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Mr. Thomas VanKirk, Esq.
Chair, Board of Trustees
Pennsylvania Opioid Misuse & Addiction Abatement Trust

Dear Chair VanKirk,

I write on behalf of the Public Defender Association of Pennsylvania to ask you to clarify and to reconsider the Trust's position on whether funds from Pennsylvania's Opioid Misuse and Addiction Abatement Trust (hereinafter the Trust) can be used to fund Public Defenders. Trustees denied recent applications that the settlement fund Public Defender attorney salaries, and the frequently asked questions (FAQ) portion of the Trust's website now states:

Can settlement funds be used to partially fund an assistant public defender?

Since the services of an assistant public defender are required to be provided by the counties, the costs associated with their position would not be considered an abatement strategy. Please note programs and services for treatment within the criminal justice system are included in Schedule B to Exhibit E.

The Trust could make the exact same statement about allocating funds to District Attorney's offices, yet the Trust has already allocated over \$4,500,000 to District Attorney's offices throughout the state.¹

Much of what Public Defender attorneys and social workers do helps transition people with Opioid Use Disorder (OUD) as well as co-occurring Substance Use Disorders (SUD) and mental health conditions away from the criminal justice system and toward treatment. Projects that include Public Defender offices fall squarely within Schedule B of Exhibit E's list of appropriate opioid remediation uses.

¹ \$4,559,162 in funds were allocated for district attorney offices in 2022 and 2023. Ed Mahon, "Oversight board will secretly review how Pa counties spent millions of dollars to fight opioid crisis," *Spotlight PA*, March 6, 2024. Available at: https://www.spotlightpa.org/news/2024/03/opioid-settlement-secret-review/?oref=cspa_firstread_nl&utm_source=Sailthru&utm_medium=email&utm_campaign=First%20Read%20PA%20-%20March%207%2C%202024&utm_term=newsletter_cspa_firstread



The broad language of the above FAQ and response imply that projects involving assistant public defenders may not be funded with settlement funds. We hope the implication is unintentional but fear the ambiguity will chill counties from including Public Defenders in their project plans. Accordingly, we ask that the Trust add clarifying language to the FAQ section of the website. If the Trustees have decided that no Public Defender projects may be funded by settlement funds, we ask you to reconsider.

The Public Defender Association of Pennsylvania (PDAP) is a non-profit association whose membership includes all Public Defenders employed full or part-time across Pennsylvania. PDAP is dedicated to securing a fair justice system and ensuring high quality legal representation for people facing the loss of life, freedom, or family. Our mission is to provide tools, strategies, mutual support, training, and information to Public Defender offices; to be the voice of public defense; and to promote best practices in the leadership, management, and administration of justice in Pennsylvania. Projects with Public Defenders qualify as opioid remediation under Section B of Exhibit E and should be funded by the Trust for the following reasons.

I. PUBLIC DEFENDER ATTORNEYS DIVERT PEOPLE TO TREATMENT AND AWAY FROM THE CRIMINAL JUSTICE SYSTEM

Public Defender attorneys work to minimize the impact of the criminal justice system on their clients. While sometimes Defenders achieve this by winning trials or negotiating with prosecutors for a plea to lesser charges, whenever possible, Defenders divert clients away from incarceration and toward treatment.

This happens when Defenders connect clients to treatment in specialty courts. Treatment courts, veterans' courts, mental health courts, and specialty courts designated for people charged with prostitution offenses all connect people to treatment and away from harsher carceral consequences. Many Defender clients in these programs struggle with opioid use disorder. Defenders also connect clients to treatment as part of diversion or sentencing negotiations. This work by Public Defender attorneys comports with subsection D of schedule B of Exhibit E.²

The work by Public Defender attorneys is more closely aligned with the abatement strategies outlined in Exhibit E than other projects already funded by the settlement. Such projects include:

- Cameron County Commissioners approved use of opioid settlement funds to purchase stun vests and tasers for the Cameron County Sheriff's department on December 7, 2023.³

² "Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies...." Subsection D of Schedule B of Exhibit E, "List of Opioid Remediation Uses."

³ Cameron County Commissioners, meeting minutes, December 7, 2023. Available at: <https://www.cameroncountypa.com/Commissioner%20meeting%20notes%2012.7.23.pdf>.



- Clearfield County and Greene County approved use of opioid settlement funds to purchase body scanners for their county prison.⁴
- Lancaster County allocated \$193,000 of funds from the Trust to its Drug Task Force of the Lancaster County District Attorney's office to fund a prosecutor and evidence custodian.⁵

Public Defenders are uniquely situated to connect people with OUD to the help they need. No other faction of the criminal legal system is solely on the side of the person arrested. Because Defenders owe their clients a duty of confidentiality, Defender clients speak freely and frankly to their lawyers about SUD, OUD, and other treatment needs. By investing in attorney staffing in Public Defender offices, settlement funds would increase Defenders' capacity to work collaboratively across systems to connect their clients to care.

II. PROJECTS SPECIFICALLY GEARED TOWARD PEOPLE WITH OPIOID USE DISORDER FALL UNDER THE PROJECTS OUTLINED IN EXHIBIT E

Beyond broadly adding Public Defender attorneys, some projects add wholly new capacity specifically targeted to people with OUD. Some projects identify justice involved people who are already engaged in treatment, present their rehabilitation efforts to the courts, and resolve their cases in accordance with their treatment needs, by clearing warrants of people in drug treatment for old criminal cases. This enables Defender clients to remain in treatment, uninterrupted by incarceration. Other projects would create specialized units of attorneys and social workers to reduce harm and abate addiction. Such specialized units connect people with OUD to treatment and divert them into recovery-focused specialty courts by providing consistent points of contact through vertical representation that streamlines court involvement to connect people to care quickly.

