

Misdemeanor Early Representation Project

Produced by Further The Work

For Submission to the Department of Justice, Bureau of Justice Assistance

Smart Defense Initiative: Answering Gideon's Call

1. Statement of the Problem

Although it's typically serious felony crimes that grab headlines across the nation, the majority of cases that clog America's criminal courts and overwhelm its jails are low-level, misdemeanor offenses.ⁱ As is common across the country, in Richmond, CA, a low-income, urban city of 105,000 people located in northern California's West Contra Costa County, an indigent person who is cited and released for a misdemeanor offense generally does not receive legal representation until his or her first court appearance – often, many months after arrest. It is only then, at first appearance, that an indigent person receives the benefit of public counsel. This lack of early representation during the critical months between arrest and arraignment gives rise to a host of grave and lasting consequences for indigent people as they try – and often fail – to navigate the criminal justice system, without the support and advocacy provided by those with the means to hire private attorneys well in advance of first appearance.

The first indicator of the negative consequences of this gap in representation for indigent people charged with misdemeanor offenses is the high rate of failures to appear (FTA). Studies find “that many defendants fail to appear not only because they fear the consequences of [or don't understand] the legal proceedings, but also because they are unable to arrange for transportation to court, they have other, competing responsibilities (*e.g.* work, care of child or other person), or they are disorganized, forgetting the appointment or losing critical information (*e.g.* citation, contact, or location.”ⁱⁱ Language and literacy issues also play a part in FTAs. This truth is strikingly apparent in the Richmond branch of the Superior Court: Of the 65-90 misdemeanor arraignments per week, the court estimates that as many as one-third fail to appear for the initial date. As a result, currently approximately 15-20% of public defender misdemeanor cases originate with a client who has been arrested on a bench warrant for a failure to appear.

The reasons for high rates of FTA can best be understood by examining the common

procedures that lead up to arraignment. For the majority of misdemeanor cases in Richmond, an arresting officer issues a citation and releases the suspect, rather than making a custodial arrest. Each citation provides a date and time for the cited person to come to court, offering no other explanation of the legal process. Despite the high percentages of monolingual Spanish-speaking people in West Contra Costa County, these citation forms are written only in English; and for those with limited literacy in any language, these forms can be hard to interpret. In addition, the court dates specified on the citations are often subsequently changed, and defendants may not receive (or understand) subsequent letters notifying them of changes to the court dates. Finally, no information is provided regarding legal assistance, such as contact information for the Office of the Public Defender, or a brief summary of services available through that office.

In turn, many indigent persons fail to make it to the court date provided on the citation. The reasons most commonly cited in relevant literature are that defendants forgot the court date, did not understand the citation, could not afford to miss a day of work, had no childcare, had no transportation to court, feared the immigration or legal consequences of coming to court, or did not understand the court process, among a host of other reasons.

Unfortunately, when a person fails to appear for arraignment, the judge issues a warrant for arrest. In turn, police officers or Sheriff's deputies eventually execute that warrant and take that person into custody, generating all of the adverse impacts that follow from any period of incarceration. The costs of this cycle of collateral consequences can be devastating to family and thus community stability: "When people are in jail, jobs are lost, bills go unpaid, financial aid for school is terminated, evictions are served, and children and spouses lose a vital member of the family unit. These are counter-productive, often irreversible disruptions in a [defendant's] life."ⁱⁱⁱ

In fact, the criminal implications of an arrest following a failure to appear are sharply disproportionate to the underlying misdemeanor offense that triggered this costly cycle. It is well

recognized that, as compared to persons who are financially able to post bond or are released on their own recognizance, persons held in custody are far more likely to plead guilty at arraignment as a way to avoid additional time in custody. But by pleading guilty at that early stage, defendants surrender the opportunity for defense counsel to investigate the merits of the case, provide mitigating evidence to the district attorney and the court, advocate for diversion opportunities, or file motions that may result in dismissal of the charges.

