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## Annual Review of National Developments in Indigent Defense

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### Standards for Indigent Defense

There has been a growing emphasis on the need for standards relating to the provision of indigent defense. It is important to recognize that there are three discrete but interrelated areas where standards play an important role in the provision of indigent defense services. Standards can be applied to public defense delivery systems, to the caseloads of attorneys within those systems, and to the performance of attorneys who provide public defense.

The first area where standards play a role is in the structure of a public defense delivery system. This type of "structural" standard seeks to define the manner in which an indigent defense delivery system should operate. The ABA's *Ten Principles of a Public Defense Delivery System* are an excellent example of standards related to the manner in which indigent defense services are provided; they identify the requisite characteristics of an adequate public defense delivery system:

<http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.authcheckdam.pdf>

See also NLADA's Standards for the Delivery of Public Defense Services:

[http://www.nlada.net/library/article/na\\_standards](http://www.nlada.net/library/article/na_standards)

The second area where standards are necessary concerns the number of cases assigned to an attorney working within an indigent defense delivery system. Caseload standards deal with the volume of cases handled within an indigent defense delivery system and typically limits the number of cases an attorney can be expected to handle and still provide quality representation. The establishment of meaningful caseload standards has proved elusive. The first attempt to set caseload standards was done by the National Advisory Commission on Criminal Standards and Goals in 1973 which recommended a maximum annual caseload for public defenders of no more than 150 felonies; 400 misdemeanors; 200 juvenile court cases; 200 mental health cases; or 25 appeals. However, these standards were not based on any empirical evidence and rely on overly simplistic categorizations. The trend has been toward weighted caseload studies which use empirical evidence to ascertain the amount of time required to render quality representation; these studies take into account specific characteristics of individual cases.

The "Maryland Attorney and Staff Workload Assessment, 2005", National Center for State Courts (2005), which was prepared at the request of the Maryland Office of the Public Defender, is one such example:

[http://www.ncsconline.org/WC/Publications/Res\\_WorkLd\\_MDAtty&StaffWkLdAs05Pub.pdf](http://www.ncsconline.org/WC/Publications/Res_WorkLd_MDAtty&StaffWkLdAs05Pub.pdf)

Currently, in Washington State, there is an attempt to impose meaningful caseload standards through proposed changes to Supreme Court rules. The Washington State Bar Association Council on Public Defense developed the standards now being proposed. The rules would specifically limit indigent defense providers to handling in a single year no more than: 150 felonies; or 250 juvenile delinquency cases; or 36 appeals; or a single active death penalty case along with a limited number of other cases; or a proportionate number where caseloads are mixed. The standards do not currently address a maximum number of misdemeanor cases, though they do set limits for juvenile dependency and civil commitment cases.

For more information see: <http://www.nlada.net/iseri/blog/gideon-alert-proposed-washington-supreme-court-standards-give-focus-national-caseload-deb>

The proposed rule changes are available on the Washington Court's website:

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedDetails&proposedId=48](http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedDetails&proposedId=48)

The third area where standards play an important role is with regard to the qualifications and performance of defense attorneys. Performance standards are necessary to govern the conduct of attorneys who are working within an indigent defense delivery system. The ABA *Standards for Criminal Justice, Providing Defense Services* is an example of a nationally recognized set of performance guidelines for defense attorneys:

[http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_defsvc\\_s\\_toc.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvc_s_toc.html)

Many state and local bar associations as well as state commissions on indigent defense promulgate standards related to attorney performance. Some essential components of any set of standards governing attorney performance include what initial qualifications attorneys should have as well as what continuing legal education they should receive. In order to make these types of performance standards meaningful, there should also be a mechanism for reviewing and evaluating attorney performance.

Obviously these standards - systemic, quantitative and qualitative – overlap and should be implemented in such a way as to reinforce each other. For example, the ABA Ten Principles of a Public Defense Delivery System calls for the regulation of defense counsel's workload to ensure quality representation. This principle speaks directly to the need for caseload standards and mandates that a public defense delivery system have a mechanism for diverting cases to alternate defense providers should a public defender's workload become excessive. Similarly, the Ten Principles calls for the supervision and review of defense counsel based on national, as well as local, standards to ensure quality representation.

