offices or the appointment of the federal public defenders themselves. Until those goals can be achieved in their entirety, the Committee makes the following interim recommendations:

10. To promote the stability of defender offices until an independent Federal Defender Commission is created: Circuit judges should establish a policy that federal defenders shall be reappointed absent cause for non-reappointment.

12. The Judicial Conference should develop a policy in which judges defer to DSO recommendations and accepted staffing formulas when setting staffing levels.
13. Circuit court judges should implement DSO staffing formulas when approving the number of assistant federal defenders in a district
35. Congress must amend the Criminal Justice Act to eliminate circuit court review of attorney and expert fees exceeding current statutory caps.

Section 7: Quality of Representation

The Committee believes that the quality of representation is being significantly impacted by the vast disparities currently experienced in funding, access to resources and training. Until changes can be implemented to fully address these concerns, the Committee makes the following recommendations:

7. The annual budget request must reflect the highest statutorily available rate for CJA panel attorneys.
11. A federal public or community defender should be established in every district which has 200 or more appointments each year. If a district does not have a sufficient number of cases, then a defender office adjacent to the district should be considered for co-designation to provide representation in that district.
14. Modify the work measurement formulas to:
 - Reflect the staff needed for defender offices to provide more training for defenders and panel attorneys.
15. Form a committee, or designate a CJA supervisory or administrative attorney or a defender office, to manage the selection, appointment, retention, and removal of panel attorneys. The process must incorporate judicial input into panel administration.
17. The Defender Services Office (DSO) should regularly update and disseminate best practices.
19. All districts must develop, regularly review and update, and adhere to a CJA plan as per JCUS policy. Reference should be made to the most recent model plan and best practices. The plan must include:
 - Provision for appointing CJA panel attorneys to a sufficient number of cases per year so that these attorneys remain proficient in criminal defense work.
 - A training requirement to be appointed to and then remain on the panel.
 - A mentoring program to increase the pool of qualified candidates
20. Provide training for judges and CJA panel attorneys concerning the need for experts, investigators and other service providers.

21. Provide increased and more hands-on training for CJA attorneys, defenders, and judges on e-discovery. The training should be mandatory for private attorneys who wish to be appointed to and then remain on a CJA panel.
23. Include *Criminal e-Discovery: A Pocket Guide for Judges*, which explains how judges can assist in managing e-discovery, in the bench book provided to every federal judge.
32. Create new litigation support position(s) in *each district* or at the circuit level, as needed, to assist panel attorneys with discovery, evaluation of forensic evidence and other aspects of litigation.
33. Develop a national policy requiring the use of qualified interpreters whenever necessary to ensure defendants' understanding of the process.

Section 8: Diversity

The Committee has determined that the following recommendations will aid in promoting diversity among defenders and panel members:

14. Modify the work measurement formulas to:
 - Support defender offices in hiring attorneys directly out of law school or in their first years of practice, so that the offices may draw from a more diverse pool of candidates.
18. Compile and share best practices for recruiting, interviewing, and hiring staff, as well as the selection of panel members, to assist in creating a diversified workforce.
19. All districts must develop, regularly review and update, and adhere to a CJA plan as per JCUS policy. Reference should be made to the most recent model plan and best practices. The plan must include:
 - A mentoring program to increase the pool of qualified candidates

Section 9: Capital Representation

In reviewing the provision of high quality counsel and expert assistance in capital cases, the Committee found significant disparities across districts and circuits. Until changes can be made to address these concerns in the entirety, The Committee makes the following interim recommendations:

13. Circuit court judges should implement DSO staffing formulas when approving the number of assistant federal defenders in a district
21. Provide increased and more hands-on training for CJA attorneys, defenders, and judges on e-discovery. The training should be mandatory for private attorneys who wish to be appointed to and then remain on a CJA panel.