The Office of the Public Defender proposes to address these multiple points of failure in the justice system by establishing the West County Misdemeanor Early Representation Project (MERP). MERP is designed to bridge this gap in representation for individuals cited for misdemeanor offenses in Richmond. Through an innovative partnership of the Public Defender's Office and the Richmond Police Department, MERP will ensure that, at the time a citation is issued, cited-released persons will receive printed information (in English and in Spanish) advising them of the immediate availability of legal representation, at no cost, and provided at a familiar, readily-available community resource center. With MERP, legal representation for indigent clients can begin within days – if not hours – of their arrest and cite-release.

This project has the strong support of multiple local justice partners, including the District Attorney, the Court, the Sheriff, the Richmond Police Department, and the West County Reentry Resource Center, all of which have signed letters of support (attached). In addition, the Contra Costa County Office of the Public Defender will partner with subgrantee the Justice Management Institute (JMI) for ongoing research, strategic planning, support and evaluation of the project.

MERP is consistent with Principle 3 of the ABA Ten Principles of a Public Defense Delivery System: Ensuring that counsel is assigned as soon as feasible after a client's arrest.^{iv} MERP is also consistent with the principles and best practices of holistic defense, which emphasize the importance of seamless access to legal and non-legal services that meet clients' needs provided

through interdisciplinary means.^v It is consistent with the national focus on justice reinvestment, which emphasizes the importance of using data-driven approaches to increase judicial efficiencies and outcomes while reducing burdens on justice partners and ensuring the most appropriate use of jail resources.^{vi} And it is consistent with procedural justice theory, which emphasizes the importance of ensuring that justice-involved individuals understand the process and feel that they have access to helpful resources.^{vii}

Program Design and Implementation (30%)

A. **Project Design:** In its two-year pilot phase, MERP will be staffed with a 1 FTE bilingual Special Assignment Attorney and a .5 FTE bilingual paralegal, supervised by a .1 FTE Supervising Attorney. Providing pre-arraignment legal advice and representation, MERP staff will track clients' criminal process, consistently and effectively notify clients of future court dates, advocate with the District Attorney's office for pre-filing disposition options, conduct investigation and other case preparation, and keep clients informed of all aspects of the judicial process. By operating at the community-based West County Reentry Resource Center, MERP will offer a further innovative benefit, providing early representation alongside multiple, co-located social service resources (drug and alcohol services, mental health care, financial planning and public benefits, family support and reunification services, probation services, and peer mentoring) to support client success, both during and after the judicial process. MERP's early representation and connection to services will maximize the likelihood that indigent clients charged with misdemeanor offenses will successfully navigate the justice system, minimizing inefficiencies and costs to themselves, their communities, and the justice system.

MERP's lean staffing plan will be substantially leveraged by the program's location at the Resource Center, allowing MERP staff to work with Center staff to ensure that clients build comprehensive plans to address civil and criminal legal needs, housing, employment, behavioral

health services, and family supports, as needed. Further, as a highly visible community hub of information and resources for justice-involved individuals, the Center will foster ongoing contact with clients, enhancing MERP's capacity to remain in contact with clients. Furthermore, MERP staff will be able to provide clients with automated appointment reminders through the Center's data management system; studies of such automated systems to remind clients of upcoming court dates have demonstrated substantial impact on reducing FTAs. For example, the Court Appearance Notification System in Multnomah County, Oregon and the Reminder Notification System in King County in Washington State have reduced FTAs by anywhere from 38%-60%.^{viii} Finally, MERP will work with the countywide information resource (211.org), to ensure that clients who call 211 after-hours are informed of MERP's location and services.

B. Project Goals: The ultimate intentions of MERP are as follows: i) Improve case results for indigent persons charged with misdemeanor offenses by diverting cases pre-filing and improving case dispositions through early case evaluation, case investigation, and intervention with the District Attorney's Office prior to first court appearance; ii) Reduce the numbers of arrest warrants issued for indigent persons by reducing FTA rates at the first arraignment date; iii) Reduce the financial and human-resource costs to law enforcement and the justice system of processing FTA arrest warrants for misdemeanor cases; iv) Eliminate or mitigate the collateral consequences to the individual of a custodial arrest.