### Independence

A prerequisite for an adequate public defense delivery system is its independence from other actors within the criminal justice system. To function properly, a public defense delivery system cannot be subject to the influence of the judicial or the executive branch of government, which includes everyone from a local prosecutor to a state's governor. An independent board or commission should be

responsible for the selection of a chief public defender and the selection process should be free from political influence. In addition, there must be adequate funding for the provision of services within a public defense delivery system and that funding should not be tied to variable revenue streams. State funding for indigent defense must also be maintained at a consistent level to ensure the quality of representation.

#### Examples of Political or Judicial Influence on Public Defense Delivery Systems

On May 4, 2010, Maryland Governor Martin O'Malley signed into law Senate Bill 97 increasing independence for the state public defender agency. The legislation expanded the Public Defender Board from three members all appointed by the Governor to a thirteen-member board selected by diverse authorities. No sitting judges, prosecutors, or law enforcement employees may serve on the public defender board. Following prevailing national standards, Senate Bill 97 requires that the chief public defender be appointed for a term of six years and only is terminated for just cause. The legislation was passed on a near unanimous, bipartisan basis.

<http://www.nlada.net/jscri/blog/gideon-alert-maryland-public-defender-independence-increased>

On January 24, 2011, the Massachusetts Governor Deval Patrick proposed sweeping changes to the delivery of indigent defense services in that state. Among other changes, the measure would abolish the existing independent commission that oversees the Committee for Public Counsel Services (CPCS) and create a new public defender department under direct control of the executive branch. The threat was not only averted, but the Senate reconfigured the CPCS Board to meet national standards for independence.

<http://www.nlada.net/jscri/blog/gideon-alert-ma-governor-proposes-disbanding-statewide-defender-commission>

On February 16, 2011, newly elected New Mexico Governor Susana Martinez removed the state's Chief Public Defender Hugh Dangler from his post in the middle of the legislative session because he questioned the governor's proposed budget. New Mexico has no independent commission as required by national standards regarding a public defense delivery system.

<http://www.nlada.net/jscri/blog/gideon-alert-nj-gov%E2%80%99s-dismissal-state-public-defender-sparks-debate-over-independence>

In September 2011, the New Hampshire Supreme Court issued an order which removed the courts from process of assigning counsel in conflict cases. All appointments now go to the Public Defender in the first instance, and upon finding conflicts will be assigned directly to attorneys qualified by the Judicial Council on a rotating basis by case-type.

<http://www.nhbar.org/publications/display-news-issue.asp?id=6221>

#### Examples of Prosecutorial Influence on Public Defense Delivery Systems

On July 13, 2010 the Lt. Governor of Tennessee, in his official capacity as Speaker of the Senate, appointed a sitting district attorney general to serve on the Office of the Post-Conviction Defender commission (district attorneys general are elected prosecutors). On September 2, 2010, the Board of Professional Responsibility of the Tennessee Supreme Court issued Advisory Ethics Opinion 2010-A-

853, concluding that the aims of a prosecutor are "inherently antagonistic" to the duties of the Post-Conviction Defender. The opinion states that "an attorney serving in such a dual capacity would, at minimum, present a significant risk of materially interfering with the attorney's independent professional judgment" and suggests that the district attorney general withdraw from one of his duties or the other.

