



SIXTH  
AMENDMENT  
CENTER

P.O. Box 15556, Boston MA 02215

June 22, 2021

[REDACTED]

Lake County Administrative Office  
255 N. Forbes Street  
Lakeport, CA 95453  
Attn: Carol J. Huchingson ([Carol.Huchingson@lakecountyca.gov](mailto:Carol.Huchingson@lakecountyca.gov))

RFP No. 21-08: Operational Analysis for Indigent Defense Services (Section A: Cover Letter)

Dear Ms. Huchingson,

The Sixth Amendment Center (6AC) is a non-partisan, non-profit, tax-exempt organization seeking to ensure that no person accused of crime goes to jail without first having the aid of a lawyer with the time, ability, and resources to present an effective defense as required under the United States Constitution. We do so in part by measuring public defense systems against Sixth Amendment case law and established standards of justice, and we assist state and local policymakers in their work to establish and implement public defense systems that meet constitutional requirements while promoting public safety and fiscal responsibility. 6AC is an indigent defense technical assistance provider for the United States Department of Justice, Bureau of Justice Assistance.

With this proposal, the 6AC agrees to provide Lake County with an independent and objective evaluation of the County's current indigent defense services. The assessment report will include an analysis of public defender alternatives and costs, and recommendations for systemic improvements. I attest that we have the capabilities and competencies to complete the work at the projected costs contained herein and at the projected time schedule.

Thank you for the opportunity to submit this proposal.

Sincerely,

A handwritten signature in black ink that reads "David Carroll".

David Carroll, Executive Director  
Sixth Amendment Center  
P.O. Box 15556  
Boston, MA 02215  
[David.carroll@6AC.org](mailto:David.carroll@6AC.org)

Cc:

Susan Parker, Assistant County Administrator  
[Susan.Parker@lakecountyca.gov](mailto:Susan.Parker@lakecountyca.gov)

## **Section B: Work Plan Proposal to Conduct an Operational Analysis of Indigent Defense Services in Lake County, California**

**Introduction:** In 1963, the U.S. Supreme Court declared it an “obvious truth” that anyone who is accused of a crime and who cannot afford the cost of a lawyer “cannot be assured a fair trial unless counsel is provided for him.”<sup>1</sup> Under subsequent caselaw, the Supreme Court has determined that attorneys appointed to the indigent accused must be effective,<sup>2</sup> and subject the prosecution’s case to “the crucible of meaningful adversarial testing.”<sup>3</sup>

Providing and protecting the Sixth Amendment right to effective assistance of counsel for the indigent accused in state courts is a constitutional obligation of the states – not local governments – under the due process clause of the Fourteenth Amendment.<sup>4</sup> California has delegated this responsibility to county boards of supervisors and/or the superior court judges in each county.

In each California county, indigent people may be represented by a public defender office,<sup>5</sup> a private attorney under contract,<sup>6</sup> a private attorney appointed on a case-by-case basis,<sup>7</sup> or almost any combination of these methods. California has delegated to its counties all responsibility at

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<sup>1</sup> Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

<sup>2</sup> McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970); Strickland v. Washington, 466 U.S. 668, 688-89 (1984).

<sup>3</sup> United States v. Cronin, 466 U.S. 648, 656 (1984).

<sup>4</sup> Gideon v. Wainwright, 372 U.S. 335, 341-45 (1963).

<sup>5</sup> A county board of supervisors may, but is not required to, establish a public defender office for the county; and two or more counties may join together to establish and operate a public defender office. CAL. GOV. CODE § 27700 (West 2019). If a county establishes a public defender office, the county board of supervisors determines whether the public defender is elected or appointed. CAL. GOV. CODE § 27702 (West 2019). If elected (only the case in San Francisco), the public defender is elected countywide to a four-year term of office. CAL. GOV. CODE § 27704 (West 2019). If appointed, the public defender is appointed by and serves at the will of the board of supervisors. CAL. GOV. CODE § 27703 (West 2019). Whether elected or appointed, the public defender must have been licensed to practice law in all California courts for at least one year prior to taking the position. CAL. GOV. CODE § 27701 (West 2019).

