

# PUTTING RACIST POLICING ON TRIAL

# PUTTING CIVIL GIDEON INTO PRACTICE: ACLU-LA JUSTICE LAB AND PUBLIC DEFENDERS COLLABORATING FOR JUSTICE

The ACLU of Louisiana's (ACLU-LA) Justice Lab recognizes the need for synergy between our civil and criminal legal systems. At bottom, while there are civil remedies available for victims of unconstitutional policing, those remedies are generally waived if victims do not exercise their right to sue within one year of the date of the incident. Albeit counterintuitive, this means that—if criminal charges stemming from an unconstitutional stop, search, seizure, or arrest are pending, and the defendant does not timely file a complaint to preserve potential civil remedies related to those actions—those remedies are unlikely to be available once the criminal case is resolved. Collaboration between Justice Lab and public defenders presents an opportunity to preserve and, where possible, litigate the civil rights claims of people subjected to the criminal legal system. The claims at issue include unconstitutional stops, searches, seizures, arrests, excessive force, and racial profiling.

## How Can Partnering with Justice Lab Assist Public Defender Clients Who Have Been Subjected to Unconstitutional Policing?

- » Considering more than criminal charges when developing a defense strategy serves to improve outcomes for clients.<sup>1</sup>
- » Qualitative and quantitative studies show that addressing civil claims and mental health needs of those subjected to the criminal legal system reduces the likelihood of a custodial sentence, expected sentencing length, and rates of recidivism.<sup>2</sup>

## How Will Justice Lab Ensure that Filing a Civil Rights Action Will Not Jeopardize the Criminal Case?

- » The purpose of filing a civil rights action within the statute of limitations is to preserve, not jeopardize, the rights of people subjected to the criminal legal system.<sup>3</sup>

- » That said, we understand that public defenders and their clients may fear retaliation from prosecutors and/or law enforcement if a civil rights action is filed.<sup>4</sup>
- » To alleviate this fear, our goal is to maintain consistent communication with public defenders and clients—to the extent there is openness to such communication. Indeed, timing concerning the filing of a civil rights action and/or any other attendant strategic issues (such as the prospect of retaliation) will, with the client's consent, be discussed with the public defender.
- » In all likelihood, the civil case will be stayed during the pendency of the criminal case.<sup>5</sup>

## When Should a Public Defender Communicate with Justice Lab About a Potentially Viable Civil Rights Claim?

- » In Louisiana, the statute of limitations for bringing a civil rights action under 42 U.S.C. § 1983 is one year from the date of the incident. Accordingly, we suggest that public defenders communicate with their clients about the prospect for bringing a civil rights action as soon as evidence of an unconstitutional act surfaces.
- » If the public defender's client agrees to speak with someone from Justice Lab about a potential civil rights claim, we would ask that the public defender and/or the public defender's client contact us to set up an intake appointment.
- » Justice Lab can be reached by phone, email, or by filling out an intake form.

Phone: **(504) 522-0628**

Email: **justicelab@laaclu.org**

Intake Form: **<https://action.aclu.org/legal-intake/la-justice-lab>**

## What Should a Prospective Justice Lab Client Expect?

- » Once the public defender and/or the prospective Justice Lab client contact(s) us, we will send the prospective client through our intake process. That process involves responding to a series of questions that help us ascertain the viability of a potential civil rights action.
- » If we determine the prospective Justice Lab client may have a viable civil rights claim, we assign that case to a pro bono law firm partner that, along with ACLU-LA, will further investigate the claim.
- » If the outcome of that additional investigation supports taking legal action, the prospect for filing a civil rights complaint and next steps will be discussed with relevant parties and counsel, as appropriate.

- 1 Cait Clarke, James Neuhard, *Making The Case: Therapeutic Jurisprudence and Problem-Solving Practices Positively Impact Clients, The Justice Systems and Communities They Serve*, 17 St. Thomas L. Rev. 781 (2005).
- 2 James M. Anderson, et al., *The Effects Of Holistic Defense On Criminal Justice Outcomes*, 132 Harv. L. Rev. 819 (2019).
- 3 *Wallace v. Kato*, 549 U.S. 384, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007); Rebecca Garibotto, *Section 1983 Claim Accrual Under Wallace v. Kato and the Need for Equitable Tolling*, 42 Seton Hall L. Rev. 1261 (2012).
- 4 Michael S. Vaughn, *Police Civil Liability and the First Amendment Retaliation Against Citizens Who Criticize the Police*, 42 Crime & Delinquency 50 (1996).
- 5 *Mackey v. Dickson*, 47 F.3d 744 (5th Cir.1995); *Guillory v. Wheeler*, 303 F. Supp. 2d 808 (M.D. La. 2004).