C. Outreach and Access: Access to early representation will be achieved as follows: i) As an active member of this collaborative pilot project, the Richmond Police Department has agreed that, in making a citation for a misdemeanor offense, RPD officers will provide the cited person with a **printed information sheet**, in English and in Spanish, outlining MERP's services and providing the address and phone number for the Center. The information sheet will explain, in clear and simple language, that legal advice and representation is available free of charge for

those who request it; ii) Staff **presentations and informational materials at the Center** will highlight MERP's services and benefits. Center staff and MERP partners will provide regular orientations to Center clients related to judicial process to help familiarize the larger community to these resources; iii) Information about the program will be provided **brochures** disseminated through community-based organizations and hosted on the Center's website and the County's 211.org website; iv) MERP staff will conduct **consistent information sessions** at various community locations to reach persons who may qualify for MERP services.

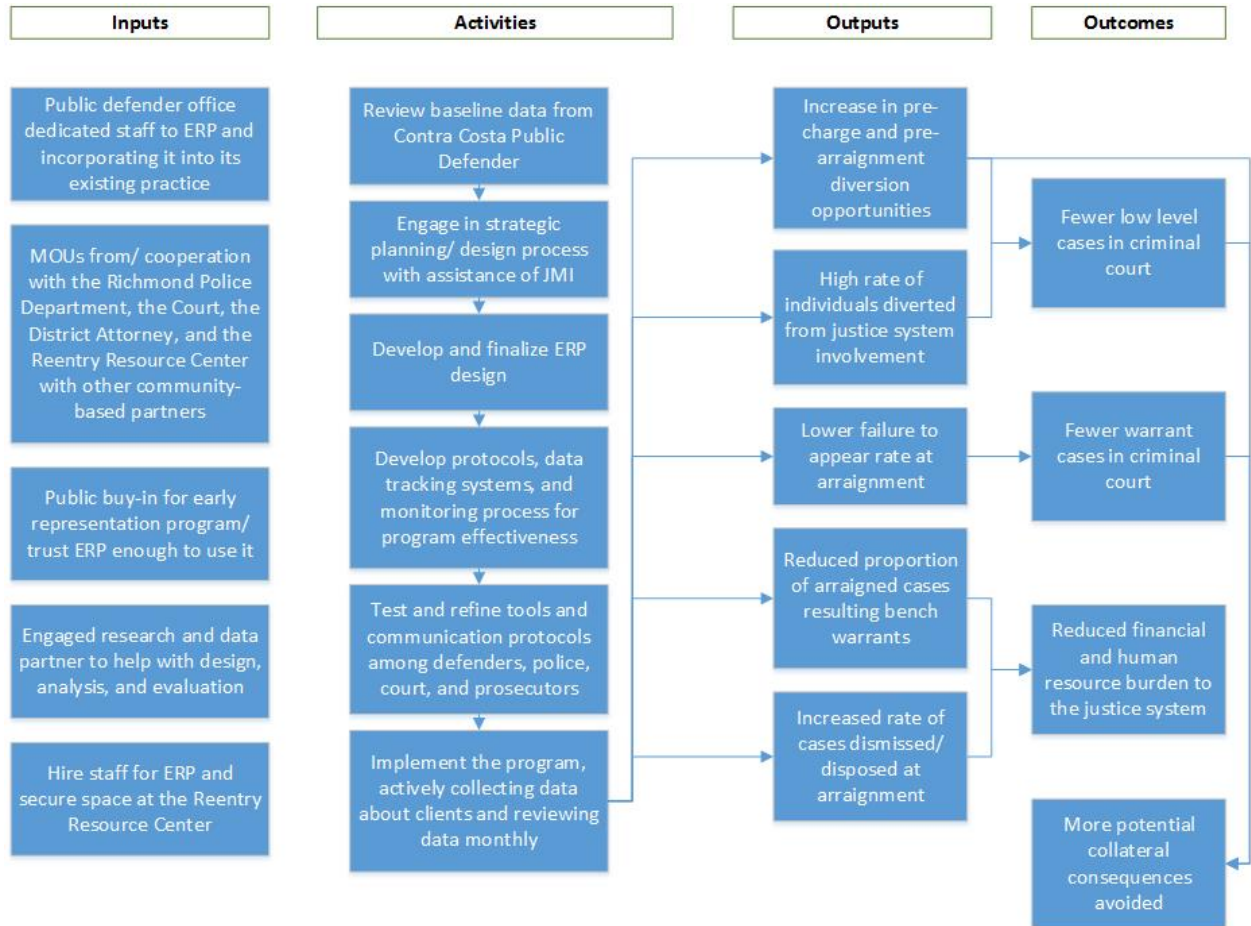
D. Legal Representation: Representation by MERP staff will proceed in a tiered approach, depending on the stage of the case. Because a significant percentage of arrests by law enforcement do not result in prosecutions, the tiered intervention will fall into two categories:

Tier One/Post-Arrest and Pre-Filing: For people who have been cite-released but against whom a complaint has not yet been filed, MERP staff will regularly check with the court to see if criminal charges have been filed and to notify individuals accordingly. In addition, MERP staff will gather information to determine whether immediate investigation needs to be conducted and will take steps to preserve critical evidence in the event that a charge is filed. Staff will work with the client to address barriers to meeting court dates, such as access to transportation and childcare or intervening with employers. Finally, MERP staff will evaluate each case to determine whether early advocacy and intervention with the DA is appropriate, to avoid the filing of charges or to negotiate an early disposition.

Tier Two/Post-Filing and Pre-Arrest: Once MERP staff is alerted that the District Attorney has filed a criminal complaint, MERP will schedule an appointment with the client. The attorney will flag cases eligible for diversion and will assist those clients with the diversion process. For cases that are not to be diverted, MERP staff will begin investigation requests, request surveillance footage and other potential time-sensitive evidence, and gather mitigating

facts and personal information to aid in plea negotiation and case preparation. Such cases will thereafter be assigned to a Public Defender staff attorney for the remainder of the representation.

E. Roles and Responsibilities of the Research Partner: In partnership with its subgrantee research partner, the Justice Management Institute, MERP will track multiple data points to evaluate program success, as indicated in the following logic model.



As detailed in the project timeline (attached), the project will proceed in five steps:

- Step 1: Gather baseline information, refine logic model and finalize program design:

Justice Management Institute (JMI) will serve as an active partner throughout the design, implementation, and evaluation of the MERP. At the onset, JMI staff will work with MERP project partners (including the Public Defender, the District Attorney, the Court, the Sheriff, and

the Richmond Police Department) to gather and aggregate relevant data from across these systems. These data will be linked together into a single data set, using common, unique identifiers across information systems. To establish an appropriate baseline against which to compare the results of the MERP, JMI will gather retrospective data for at least the three years prior to the project's implementation. Key data to be collected will include demographics of arrestees and defendants (especially primary language spoken); rates of failures to appear; rates of bench warrants issued in arraignment court for failures to appear; case type; arraignment dates set forth on citations versus actual arraignment dates; numbers of misdemeanor cases diverted; number of cases disposed at arraignment by disposition; and caseload data for judges, prosecutors, and defenders. To maintain client confidentiality, client data will be anonymized. At the aggregate level, JMI will also analyze financial data to establish average costs of issuing citations, making arrests, arraignments, and other key events. As data are collected and analyzed, JMI staff will work with project staff to refine the logic model, refine shared expectations for program outputs and outcomes, and foster ongoing communication with the project's partners.