The legislature mandates that a public defender in the counties of Los Angeles, Orange, and San Diego must be full-time and cannot engage in the practice of law outside of the public defender office. CAL. GOV. CODE §§ 27705, 28020, 28022, 28023, 28024 (West 2019). In all other counties, the board of supervisors chooses whether a public defender is full-time or part-time and whether allowed to have a private law practice, although no public defender is allowed while holding the position to defend a person accused of crime in any other county. CAL. GOV. CODE § 27705.1 (West 2019).

<sup>6</sup> A superior court may contract with one or more “responsible attorneys” to provide representation to indigent adults and children. CAL. PENAL CODE § 987.2(a), (b) (West 2019). Where a superior court contracts with one or more private attorneys, state law does not impose any requirements for how the courts go about selecting the attorneys with whom they contract; courts are free to create their own requirements if they choose to do so. The court must consult with the county board of supervisors regarding the amount of the contract. CAL. PENAL CODE § 987.2(b) (West 2019). Each superior court judge may choose and appoint an individual private attorney to represent the indigent person in a specific case. CAL. PENAL CODE § 987.2(c) (West 2019).

<sup>7</sup> State law does not impose any requirements for how the courts go about selecting the attorneys whom they appoint; courts are free to create their own requirements if they choose to do so. Where judges appoint individual private attorneys on a case-by-case basis, the judges or the county are “encouraged” but not required by state law to: (1) Establish panels that shall be open to members of the State Bar of California; (2) Categorize attorneys for panel placement on the basis of experience; (3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause; (4) Seek to educate those panel members through an approved training program; and, (5) Establish a cost-efficient plan to ensure maximum recovery of costs [from indigent defendants]. CAL. PENAL CODE § 987.2(c) (West 2019).



the outset for funding indigent representation services at the trial court level,<sup>8</sup> regardless of the method(s) a county uses to provide those services.<sup>9</sup> To whatever extent the California legislature makes funding available each year, counties can apply for state reimbursement of three types of indigent representation expenditures: homicide cases;<sup>10</sup> crimes and involuntary detentions;<sup>11</sup> and training.<sup>12</sup> In 2020, the California Legislature the mission the Office of the State Public Defender (OSPD) to include not only the representation of people of insufficient means in post-conviction death penalty appeals, but to begin to provide assistance and training to county trial-level public defender offices.<sup>13</sup>

Lake County<sup>14</sup> provides indigent defense services by contract with a private firm to provide indigent defense services – Lake Indigent Defense. Lake Indigent Defense then subcontracts with private criminal defense lawyers and investigators. Lake County received no state assistance from OSPD in its first year of offering technical assistance grants.

On May 28, 2021, Lake County, California issued a request for proposal to conduct an operational analysis of indigent defense services.<sup>15</sup> Specifically, Lake County seeks an independent and objective evaluation that includes three aims:

- Assessment of indigent legal services;
- Analysis of public defense alternatives and costs; and

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<sup>8</sup> Whenever an attorney other than a public defender is appointed by a court of appeal or the California Supreme Court, the attorney is paid “a reasonable sum for compensation and necessary expenses” by the state controller from funds appropriated to the Judicial Council for that purpose. CAL. PENAL CODE § 1241 (West 2019); see CAL. GOV. CODE § 68511.5 (West 2019), CAL. RULES OF COURT r. 8.300, 8.391, 8.403, 8.482, 8.605, 8.652. The state funds representation of indigent defendants on direct appeal, habeas corpus, and post-conviction proceedings through the courts of appeal, the State Public Defender, the California Habeas Corpus Resource Center, and the Judicial Council. CAL. GOV. CODE §§ 15400 *et seq.*, 68660 *et seq.*, (West 2019).

<sup>9</sup> CAL. GOV. CODE §§ 27707.1, 27708, 27711 (West 2019) (funding for public defender office overhead, case-related expenses, and attorney compensation); CAL. PENAL CODE §§ 987.2(a), 987.2(b) (West 2019) (funding for private attorneys under contract); CAL. PENAL CODE § 987.2(a) (West 2019) (funding for private attorneys appointed case-by-case).

