

Holistic Defense: An Innovative Model for Public Defender Services

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For the indigent accused of crime, the charge itself is often the last of their concerns. A criminal charge may result in eviction, involvement with child protection services, and the loss of financial assistance, employment, a driver's license, and educational financial aid. Those involved with the criminal justice system often struggle with poverty, mental illness, addiction, and marginalization. Left unaddressed, the underlying issues and collateral consequences to criminal charges lead people to continually cycle through the criminal justice system.

Developed by the Bronx Defenders in New York in 1997, holistic defense is a model of providing public defender services that views the client as a whole person and addresses all aspects of a client's life. Holistic defense has four pillars:

- *Seamless access to services that meet legal and social support needs.* Clients who encounter the criminal justice system often have unmet legal and social support needs that lead them to recidivism. Due primarily to systemic barriers, accessing services is often an obstacle for clients. A holistic defender offers clients access to services, either in-house or in collaboration with other providers in the community.
- *Dynamic, interdisciplinary communication.* Holistic defense utilizes an interdisciplinary team where each member of the team is actively involved in the client's plan and progress. A holistic defense team embraces open, frequent, and meaningful communication, focused on serving the client.
- *Advocates with an interdisciplinary skills set.* A holistic defense office is not just about members from different disciplines. It is about working as a team to develop and enhance each member's skills set and recognizing the benefits that may be achieved through an interdisciplinary approach. Holistic defense encourages defenders to represent their clients in a way that focuses on the client's needs, not just the resolution of a case.
- *A robust understanding of, and connection to, the community served.* Holistic defense cultivates an understanding of, and connection to, the community served. A holistic defender that has an understanding of the community is better equipped to provide effective representation and address client needs.ⁱⁱ

Holistic defense on the Flathead Reservation.

After receiving technical assistance from the Bronx Defenders in 2011, the Tribal Defenders for the Confederated Salish and Kootenai Tribes became the first office in Montana, and the first tribal office in the country, to adopt holistic defense. In fact, the model blended particularly well in Indian country because like holistic defense, traditional tribal justice systems were based on a holistic philosophy with restorative principles that viewed problems in their entirety, promoted resolution of underlying issues, and engaged the community.ⁱⁱⁱ

With a staff of ten, the Tribal Defenders redefined staff positions to form an interdisciplinary team to offer client-centered, holistic defense services. The Tribal Defenders identified client needs and implemented services to address those needs.

Finding a high incidence of mental illness and chemical dependency among their clients that significantly contribute to a high rate of recidivism, the Tribal Defenders collaborate with Tribal Health and the University of Montana to offer in-house psychology services for their clients. Clinical psychology doctoral students provide assessment, therapy, and psycho-educational groups at the Tribal Defenders' office and in the tribal jail. The doctoral students also provide team training on psychological issues and program evaluation of the Tribal Defenders' holistic practice.

Learning that clients are more likely to be successful with the support of their tribal community, the Tribal Defenders work with the Selis Qlispe and Kootenai culture committees to recruit volunteers to serve as cultural mentors. The mentors counsel clients to reconnect to their tribal culture and provide culturally relevant dispute resolution.

Recognizing that many of their clients were driving on suspended driver's licenses out of the pure necessity to get to work, health care appointments, and court appearances, the Tribal

Defenders assigned an advocate to assist clients to learn why their licenses were suspended and how to get them restored. To date, 200 of the Tribal Defenders' clients have restored their driver's licenses.

Discovering that a large number of litigants in tribal court were *pro se*, the Tribal Defenders developed standardized forms and assist litigants in drafting their own pleadings. The Tribal Defenders also collaborate with the Alexander Blewett III School of Law. Interns from the law school assist with community outreach projects, represent clients in criminal cases, and provide mediation to litigants in tribal court.

The Tribal Defenders also offer a sobriety support group, Salish language classes, community service projects for clients to work off fines, and walk-in services that range from emergency psychological interventions to providing people with information and referrals for services.

In 2016, the Tribal Defenders started the Flathead Reservation Reentry Program, offering legal, psychological, and case-management services to tribal members returning to the Flathead Reservation from tribal, county, and state incarceration. As a part of the reentry program, the Tribal Defenders' psychologists developed the only case management tool that measures resiliency factors and level of risk to reoffend for a Native American population.^{iv} By the end of its second year, recidivism was down to 32% – a significant reduction considering that 100% of the 319 clients served were recidivists when they entered the reentry program.^v

New holistic defense projects in Montana.

