



## **PRESS STATEMENT**

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In *Gideon v. Wainwright*, the U.S. Supreme Court determined it to be an “obvious truth” that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” Yet, *Gideon*’s obvious truth is obscured in Indiana.

*Gideon* made the provision of Sixth Amendment right to counsel services a state obligation under the Fourteenth Amendment. In Indiana, however, counties and cities are primarily responsible for funding and administering all public defense services. Although the U.S. Supreme Court has never directly considered whether it is unconstitutional for a state to delegate its constitutional responsibility in this way, a state choosing to do so must guarantee that local governments are not only capable of providing adequate representation, but that they are in fact doing so. Despite this, Indiana has little or no oversight over the majority of indigent defense cases.

For example, the state of Indiana provides no oversight over - or funding for - misdemeanor cases at all. Misdemeanors matter. Although a misdemeanor conviction carries less incarceration time than a felony, the collateral consequences can be just as severe. Going to jail for even a few days may result in a person’s loss of professional licenses, exclusion from public housing, inability to secure student loans, or even deportation.

Indiana counties may, if they so choose, receive a partial reimbursement from the state for their indigent defense felony and delinquency costs in exchange for meeting standards set by the Indiana Public Defender Commission (IPDC). But counties are also free to forgo state money and avoid state oversight completely. Thirty-seven of Indiana’s 92 counties (40%; as of June 30, 2015) choose not to participate in the state’s reimbursement program. Indiana has no oversight over any indigent defense cases in these counties.

Ostensibly, Indiana has in place a mechanism to provide effective oversight of public defense services in most of the courts in the 55 counties that do seek reimbursement from the state. However, IPDC is limited to trying to entice counties to meet standards only through the promise of the state reimbursing 40% of costs -- a promise, by the way, that the state has not always kept; in 2006, the state reimbursements dropped to a low of approximately 18% of costs. Because counties are always free to simply leave the program, the IPDC is in the difficult position of deciding whether to allow non-compliant counties to stay in the

program and receive reimbursement in the hope that they will work toward meeting standards, or to not pay the counties and lose the ability to work with them toward the goal of future compliance. This structural flaw led the IPDC to make exceptions to standards, for example allowing counties to exceed the standard limits on attorneys' workloads, thereby undercutting the goal of giving attorneys sufficient time to fulfill the state's obligation to provide effective representation.

Most tellingly, although the state holds the obligation to ensure effective representation in 91 circuit courts, 177 superior courts, and 67 city and town courts, the IPDC operates with only two full-time staff members to oversee compliance with the organization's standards. No two people, no matter how talented, could perform that task.

Of course the absence of institutionalized statewide oversight does not mean that all right to counsel services provided by all county and municipal governments are constitutionally inadequate. To assess compliance with constitutional requirements, the 6AC studied services in eight sample counties. The 6AC determined that the state of Indiana's constitutional obligation to provide counsel at all critical stages of a criminal proceeding is not consistently met at the local level. Rather, some courts encourage defendants to negotiate directly with prosecutors before being appointed counsel, others accept uncounseled pleas at initial hearings, and many courts use non-uniform indigency standards to deny counsel to defendants who would otherwise qualify for counsel in a neighboring county.

What many Indiana counties have realized is that they can contract with private attorneys to provide indigent defense on a low-bid flat fee basis for an unlimited number of cases for less money than it would cost to comply with state standards (even factoring in the state reimbursement). With little to no state oversight, Indiana's counties do not consistently require indigent defense attorneys to have specific qualifications necessary to handle cases of varying severity or to have the training needed to handle specific types of cases (other than for capital cases). The public defense systems in many Indiana counties have undue judicial interference, undue political interference, flat-fee contracts, or all three, that produce conflicts between the lawyer's financial self-interest and the defendant's right to effective representation. These conflicts result in public defense attorneys throughout Indiana carrying excessive caseloads and spending insufficient time on appointed cases.