<sup>10</sup> In accordance with rules and regulations established by the state controller, a county can apply to the state controller for “reimbursement of the costs incurred by the county in excess of the amount of money derived by the county from a tax of 0.0125 of 1 percent of the full value of property assessed for purposes of taxation within the county” in a homicide case. CAL. GOV. CODE §§ 15202, 15204 (West 2019). The reimbursable costs include those incurred “by the public defender or court-appointed attorney or attorneys in investigation and defense,” but exclude “normal salaries and expenses” and also exclude any costs for which the superior court is responsible.” CAL. GOV. CODE § 15201 (West 2019).

<sup>11</sup> The state is allowed to reimburse counties for not more than 10% of the funds actually expended for providing appointed counsel for indigent defense people “charge with violations of state criminal law or involuntarily detained under the Lanterman-Petris-Short Act. CAL. PENAL CODE §§ 987.6 (West 2019).

<sup>12</sup> In accordance with eligibility guidelines developed by the state Office of Emergency Services, local public defenders can be reimbursed out of the state’s “Local Public Prosecutors and Public Defenders Training Fund” for attending “statewide programs of education, training, and research. CAL. PENAL CODE §§ 11501 through 11504 (West 2019).

<sup>13</sup> CAL. GOV. CODE § 15420 (West 2019).

<sup>14</sup> Lake County has a land area of only 1,256.46 square miles, and a 2010 federal census population of 64,662, making it California’s 18<sup>th</sup> least populated county. The county’s estimated July 1, 2019, population decreased to 64,386. The county seat is Lakeport (pop. 5,006), but the majority of the population lives in Clearlake (15,267). The median income of Lake County residents is \$47,040, which is significantly below both the national (\$62,843) and state (\$75,235) averages. An estimated 18.3% of the Lake County population lives in poverty. *QuickFacts – Lake County, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/lakecountycalifornia/US/PST045219>.

All cases are heard in one of the four divisions of the Lake County Superior Court in Lakeport, or its branch in Clearlake. Prosecutions of all state crimes (both felonies and misdemeanors) alleged to have been committed within the geographic boundaries of Lake County are conducted by the Lake County Office of the Prosecuting Attorney (“Prosecutor’s Office”). The Prosecutor’s Office works with 30 different police agencies. See: [http://www.lakecountycalifornia.gov/Government/Directory/District\\_Attorney/About\\_Us.htm](http://www.lakecountycalifornia.gov/Government/Directory/District_Attorney/About_Us.htm).

<sup>15</sup> Lake County, California, Request For Proposal # 21-08. May 28, 2021.

- Recommendations for County public defense services.<sup>16</sup>

**Assessment Methodology:** An objective assessment of current indigent legal services is necessary before analyzing alternatives and costs, and making recommendations for change (if any).

The Sixth Amendment Center independently and objectively evaluates indigent defense systems using Sixth Amendment case law and national standards for right to counsel services as the uniform baseline measurements for providing attorneys to indigent defendants, along with the requirements of state, local and federal laws. The use of standards as a basis for evaluation of government services is familiar to most governmental officials. After all, for many decades policymakers have ordered minimum safety standards in all proposals to build a brand-new courthouse, provide a fleet of city buses, or construct a new state highway overpass. Our Constitution demands that the threat of taking an individual's liberty is given at least the same level of concern and care.

To help policymakers who may not be versed in the standards imposed by Sixth Amendment constitutional law, the American Bar Association (ABA) promulgated the *Ten Principles of a Public Defense Delivery System (Ten Principles)*. As the ABA explains, these principles represent "fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney."<sup>17</sup>

Although each indigent defense project is tailored to the specific needs of the jurisdiction being evaluated, 6AC assessments employ the following three primary approaches:

- **Data collection:** Basic information about how a jurisdiction provides right to counsel services is often available in a variety of documents, from statistical information to policies and procedures. Relevant hard copy and electronic information, including copies of indigent defense contracts, policies, and procedures, will be obtained and analyzed.
- **Court observations:** Evaluating how right to counsel services work in any jurisdiction requires an understanding of the interaction between at least three critical phenomena: (a) the procedures an individual defendant experiences as her case advances from arrest through disposition; (b) the process the defense attorney experiences while representing that individual at the various stages of the case; and (c) the substantive laws and procedural rules that govern the justice systems in which indigent representation is provided. Courtroom observations will be conducted to clarify these processes.
- **Interviews:** No individual component of the criminal justice system operates in a vacuum. Rather, the policy decisions of one component necessarily affect another. Because of this, interviews will be conducted with a broad cross-section of stakeholder groups during each site visit. In addition to speaking with indigent defense attorneys, interviews will be conducted with trial court judges, prosecutors, court clerks, and law enforcement.