<http://www.nlada.net/jscri/blog/gideon-alert-tennessee-supreme-court-issues-advisory-opinion-sitting-prosecutor-appointed>

On March 3, the *Newark Star-Ledger* published an editorial on the New Jersey governor's recent decision to remove the current chief public defender, Yvonne Smith Segars, and nominate a new candidate for the state senate's approval. New Jersey has a statewide, state-funded indigent defense system that provides direct services primarily through regional staffed public defender offices. The state's chief public defender, who oversees all right to counsel services in the state, is appointed by the governor with approval of the senate. <http://www.nlada.net/jscri/blog/gideon-alert-ni-gov%E2%80%99s-dismissal-state-public-defender-sparks-debate-over-independence>

On March 30, 2011, North Carolina prosecutors made a PowerPoint presentation to the state legislature claiming to be out-resourced by the Office of Indigent Defense Services (IDS). Asserting that IDS attorneys only handle half of the total criminal caseload handled by prosecutors yet outspend the district attorneys by nearly 43.5% (\$132 million to \$92 million), one district attorney was quoted in the *Progressive Pulse* as saying, "We're outspent and outgunned every day in the courtroom." <http://www.nlada.net/jscri/blog/gideon-alert-north-carolina-prosecutors-cry-foul-over-disparate-funding>

On August 9th, 2011, the Washoe County (Reno), Nevada District Attorney asked the County Board to contract with Washoe Legal Services (WLS) to provide representation to criminal defendants in a reinstated early case resolution (ECR) program. The ECR program had been terminated because the Washoe County public defender had determined that he could not participate in it and still meet the performance standards established by the Nevada Supreme Court.

<http://www.nlada.net/jscri/blog/gideon-alert-nevada-da-seeks-way-around-court-ordered-performance-guidelines>

A report released on August 24, 2011 by the Utah ACLU reports that prosecutors in that state regularly select opposing counsel and, in one instance, reviewed defense counsels work. In most of the nine counties studied in the report, the local prosecutor routinely is responsible for hand-selecting opposing defense counsel and often helps to negotiate the terms of defender contracts.

<http://www.acluutah.org/FailingGideon.html>

On November 15, 2011, the *Emery County Progress* reported that the county attorney - the same office that prosecutes crimes in the county - not only plays a major role in selecting opposing counsel, but also controls the budget of the local indigent defense system.

<http://www.nlada.net/jscri/blog/gideon-alert-prosecutorial-interference-utah>

On November 4, 2011 WWLTV.com reported that New Orleans District Attorney Leon Cannizzaro is advocating that, if a defendant posts bail, the defendant probably should not receive a public defender.

<http://www.nlada.net/jscri/blog/gideon-alert-new-orleans-da-questions-appointed-counsel-those-who-make-bail>

### Adequate Funding and Flat Fee Contracts

The independence which is essential to a public defense delivery system includes financial independence. Public defense delivery systems are often underfunded and this lack of financial independence can have crippling effects. Inadequate compensation means fewer lawyers will take assigned cases and the lawyers who do take assigned cases will tend to be less experienced. The overall quality of representation will diminish. Underfunding public defender offices leads to inadequate staffing levels which in turn cause caseloads to become unreasonably high. There is very often a correlation between funding and caseloads; inadequate funding for indigent defense delivery systems directly translates into unacceptably high caseloads for the attorneys working within those systems.

States have turned with greater frequency to flat-fee contracts to control the rising costs of providing indigent defense services. In addition, flat fee contracts have the advantage of providing a state or county with fixed costs over time. These types of contracts often fail to set any limit on the number of cases the attorneys will be required to handle which violates the National Legal Aid & Defender Association's *Guidelines for Negotiating and Awarding Government Contracts for criminal Defense Services*.

[http://www.nlada.org/Defender/Defender\\_Standards/Negotiating\\_And\\_Awarding\\_ID\\_Contracts](http://www.nlada.org/Defender/Defender_Standards/Negotiating_And_Awarding_ID_Contracts)

### Examples of Underfunded Indigent Defense Systems & Flat Fee Contracts

The Iowa Supreme Court handed down a unanimous decision in *Simmons v. State Public Defender* on Nov. 24, 2010, finding that a rigid fee cap of \$1,500 per appellate case would "substantially undermine the right of indigents to effective assistance of counsel." The decision effectively bans the practice of flat-fee contracting in the state.