When the Trust funds novel proposals like these, that can only function by including Public Defenders, it enables creation of OUD abatement strategies that otherwise could not exist.

⁴ Julie Rae Rickard, "Clearfield jail buys body scanner to combat contraband" Altoona Mirror, Oct. 21, 2023. Available at: <https://www.altoonamirror.com/news/local-news/2023/10/clearfield-jail-buys-body-scanner-to-combat-contraband/>. "Local counties start receiving opioid settlement funds," Observer-Reporter, July 15, 2023, available at: <https://www.observer-reporter.com/news/2023/jul/15/local-counties-start-receiving-opioid-settlement-funds/#:~:text=Greene%20County%20is%20set%20to,continuing%20programming%20for%20drug%20treatment>.

⁵ Tim Stuhldreher, "Commissioners approve opioid settlement funds for Drug Task Force positions" One Unitd Lancaster, Aug. 30, 2023. Available at: <https://oneunitdancaster.com/government/commissioners-approve-opioid-settlement-funds-for-drug-task-force-positions/>



III. SOCIAL WORKERS IN PUBLIC DEFENDER OFFICES FALL UNDER THE PROJECTS OUTLINED IN EXHIBIT E

Social workers⁶ in Public Defender offices serve two primary purposes. They create mitigation reports for attorneys to use in court, and they connect Defender clients to services. Those services include housing, employment, mental health treatment, and, most frequently, treatment for OUD and SUD. Somewhere between 67% and 85% of the US prison population has a SUD or are incarcerated for crimes involving drug use.⁷ Because Public Defender offices represent the vast majority of people charged with offenses in the Pennsylvania legal system, they frequently represent people in need of treatment for OUD and SUD. Any Public Defender office with a social service advocate is better equipped to connect Defender clients to treatment than offices without social workers. Out of Pennsylvania's 67 county Public Defender offices, only 15 have social services advocates.

Any settlement funds that add new social services advocates to Public Defender offices supports efforts to abate the opioid epidemic by increasing Public Defenders' capacity to connect their clients to treatment and care. Public Defender social workers collaborate across systems to support Defender clients in treatment and to connect them to care.

IV. COUNTIES ARE REQUIRED TO ADEQUATELY FUND PUBLIC DEFENDER OFFICES, BUT FAIL TO DO SO

County-based funding is both insufficient to put a social worker in every Public Defender office in Pennsylvania and insufficient to adequately fund Public Defender offices generally. A recent evaluation by the bipartisan, bicameral Legislative Budget and Finance Committee (LBFC report) found vast disparities and inadequacies in existing funding. While the national average of per capita funding for indigent defense is \$19.82,⁸ the LBFC report found that only one county in Pennsylvania spent that much

⁶ Also sometimes referred to as social services advocates or client advocates. While specialized education and licensure is required to call someone a social worker, these broad titles encompass people who do work similar to that of a licensed social worker, including connecting Defender clients to MAT and other drug treatment programs.

⁷ Sean Fogler and Carla Sofronski, "Pa's criminal legal system increases overdose deaths and makes recovery impossible," *Penn Capital Star* guest commentary, January 9, 2023. Available at: <https://penncapital-star.com/commentary/pa-s-criminal-legal-system-increases-overdose-deaths-and-makes-recovery-impossible-opinion/>. And See, "FAQ Treatment Court: Why Are Treatment Courts Needed?" *Pennsylvania Association of Treatment Court Professionals*. Available at: https://patcp.org/FAQ_Treatment_Court.

⁸ David Carroll and Aditi Goel, "The State of the Nation on Gideon's 60th Anniversary," *6th Amendment Center*, March 14, 2023.



per capita.⁹ One county spent as little as \$3.20 per capita on indigent defense, and another spent \$35,559 on the total annual budget for its Public Defender services.¹⁰

Counties do have the obligation to fund Public Defender offices sufficiently, but they don't. That makes it important both that settlement funds be available for Public Defender initiatives and that settlement funds supplement but not supplant existing county funding. Offices with too few attorneys and no access to social workers have limited capacity to connect their clients to OUD treatment and care.

The Trust can change that. It can help abate OUD and SUD by funding Public Defenders- Public Defender attorneys, Public Defender novel projects specially designed to abate OUD, and Public Defender social workers. Every one of those efforts that the settlement funds increase capacity in underfunded Public Defender offices to connect clients to care.

We ask that you do so, by clarifying the decision-making language reflected in the FAQ or reconsidering your decision to exclude Defenders from settlement funds and ask for the opportunity to present this request to the full Board of Trustees at your next meeting.

Best regards,

SARA E. JACOBSON

Sara Jacobson, Esq.

Executive Director, PDAP

⁹ LEGISL. BUDGET & FINANCE COMM. OF PA. GENERAL ASSEMB. (LBFC REPORT), *Pennsylvania Indigent Criminal Defense Fundings and Caseloads*, at 34-35, (Oct. 2021). <http://lbfc.legis.state.pa.us/Reports.cfm?ReportID=332>.

¹⁰ *Id.* at 32.