<sup>16</sup> Lake County, California, Request For Proposal # 21-08. May 28, 2021, page 3.

<sup>17</sup> AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2002).

Alternatives Analysis: Where the standards-based assessment identifies shortcomings in the current indigent defense delivery system, 6AC analyzes structural alternatives that meet constitutional commands while also promoting public safety and fiscal responsibility. Alternatives analysis is based on U.S. Supreme Court case law, national criminal justice standards, California law, and best practices with a focus on similarly situated jurisdictions across the country.

Final Report: 6AC produces a final report of the findings and recommendations, which incorporates the standards-based assessment and analysis of alternatives necessary to correct shortcomings (if any). Should recommendations contemplate significant structural changes, the recommendations discussion may include: a framework for implementing a new plan for indigent defense services; a draft contract for indigent defense services; indigent defense system budget; and other relevant guides for future policy discussion (as needed).

### **Section C: References**

1. Nicole D. Coburn, Assistant County Administrative Officer  
County of Santa Cruz, California  
(831) 454-3408; [nicole.coburn@santacruzcounty.us](mailto:nicole.coburn@santacruzcounty.us)

For decades, Santa Cruz County delegated all decision-making about the provision of Sixth Amendment right to counsel services to private law firms through county contracts. In 2019, Santa Cruz County contracted the 6AC to assess all indigent legal services, to analyze public defense alternatives and costs, and, to make recommendations for County public defense services. 6AC's subsequent report, *The Right to Counsel in Santa Cruz County, California*, determined that Santa Cruz County could not accurately say how many people or cases, and of what case types, require appointed counsel nor by whom the representation is being provided, if at all. At the same time, the county did not require that the contract private law firms explain: how much tax-payer money they spend on overhead and what is acquired; how much money they pay to partners, associate attorneys, and staff; nor what services are provided in exchange.

The 6AC recommended that Santa Cruz County hire a full-time chief public defender, and authorize and fund that chief public defender to: establish an indigent representation system, including executive staff, a public defender office division, and a conflicts counsel division; promulgate uniform policies and standards for all indigent representation system services; and secure a sufficient number of attorneys, support staff, and supervisors in each division, and with adequate compensation and resources, to ensure conflict-free and effective assistance of counsel to every indigent person.

In January 2021, Santa Cruz county adopted an ordinance authorizing the hiring of a new chief public defender. The Santa Cruz County board voted on March 9, 2021, to approve the county administration's transition plan, which would open a county-employed public defender office simultaneously with the expiration of the private law firm contract on July 1, 2022.

2. Senator Lisa Kiem  
State of Maine  
(207) 418-2552; [Lisa.Keim@legislature.maine.gov](mailto:Lisa.Keim@legislature.maine.gov)

Maine is the only state in the country that provides all indigent defense services through private attorneys. Other states have moved away from using solely private attorneys, because it is difficult to predict and contain costs in a private attorney system and difficult to provide quality oversight. The Maine Commission on Indigent Legal Services (MCILS) is tasked with overseeing indigent defense services, but undue political interference with MCILS resulted in underfunding. Moreover, MCILS is expected to oversee the representation by, and cost of, nearly 600 attorneys, handling more than 30,000 cases each year in 47 courthouses presided over by approximately 90 justices, judges, and magistrates – all with a staff of just three people.

Based on 6AC technical assistance as the first step in creating proper oversight, in 2018 Maine expanded the number and type of government officials authorized to appoint commission members to MCILS to comport with national standards on independence of the defense function. The same legislation authorized and funded a 6AC evaluation for the Maine Legislative Judiciary Committee.