*Simmons v. State Public Defender*, 791 N.W.2d 69 (Iowa 2010)

On January 19, 2011, the National Association of Counties called upon the United States Department of Justice to assist rural counties in overcoming systemic deficiencies that prevent them from meeting the states' obligation to provide constitutionally-mandated indigent defense services.

<http://www.nlada.net/jseri/blog/gideon-alert-national-association-counties-calls-improved-public-defense-services>

On March 4, 2011 the State Public Defender posted a message on its website that the indigent defense fund used to pay private and contract attorneys was out of money. The Iowa State Public Defender is a 100% state-funded, statewide agency. Though the majority of indigent defense services are provided by staffed public defenders, the State Public Defender contracts with private attorneys to provide representation in areas not covered by staff attorneys and to handle overload of the primary system.

<http://www.nlada.net/jseri/blog/gideon-alert-facing-18m-indigent-defense-deficit-iowa-can-no-longer-afford-its-current-cr>

In March, 2011, the newly created New York State Office of Indigent Legal Services, which was the first statewide agency responsible for the creating and implementation of standards for indigent defense, had its budget cut in half.

<http://www.nlada.net/iseri/blog/gideon-alert-budget-deal-threatens-gut-new-york-indigent-defense-efforts-they-begin>

On April 6, 2011, the Atlantic Center for Constitutional Representation (ACCR) filed a motion in four court-appointed death penalty cases arguing that the rate of attorney compensation Philadelphia County pays in capital cases is so low as to be unconstitutional, as reported in the *Philadelphia Inquirer*. Philadelphia County pays a flat-fee of \$1,700 for all pre-trial preparation in death penalty cases and an additional \$200 for each in-court half day (three hours or less) or \$400 for each in-court full day (three hours or more). <http://www.nlada.net/iseri/blog/gideon-alert-philadelphia-death-penalty-assigned-counsel-rates-challenged>

On May 4, 2011, North Carolina's General Assembly passed a budget bill that cuts annual funding for the statewide Indigent Defense Services (IDS) by roughly \$11 million, or more than 9% of their previous year's budget. The threatened cut is especially drastic because, based on projected need for the remainder of this fiscal year, IDS expects to be nearly \$12.8 million short.

<http://www.nlada.net/iseri/blog/gideon-alert-north-carolina-attorneys-leave-appointed-counsel-panels-droves>

Due to budget reductions, Connecticut has recently had to let go forty-two public defender employees, including 23 lawyers, and is planning to eliminate 33 more positions, as reported in the July 21, 2011 *Boston Globe*.

<http://www.nlada.net/iseri/blog/gideon-alert-connecticut-backslides-right-counsel>

The *Wilcox Range News* reported on August 10, 2011 that one county - Cochise County (Bisbee, Arizona) - is currently considering a proposal to switch from an assigned counsel system paying an hourly rate of \$50 to a system paying a "flat fee of \$150 per misdemeanor case and \$900 per felony case." <http://www.nlada.net/iseri/blog/gideon-alert-cochise-county-arizona-contemplates-contract-system-light-important-state-co>

The Tennessee Supreme Court proposed a new rule change that attempts to find an easy answer to controlling indigent defense costs by allowing flat-fee contracting for right to counsel services, but the Court has neglected to provide institutional safeguards that would protect the adequacy of representation.

<http://www.nlada.net/iseri/blog/gideon-alert-tennessee-supreme-court-proposes-rule-change-allowing-flat-fee-contracting>

The New Orleans Public Defender warns of layoffs and the necessity of cutting services due to budget shortfalls. [http://www.nola.com/crime/index.ssf/2012/01/new\\_orleans\\_public\\_defenders\\_o.html](http://www.nola.com/crime/index.ssf/2012/01/new_orleans_public_defenders_o.html); See also [http://www.nola.com/crime/index.ssf/2012/01/new\\_orleans\\_public\\_defenders\\_o.html](http://www.nola.com/crime/index.ssf/2012/01/new_orleans_public_defenders_o.html)

See also: *Missouri Public Defender Caseload Relief Efforts Timeline*

The timeline sets forth the variety of efforts undertaken to address the public defender caseload crisis above and beyond annual requests to the governor & legislature for more attorneys (available online through ABA SCLAID Indigent Defense Summit webpage).