In 2017, the Montana legislature passed House Bill 89,^{vi} modeled after the Tribal Defenders' holistic defense practice. House Bill 89 requires the Montana Office of the Public Defender to implement holistic defense pilot projects. Four pilot projects in Billings, Kalispell,

Missoula, and Bozeman are forming interdisciplinary teams of investigators, social workers, defense lawyers, and paralegals who collaborate with service providers and implement holistic defense practices that will result in positive life outcomes for their clients, lower recidivism rates, and safer communities.

In 2018, Ann Miller, Maylinn Smith, and James Taylor founded the Louise Burke Center for Holistic Representation (LBC), a 501(c)(3) non-profit corporation.^{vii} Recognizing the impacts of historical trauma, past federal policies, structural racism, and their effects on tribal communities and American Indian people, the LBC will take a multifaceted approach to reducing the current disproportionate representation of American Indian people in legal actions initiated by governmental entities. The LBC will be located in the Missoula area and will expand upon the holistic defense model developed by the Tribal Defenders.

Holistic defense solves problems.

Holistic defense eliminates a silo approach to legal representation and promotes problem solving. It fosters innovation and a positive outlook for its practitioners. Holistic defense promotes procedural justice. That is, if litigants believe the process is fair, they are more likely to comply with court orders and have success.^{viii} Holistic defense results in better life outcomes for public defender clients, a lesser likelihood of going to jail, and shorter jail sentences.^{ix}

Public defender clients are much more than the crimes they are accused of committing. They come from families and communities. They often have unresolved mental illness or addiction that brought them into the criminal justice system. They have stories of poverty and trauma, but also resilience. Holistic defense is client-centered, works with the accused in the context of their stories, builds upon their strengths, and assists them to access resources relevant

to their rehabilitative needs. In that way, public defenders practicing holistic defense not only help their clients to be more successful but also contribute to a more positive, safer community.

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Pete Wogsland is a staff attorney at the Office of the Code Reviser for the Washington State Legislature. He has written several grant proposals for the Tribal Defenders holistic program, including the application that resulted in technical assistance from the Bronx Defenders' Center for Holistic Defense in 2011.

ⁱⁱ The Bronx Defenders' website, <https://www.bronxdefenders.org/holistic/defense/>; see also, Steinberg, Robin, *Heeding Gideon's Call in the Twenty-First Century: Holistic Defense and the New Public Defender Paradigm*, 70 Wash. & Lee L. Rev. 961 (Spring, 2013).

ⁱⁱⁱ Melton, Ada Pecos *Indigenous Justice Systems and Tribal Society* (2005).

ⁱⁱⁱ Hansen, C., Swaney, G., Fox, D., Miller, A., Billedeaux, S., Matt, C., *Predicting Recidivism for Native American Offenders on a Montana Reservation: Reporting on Risk and Resilience Factors* (April, 2018).

^v Outcome data at the completion of the second year of the Flathead Reservation Reentry Program shows of 319 clients served, 32% were convicted of a new offense during the time of service – a 68% reduction from approximately 100% recidivism among reentry clients when entering the program. 38.5% had new offenses plus technical violations of sentencing conditions. Data also shows reentry clients' re-incarceration rate for conviction of new offenses and revocations of sentences is only 11%.

^{vi} Codified as 47-1-126, MCA.

^{vii} Louise Caye Burke was a traditional Kootenai elder and member of the Confederated Salish and Kootenai Tribes. As the mother of twelve children, she understood the importance of family and relationships within tribal communities. During her more than thirty years sitting as a tribal judge, she routinely demonstrated a depth of wisdom and strength of character that enabled her to effectively utilize customs, traditions, compassion, and a no-nonsense approach. The LBC is named in her honor with permission from the Burke family.

^{viii} Tyler, Tom R., *Why People Obey the Law*, New Haven, CT: Yale University Press (1990).

^{ix} Hager, Eli, *The Courts See a Crime. These Lawyers See a Whole Life*, the Marshall Project (2018). The article cites a comparative study of the Bronx Defenders' services done by the RAND Corporation and the University of Pennsylvania Law School.