- Step 2: Develop program infrastructure: Immediately upon securing funding, the Office of the Public Defender will undertake the following tasks: 1) Finalize agreements with the Richmond Police Department and the West County Reentry Resource Center to facilitate program launch and implementation; 2) Hire and/or assign appropriate staff; 3) Design an information sheet to be handed out by law enforcement and an informational brochure to be distributed throughout the community; 4) Develop intake forms and data tracking tools; 5) Develop program protocols; 6) Design a data system to monitor program data and use it to inform program development; and 7) Conduct training sessions and informational sessions with local law enforcement, the courts, the Sheriff's Office, the Office of the District Attorney, and relevant community-based organizations to ensure a smooth launch of the program. During this

stage, JMI will help ensure that agreements, hiring, and materials developed are consistent with the program model and best practices. Intake and data tracking tools as well as protocols for interviewing arrestees or defendants and responding to their questions will also be reviewed and documented as part of the implementation study. Core activities such as eligibility screening, assignment, negotiation with prosecutors, and protecting client confidentiality will be addressed and incorporated into a project manual for MERP. JMI will work with the Office of the Public Defender to develop a data tracking system that integrates with their existing case management system, collecting the process and outcome data essential to testing program success. JMI will also develop approaches to conduct cost/benefit analysis, consistent with justice reinvestment.

Step 3: Implement and Evaluate: We anticipate that the infrastructure for representation will be in place on or before December 1, 2015. As of that date, the MERP staff will be on-site at the Reentry Resource Center, and the Richmond Police Department will begin providing new arrestees with information about MERP at the time they are issued a citation. Concurrent with the launch date, MERP staff will promote the program through a press release and widespread dissemination of informational brochures at appropriate sites throughout West County. Immediately upon accepting clients, MERP staff will begin capturing and tracking data under the guidance of and in close coordination with JMI. As discussed above, this data will be tracked in a system jointly designed by JMI and the Office of the Public Defender.

- Step 4: Evaluate Process and Outcome Measures and Present Findings: Throughout MERP implementation, the Office of the Public Defender and JMI will conduct monthly meetings to review data, troubleshoot any problems and to identify any opportunities or emerging trends. The Public Defender and JMI will also conduct quarterly meeting to present progress to the larger community of stakeholders. Within 15 months of implementation, JMI will make a presentation of findings to the stakeholder group. This presentation will provide a forum

for all parties to respond to the data, recommend changes, and strategize for sustainability. JMI will then prepare a final report summarizing the findings, including client outcomes, lessons learned, cost analysis, replication, and scalability.

2. Capabilities and Competencies

A. *Contra Costa County Office of the Public Defender*: The Contra Costa County Office of the Public Defender (CCCPD) is uniquely situated to ensure the success of this program. With a staff of 75 attorneys, the CCCPD provides vertical representation for indigent persons throughout the county. The office has two branches, one in Richmond serving West County clients and one in Martinez serving Central and East County clients. Public Defender Robin Lipetzky, the Department Head since 2010, is a statewide leader in Public Defender office management and best practices. As a board member with the California Public Defenders Association, Ms. Lipetzky chairs the Committee on Office Management and the Conference of Chief Public Defenders.

B. *Data*: The Office of the Public Defender has access to relevant data from multiple sources: The Office of the Public Defender maintains a monthly report that tallies all new cases referred to the office, by case type and geographic location. The Court maintains records of the numbers of misdemeanor cases calendared and, of those, the numbers of failures to appear. It also maintains data on the numbers of arrest warrants issued by the court for failures to appear. The Richmond Police Department maintains data on the numbers of citations issued for misdemeanor offenses. Finally, the Office of the District Attorney maintains data on the numbers of misdemeanor cases filed by geographic area and by police agency. All of the external sources (the Court, the Richmond Police Department and the Office of the District Attorney) have agreed to make their data available to the project. By drawing these data sources, the Office of the Public Defender and JMI will be able to accurately and efficiently to capture both baseline data

and ongoing data to provide a thorough and thoughtful analysis of the program's outcomes.