Norman Lefstein, "*Securing Reasonable Caseloads: Ethics and Law in Public Defense*"  
ABA SCLCID 2011 (copies available by request through ABA SCLCID)

Laurence A. Benner, "*When Excessive Public Defender Workloads Violate the Sixth Amendment Right to Counsel without a Showing of Prejudice*" American Constitution Society 2011: [http://www.acslaw.org/files/BennerIB\\_ExcessivePD\\_Workloads.pdf](http://www.acslaw.org/files/BennerIB_ExcessivePD_Workloads.pdf)

### Standards Related to Attorney Qualifications & Performance

Standards concerning the qualifications and performance of attorneys who participate in indigent defense delivery systems are essential to maintaining quality representation. Guidelines should be in place to ensure that attorneys have the necessary skills and experience to handle specific levels of offenses. While it has long been recognized that such standards are necessary, there has been an increasing emphasis placed on the need for ongoing training and supervision of attorneys who provide indigent defense services. Some indigent defense delivery systems have developed mentoring programs and make subject specific continuing legal education a requirement as well as requiring periodic recertification.

NLADA's Performance Guidelines for Criminal Defense Representation:

[http://www.nlada.org/Defender/Defender\\_Standards/Performance\\_Guidelines](http://www.nlada.org/Defender/Defender_Standards/Performance_Guidelines)

### Examples of Attorney Qualification & Performance Standards

Louisiana Public Defender Board, Trial Court Performance Standards, Spring 2010:

<http://lpdb.la.gov/Supporting%20Practitioners/Standards/txtfiles/pdfs/LPDB%20Trial%20Court%20Performance%20Standards.pdf>

Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act, October 2010: [http://publicdefender.mt.gov/forms/pdf/StandardsCounsel\\_RevisedFinal.pdf](http://publicdefender.mt.gov/forms/pdf/StandardsCounsel_RevisedFinal.pdf)

State Bar of Texas, Performance Guidelines for Non-Capital Criminal Defense Representation, 2011:

<http://www.texasbar.com/Content/NavigationMenu/ForLawyers/Committees/PerformanceGuidelinesforNon-CapitalCriminalDefenseRepresentationJanuary2011.pdf>

Re-Certification Plan for Assigned Counsel, New York Appellate Division, First Department 2010-2011:

<http://www.courts.state.ny.us/courts/ad1/committees&programs/18b/Recertification%20Process.pdf>

San Mateo County Bar Association Private Defender Program 2010-2011 Annual Report:

<https://www.smcba.org/News/NewsDetail.aspx?NewsId=3>

### The Cost of Providing Counsel

The provision of indigent defense services is far too often characterized as a "cost to taxpayers" that produces very little in the way of tangible or measurable benefits. Admittedly, the "benefits" of counsel are not easily quantifiable. It is easy to argue that our adversarial criminal justice system requires the presence of defense counsel to ensure a just result but it is difficult to put a price on justice. States typically want to spend the bare minimum on providing indigent defense services. In response to the chronic underfunding of indigent defense delivery systems there has been a growing effort to quantify the benefits that these systems provide, not just to defendants, but to the public.