The 6AC's 2019 evaluation, *The Right to Counsel in Maine*, recommended, among others, that Maine: (a) authorize and fund MCILS at a level sufficient to employ state government attorneys and support staff in a statewide appellate defendant office and in a trial level public defender office; (b) enact a statutory ban on all public defense contracts that create financial disincentive to effective representation; and (c) bar communications between prosecutors and unrepresented defendants. MCILS subsequently banned all flat fee contracting and instituted better financial controls. All other legislative reforms are currently pending in the 2021 legislative session.

3. Loren Khogali, Executive Director  
Michigan Indigent Defense Commission  
(517) 275-2845; [khogalil@michigan.gov](mailto:khogalil@michigan.gov)

Prior to 6AC involvement, the responsibility for administering and funding trial-level indigent defense services in Michigan was an entirely local government function. State government had no entity dedicated to determining whether the state's obligation to provide effective defender services was being met by its counties and cities, and local government generally fell short of the mark due to excessive caseload, no supervision, and undue political & judicial interference.

Based on 6AC technical assistance, a Governor's Advisory Commission issued a 2012 report defining the state's indigent defense system as an "uncoordinated, 83-county patchwork quilt," with each county "dependent on its own interpretation of what is adequate" given limited local funding. In 2013, Michigan enacted a comprehensive legislative package creating the Michigan Indigent Defense Commission (MIDC) – empowered to develop, monitor and enforce standards statewide. Statutorily required standards include: independence of the defense function; time sufficiency and workload controls; attorney/client confidentiality; attorney qualification, training

and supervision; and continuous representation. Local governments submit plans on how best to meet MIDC standards. If approved, the state is responsible for covering the difference between existing local funding and the amount to implement the standards. In the first year of state funding, Michigan augmented local funding by more than double. MIDC standards led 32 of 83 counties to create public defender offices. Pre-reform there were just three public defender offices in the state.

As part of its oversight function, MIDC identified Wayne County (Detroit) as needing to have their indigent defense services evaluated. For 16 years, the nonprofit State Defender Office (SDO) handling 25% of the felony cases in Wayne County received the same funding despite increasing caseloads and overhead expenses. A limited number of SDO attorneys, combined with the large number of courtrooms they were contractually obligated to cover each day, meant that the same attorney rarely ever represented an indigent defendant from appointment through disposition of the case.

MIDC granted Wayne County funds for 6AC to assess the SDO. Based on 6AC recommendations, Wayne County Commissioners ended its contractual relationship with SDO and accept bids for a new provider. Subsequently, the county unanimously approved Neighborhood Defender Services (NDS) to establish a new public defender office in Detroit. The decision brings NDS's nationally recognized holistic representation model to the service of Wayne County residents. NDS Detroit opened its doors in early October 2019, and has a staff of 70 working to meet the legal and social work needs of appointed clients. NDS Detroit also provides legal assistance to clients in areas such as immigration, housing, and family law, to protect residents who endure collateral consequences as a result of interaction with the criminal legal system.

In addition, Wayne County trial court judges directly oversee private assigned counsel providing representation in 75% of indigent felony cases. Every aspect of the Sixth Amendment right to counsel is impaired by the lack of independence from the judiciary, leaving the personal interests of appointed private attorneys in conflict with the legal interests of the defendants whom they are appointed to represent. MIDC granted to Wayne County funds for 6AC to assess the assigned counsel services. Based on 6AC recommendations, Wayne County has created an independent managed assigned counsel system to supervise private attorneys providing representation.

#### **Section D: Schedule/Timeline**

Current work commitments will allow the 6AC to begin the Lake County project on September 1, 2021 (assuming a contract will be signed in August 2021). Research, data analysis, and Zoom interviews will be completed before site work begins in October 2021. The 6AC will present our findings and recommendations in December 2021 (4 months).



TASK	SEP	OCT	NOV	DEC
Off Site Research				
Data Mining/Analysis				
Site work				
Site Notes				
Report Drafting				

**E. Cost Proposal:** See separate confidential document.

**F. Copy of Sample Analysis:** *The Right to Counsel in Santa Cruz County, California* can be downloaded at the following link:

[https://sixthamendment.org/6AC/6AC\\_ca\\_santacruzcountyreport\\_2020.pdf](https://sixthamendment.org/6AC/6AC_ca_santacruzcountyreport_2020.pdf).