C. Collaboration: In addition to the ability to track the necessary data, the Office of the Public Defender has a proven history of successful collaboration with its criminal justice partners and with community-based organizations. With California's great experiment in criminal justice reform launched in 2011, Contra Costa County has emerged as a leader in innovative and strategic collaborations among government and non-government agencies to effect positive change.^{ix} The Public Defender has been central to many of these collaborative efforts, including the formation of the state's first AB109 Community Advisory Board. The Public Defender sits on the Steering Committee for the West County Reentry and Resource Center, which will house the project. Recently, the Office of the Public Defender was instrumental in convening and facilitating a collaborative partnership of multiple government agencies and community-based organizations that resulted in a successful bid for a three-year, \$3.045 million Byrne Justice Administration Grant to create a county-wide Youth Justice Initiative to advance collective capacity to improve outcomes for youth across the county. In addition, the Office of the Public Defender currently engages with the community in multiple projects to improve the quality of representation to clients and to mitigate the effects of incarceration and criminal justice involvement. The Office operates a Clean Slate program in which it partners with the Department of Employment & Human Services to petition the court to remove barriers to employment for those seeking work. In the juvenile justice arena, the Office has worked closely with West County community groups to help young people divert from the juvenile justice process or complete probation. The Office has conducted focus groups and Know Your Rights programs with many community organizations. Finally, with the recent passage of California's Proposition 47, which provided the opportunity to reduce low-level felony convictions to misdemeanor status, the Office has conducted extensive outreach to community groups, faith-

based organizations, and homeless shelters to identify persons eligible for relief under the new law. Through these existing projects, the Office has forged strong relationships with West County community groups, which will facilitate a smooth project launch.

D. Participation of Other Criminal Justice Stakeholders: The Public Defender has secured the support of all partners necessary to ensure the success of this program. Attached are letters of support from the Richmond Police Department, the Officer of the District Attorney, the Richmond Court, the West County Reentry Resource Center, and the Office of the Sheriff.

E. Project staff: The Office of the Public Defender will staff the project with a .1 FTE Supervising Attorney, 1 FTE Staff Attorney, and a .5 FTE Staff Legal Assistant. **Michelle Dawson, Supervising Attorney** of the Richmond branch of the Office of the Public Defender, will serve as the project's Supervising Attorney. Ms. Dawson has been with the Office of the Public Defender for 18 years. As the Managing Attorney for the West County Office, she has solid relationships with the Richmond Court, the staff of the Richmond DA's Office, the Richmond Police Department, and West County community organizations. The **MERP Staff Attorney** (to be hired) will be a bilingual English/Spanish speaker with extensive knowledge of the collateral consequences of misdemeanor convictions. The attorney will be versed in the principles of procedural justice and holistic defense. Additionally, the attorney will have experience working in collaboration with community organizations. The **MERP Paralegal** (to be hired) will be a bilingual English/Spanish speaker skilled in data collection and with a working knowledge of the relevant databases. This employee will also be trained in intake procedures to include financial screening and conflict checks and will be responsible for ensuring compliance, accuracy, and privacy in coordinating data with Center staff and partners.

F. Research Partner, Justice Management Institute: Founded in 1993, JMI has a long history of conducting action research in partnership with local criminal justice agencies across

the country. JMI's approach to research focuses on helping criminal justice agencies understand and define issues in service delivery and to develop and test new and innovative strategies for addressing the issues. In fact, JMI is currently engaged in an action research project with Comal County, TX to assess the provision of indigent defense services through an intensive planning and data-driven process, to define a new model for service delivery, and to assess whether or not outcomes are improved for defendants. In that project, JMI is using a quasi-experimental design to track outcomes both pre- and post-implementation and a qualitative formative case study design to assess implementation and provide on-going feedback for program improvement. Other relevant and recent examples of research include an assessment of resource allocation for the Florida Public Defender's Association and case management for the Baltimore County, MD courts. As a partner and subgrantee, JMI will dedicate three staff members to this project:

Elaine Borakove, JMI's President, will serve as Principal Investigator, overseeing the strategic planning, data analysis, and overall evaluation design and implementation. Ms. Borakove is a member of the Michigan State Fellows Development group to create a curriculum for action researchers engaged as partners for BJA-funded demonstration sites. She is the PI and author of numerous research efforts using the action research approach, including the development and assessment of performance measurement in prosecution; strategies to address specific types of crimes such as gang violence, hate crimes, and elder abuse; and evaluation of sexual assault response models. She will directly supervise **Franklin Cruz, Program Director**, who will serve as Senior Analyst for this project, coordinating data collection and analysis throughout the two-year period, conducting strategic planning, facilitating project meetings to use data to make refinements to the MERP design, and ultimately crafting the final findings and recommendations in collaboration with the Principle Investigator. Mr. Cruz brings 15 years' experience in criminal and juvenile justice, specializing in criminal defense. He served as Chief Operating Officer of the

Bronx Defenders, a nationally recognized public defender office. **Aimee Wickman** will serve as an analyst on this project, liaising directly with data analysts in Contra Costa, supporting the development and review of protocols and project materials, and conducting baseline analyses of data throughout implementation. Ms. Wickman also brings expertise in the area of indigent defense, having worked substantively at the Spangenberg Group with systems nationwide.

3. Plan for Collecting the Data Required for this Solicitation's Performance Measures

MERP staff, in conjunction with JMI, will gather baseline data from the various sources described above (Public Defender database, court system, Richmond Police Department statistics, and District Attorney filing statistics). As part of program intake and client management, staff will gather detailed client-based data (number of clients, type of case, demographic information, services provided). MERP will also work with the Richmond Police Department to gather data on citation arrests and types of crimes, and with the Court to gather hearing dates and warrant information. The data will be stored concurrently by MERP and JMI. JMI will provide analytic and evaluative reports at 90-day intervals, at which time MERP staff and JMI will discuss the performance measurements to assess findings.

A commitment to justice reinvestment and to procedural justice is foundational to this pilot project, and proof of concept – including financial savings, increased efficiencies, and just outcomes – is a primary goal of this project. The project's short-term and long-term outcome metrics include the following: Reduction in the 30% FTA rate in misdemeanor arraignment court in Richmond; reductions in the 15-20% of cases that begin as in-custody warrant hearings for FTA; improved understanding into the characteristics of individuals who fail to appear at first arraignment hearing; increases in number of clients diverted out of the criminal justice system, thus avoiding records of conviction.

4. Sustainability: Cost-benefit analysis will include estimates of the cost reductions and

increased efficiencies as collateral consequences of reduced rates of FTA; JMI will collect available financial data (Task 1) to inform the project's ability to demonstrate its benefits throughout the justice system, both to influence the use of the County's funds and to attract additional financial support (public and private) for the project. Further, MERP's collaborative approach (e.g., prosecutors, judges, police officers, etc.) will create and maintain an engaged constituency who can advocate for the program's continuation and expansion.

ⁱ This reflects the national trend. (Roberts, J. *Why Misdemeanors Matter* 56 U.C. Davis Law. Rev. 277, 280 [hereinafter referred to as Roberts].)

ⁱⁱ *An Experiment in the Law: Studying a Technique to Reduce Failure to Appear In Court*, Alan J. Tomkins, et al, University of Nebraska Public Policy Center, 2010, page 2.

ⁱⁱⁱ *Smart Justice Spokane Court Notification*, compiled by Mary Lou Johnson, Attorney, and Julie Schaffer, Attorney for Center for Justice, Smart Justice Campaign, available at smartjusticespokane.org

^{iv} Principle 3: Clients are screened for eligibility and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention or request for counsel.

^v "Holistic Defense is an innovative, client-centered and interdisciplinary model of public defense that... yields better outcomes in court, and, in helping to stabilize clients' lives, better life outcomes for clients"; see https://www.bja.gov/Funding/HolisticDefensePR_03-13.pdf

^{vi} Justice reinvestment is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism; see <http://csgjusticecenter.org/jc/category/jr/>

^{vii} See http://cops.usdoj.gov/html/dispatch/09-2013/fairness_as_a_crime_prevention_tool.asp

^{viii} *Contra Costa County: A Model for Managing Local Corrections*, James Austin, PhD, et al, JFA Institute, January 2014