A study released by the Justice Policy Institute in July 2011 entitled "System Overload: The Costs of Under-Resourcing Public Defense" concludes that without adequate resources for the defense of the indigent more people are incarcerated due to increased levels of pretrial detention and excessive prison sentences. In addition, the lack of quality representation results in more wrongful convictions and erodes public trust in our judicial system:

*"System Overload: The Costs of Under Resourcing Public Defense"*, Justice Policy Institute, 2011  
[http://www.justicepolicy.org/uploads/justicepolicy/documents/system\\_overload\\_final.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/system_overload_final.pdf)

The Michigan State Appellate Defender Office, a state funded organization that is responsible for handling approximately 25% of appeals in the state of Michigan, estimates that they have saved taxpayers and the Department of Corrections over \$5.5 million: <http://www.sado.org/Articles/Article/73>

### Studies Addressing the Economic Benefits Associated with the Effective Assistance of Counsel

*"Baltimore Behind Bars: How to Reduce the Jail Population, Save Money and Improve Public Safety"*, The Justice Policy Institute, June 2010: [http://www.justicepolicy.org/images/upload/10-06\\_REP\\_BaltBehindBars\\_MD-PS-AC-RD.pdf](http://www.justicepolicy.org/images/upload/10-06_REP_BaltBehindBars_MD-PS-AC-RD.pdf)

*"Programs, Process and Technology: An Overview of Discretionary Grants Funded by the Texas Task Force on Indigent Defense"*, Texas Task Force on Indigent Defense Whitepaper, 2010:  
<http://www.courts.state.tx.us/tfid/pdf/DGWhitePaper051210.pdf>

*"Delivering Justice in the Face of Diminishing Returns"*, State bar of Michigan's Judicial Crossroads Taskforce, January 26, 2011: <http://www.michbar.org/judicialcrossroads/JudicialCrossroadsReport.pdf>

James M. Anders, Paul Heaton, *"How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes"*, prepared for the National Institute of Justice by the RAND Corporation (2011): [http://www.rand.org/pubs/working\\_papers/WR870.html](http://www.rand.org/pubs/working_papers/WR870.html)

*"Collateral Costs: Incarcerations Effect on Economic Mobility"*, Pew Charitable Trusts, 2010:  
[http://www.economicmobility.org/assets/pdfs/EMP\\_Incarceration.pdf](http://www.economicmobility.org/assets/pdfs/EMP_Incarceration.pdf)

Heater Baxter, "Gideon's Ghost: Providing the Sixth Amendment Right to Counsel in Times of Budgetary Crisis" 2010 Mich. St. L. Rev. 341 (2010)

Laura K. Abel, Susan Vignola, "Economic and Other Benefits Associated with the Provision of Civil Legal Aid" 9 Seattle J. for Soc. Justice 139 (Fall / Winter 2010)

#### Early Appointment of Counsel

One way in which States have sought to avoid the cost of providing indigent defense is to delay the appointment of counsel. In some states, the emphasis is on the early resolution of misdemeanor offenses through plea bargaining with the prosecutor either before defense counsel is assigned or after obtaining a waiver of counsel from a defendant. Defendants are often pleading guilty to offenses, without the benefit of counsel, which have significant collateral consequences.

Another consequence of delaying the appointment of counsel is that defendants are brought before a judicial officer who has the power to set bail while they are unrepresented; despite the fact that this is a critical stage of the proceedings where restrictions are being placed on their liberty. Incarceration without representation is still the norm in many jurisdictions around the country.

Delays in the appointment of counsel also raise questions concerning the ability of counsel to adequately investigate the allegations and prepare a defense.

#### Reports and Decisions Concerning the Early Appointment of Counsel

The desire for speed over due process has led to the denial of the right to counsel in Kentucky's Misdemeanor Courts: <http://www.nlada.net/jscri/blog/underrepresentation-kentucky-misdemeanor-courts>

"Three Minute Justice: Hast and Waste in Florida's Misdemeanor Courts: National Association of Criminal Defense Lawyers, July 2011:

<http://www.nacdl.org/criminaldefense.aspx?id=20188&terms=three+minute+justice>

In Broward County, Florida, defendants charged with municipal offenses which carry possible jail sentences are being denied appointment of counsel: <http://www.nlada.net/jscri/blog/gideon-alert-ignoring-6th-amendment-broward-county-florida-municipal-courts>