22. While judges retain the authority to approve all vouchers, provide training to them and their administrative staff on defense best practices, electronic discovery needs, and other relevant issues.
24. Remove any local or Circuit restrictions prohibiting Capital Habeas Units (CHUs) from engaging in cross-district representation. Every district should have access to a CHU.
25. Circuit courts should encourage the establishment of capital habeas units where they do not already exist and make Federal Death Penalty Resource Counsel and other resources as well as training opportunities more widely available to attorneys who take these cases.
26. Eliminate any formal or informal non-statutory budgetary caps on capital cases, whether in a death, direct appeal, or collateral appeal matter. All capital cases should be budgeted with the assistance of CBAs and/or resource counsel where appropriate.
27. In appointing counsel in capital cases, judges should defer to recommendations by federal defenders and resource counsel absent compelling reasons to do otherwise.
28. Modify work measurement formulas to:
 - Dedicate funding—that does not diminish funding otherwise available for capital representation—to create mentorship programs to increase the number of counsel qualified to provide representation in direct capital and habeas cases.
 - Reflect the considerable resources capital or habeas cases require for federal defender offices without CHUs.
 - Fund CHUs to handle a greater percentage of their jurisdictions’ capital habeas cases.
29. Provide additional judicial training on:
 - The requirements of §2254 and §2255 appeals, the need to generate extra-record information, and the role of experts, investigators, and mitigation specialists.
 - Best practices on the funding of mitigation, investigation, and expert services in death-eligible cases at the earliest possible moment, allowing for the presentation of mitigating information to the Attorney General.

Section 10: Concerns About Defender Information Technology

In reviewing the provision of high quality counsel and expert assistance in capital cases, the Committee found significant disparities across districts and circuits. Until changes can be made to address these concerns in the entirety, The Committee makes the following interim recommendations:

30. Adequately fund and staff NITOAD in order to control and protect defender IT client information, operations, contracts, and management.

Section 11: Electronic Discovery & Litigation Support

The Committee understands that defending a client in a case with a large amount of electronic discovery can be extremely time-intensive and costly. It is the Committee's concern that without adequate training, support, and financial assistance for defenders and panel attorneys grappling with e-discovery, defendants may not receive constitutionally-required effective representation. Until changes can be made to address these concerns, the Committee makes the following interim recommendations.

21. Provide increased and more hands-on training for CJA attorneys, defenders, and judges on e-discovery. The training should be mandatory for private attorneys who wish to be appointed to and then remain on a CJA panel.
22. While judges retain the authority to approve all vouchers, provide training to them and their administrative staff on defense best practices, electronic discovery needs, and other relevant issues.
23. Include *Criminal e-Discovery: A Pocket Guide for Judges*, which explains how judges can assist in managing e-discovery, in the bench book provided to every federal judge.
31. Increase staff and funding for the National Litigation Support Team, as well as increased funding for contracts for Coordinating Discovery Attorneys to be made available throughout the United States.
32. Create new litigation support position(s) in *each district* or at the circuit level, as needed, to assist panel attorneys with discovery, evaluation of forensic evidence and other aspects of litigation.

Section 12: Transportation & Subsistence for Non-Custodial Defendants

The Committee finds that the failure to provide costs for indigent defendants during and after their criminal proceedings is a long-standing problem that must be resolved. It is causing substantial hardships for many defendants and it is, in some circumstances, creating an unfair and unnecessary burden on defense counsel.

34. Amend 18 U.S.C. §4285 to permit courts to order payment of costs in the limited circumstances where the defendant is unable to bear the costs and the court finds that the interests of justice would be served by paying necessary expenses.

Acronyms

AO—Administrative Office of US Courts	Exec Com—Executive Comm of JCUS
CDO—Community Defender Office	FDO—Federal Defender Office
CHU—Capitol Habeas Unit	FJC—Federal Judicial Center
CJA—Criminal Justice Act	JCCCA--Judicial Conference of Circuit Courts of Appeals
DSC--Defender Services Committee	JCUS—Judicial Conference of the United States
DSO—Defender Services Office	JRC—Judicial Resources Committee