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Lake County Administrative Office  
255 N. Forbes Street  
Lakeport, CA 95453  
Attn: Carol J. Huchingson ([Carol.Huchingson@lakecountyca.gov](mailto:Carol.Huchingson@lakecountyca.gov))

RFP No. 21-08: Operational Analysis for Indigent Defense Services (Section E: Cost Proposal)

Dear Ms. Huchingson,

Below is the Sixth Amendment Center's cost proposal for RFP No. 21-08.

**E. Cost Proposal:** The 6AC will complete the project for \$57,890.00. If awarded the contract, the 6AC requests that four equal payments be made over the life of the project (\$14,472.50).

**Pre-Site Visit Office Work:** Much of the Lake County evaluation will necessarily involve off-site interviews, data mining/analysis, and research to inform our on-site work. We project 15 office days for research on statutes, caselaw, and local court orders pertaining to indigent defense representation. This includes preliminary Zoom/telephone interviews with local criminal justice stakeholders and policymakers. We similarly require five days of mining and analysis of public assigned counsel and court data to understand the required number of attorneys and staff needed to handle the current workload. 6AC's daily rate is \$1,200.00. Total sub-cost for 20 days of pre-site visit work is \$24,000.00 (\$1,200.00/day x 20 days = \$24,000.00).

**Site Visit Work:** Once the preliminary work is completed, 6AC will bring a two-person team on site. We are currently projecting that the two-person team will be on site for three business days (six on-site days total) in September 2021 (\$7,200.00). The total sub-cost for site visit work is \$7,200.00 (\$1,200.00/day x 2 team members x 3 days = \$7,200.00).

**Site Work Expenses:** Total on-site expenses are projected at \$2,690.00.

- Airfares are calculated at \$500.00 per trip. There will be two such trips, for a sub-total of \$1,000.00.
- Meals and incidentals are calculated at \$80.00 per day. There will be 6 such instances, or \$480.00.
- Hotels will cost \$150 per night. With 6 necessary hotel nights, lodging is projected at \$900.00.
- We will require two rental cars while on site. At \$275 per car, the cost of rental cars will be \$550.00.

- Each team member will need ground transportation to and from their home airport. This is calculated at \$65.00 per person (2) per instance (2), or \$260.00 total.

Post-Site Visit Work: Once the site work is completed, the 6AC requires 10 days (\$12,000.00) to compile site reports and 10 days (\$12,000.00) to draft, graphic-design, and finalize the report and recommendations (\$1,200.00/day x 20 days = \$24,000.00).

TIME			
ON-SITE WORK	DAILY RATE	SITE DAYS	TOTAL
Carroll	\$ 1,200.00	3	\$ 3,600.00
6AC staff 1	\$ 1,200.00	3	\$ 3,600.00
Sub-Total			\$ 7,200.00
OFF-SITE WORK	DAILY RATE	WORK DAYS	TOTAL
Off-Site Research	\$ 1,200.00	15	\$ 18,000.00
Data Mining	\$ 1,200.00	5	\$ 6,000.00
Site Reports	\$ 1,200.00	10	\$ 12,000.00
Report Drafting	\$ 1,200.00	10	\$ 12,000.00
Sub-Total			\$ 48,000.00
<b>TOTAL</b>			<b>\$ 55,200.00</b>

EXPENSES			
EXPENSE	RATE	OCCURENCES	TOTAL
Meals & IE	\$80/day	6	\$ 480.00
Airfare	\$500/trip	2	\$ 500.00
Hotel	\$150/night	6	\$ 900.00
Car/Milcage	\$275/trip	2	\$ 550.00
Parking/Ground Transportation	\$65/day	4	\$ 260.00
<b>TOTAL</b>			<b>\$ 2,690.00</b>

<b>GRAND TOTAL</b>	<b>\$ 57,890.00</b>
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Sincerely,



David Carroll, Executive Director  
Sixth Amendment Center  
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Boston, MA 02215  
[David.carroll@6AC.org](mailto:David.carroll@6AC.org)

Cc: Susan Parker, Assistant County Administrator  
[Susan.Parker@lakecountyca.gov](mailto:Susan.Parker@lakecountyca.gov)