A lawsuit is pending which challenges the constitutionality of Colo. Rev. Stat. § 16-7-301(4) which provides that, in misdemeanors, petty offenses and traffic offenses an indigent defendant's "application for appointment of counsel and the payment of the application fee shall be deferred until after the prosecuting attorney has spoken with the defendant". It then requires the prosecuting attorney to "tell the defendant any offer that can be made based on the facts as known by the prosecuting attorney at that time." It also permits the prosecuting attorney to "engage in further plea discussions about the case" and charges the prosecutor with advising the defendant that they have "the right to retain counsel or seek appointment of counsel." See:

<http://www.nacdl.org/criminaldefense.aspx?id=20175&libID=20145>

See also: [http://www.nlada.net/iseri/gideon-blog/co\\_complaintfiledinmisdrsuit12-12-2010\\_gideonalert](http://www.nlada.net/iseri/gideon-blog/co_complaintfiledinmisdrsuit12-12-2010_gideonalert)

New York Court of Appeals decision declaring the imposition of bail as a "critical stage" of the proceeding where the presence of counsel is required: New York: *Hurrell-Harring v. New York*, 15 N.Y.3d 8, 930 N.E.2d 217 (2010)

Maryland Court of Appeals decision declaring that the Public Defender Statute requires representation before Court Commissioners who set bail and at bail hearings before District Court Judges: *DeWolfe v. Richmond*, 2012 WL 10853, Md., January 04, 2012

See also: Douglas L. Colbert, Ray Paternoster, Shawn Bushway, "Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail" 23 *Cardozo L. Rev.* 1719 (2002)

### Systemic Advancements

Efforts to make the Sixth Amendment right to counsel a reality are ongoing. As we approach the 50<sup>th</sup> anniversary of the *Gideon* decision it is encouraging to see that some states, like Michigan and Pennsylvania, are finally coming to the realization that the systems currently in place are failing to provide adequate representation. We must consider the recognition that changes to an existing public defense delivery system are necessary as a victory in itself. While there have been many instances over the past year where financial pressures have led states to attempt to limit the right to counsel, it is encouraging that, even in difficult economic times, there are states willing to reevaluate their existing public defense delivery systems.

In Mississippi the Office of State Public Defender was created consolidating the existing Office of Indigent Appeals and the Office of Capital Defense Counsel. The new office is tasked with providing "training and services to public defenders practicing in all state, county and municipal courts" and making recommendations for a future unified, statewide trial-level system.

<http://www.nlada.net/iseri/blog/gideon-alert-mississippi-takes-first-step-toward-unified-statewide-system>

On June 9, 2011, Alabama joined the majority of states in the country that have state-administered right to counsel systems. While Alabama already funds indigent defense at the state level, the new system creates centralized oversight of right to counsel services, requires the promulgation of standards, and seeks to expand the number of staffed public defender offices.

<http://www.nlada.net/iseri/blog/gideon-alert-alabama-creates-statewide-indigent-defense-system>

On October 13, 2011, Michigan Governor Rick Snyder issued an Executive Order establishing an Indigent Defense Advisory Commission (Commission). The Commission is charged with making recommendations to the Governor and Legislature for statewide "improvements to the system of providing legal representation for indigent criminal defendants."

<http://www.nlada.net/iseri/blog/gideon-alert-michigan-takes-first-steps-fulfilling-gideon%E2%80%99s-promise>

See Also: <http://www.nlada.net/iseri/blog/gideon-alert-michigan-supreme-court-again-reinstates-aclu-duncan-lawsuit-race-bottom-cont>

A study of the Office of the Public Defender in Pittsburgh, Pennsylvania identifies the deficiencies in the existing public defense delivery system and explains why those deficiencies are not recognized by the defense attorneys operating within that system. <http://www.nlada.net/jseri/blog/gideon-alert-pittsburgh-symptomatic-pennsylvania%E2%80%99s-right-counsel-problems>

See also: "Allegheny County Office of the Public Defender Assessment Final Report" Institute for Law and Policy Planning. <http://www.aclupa.org/downloads/kalmanoffreport2.pdf> ; "A Job Left Undone: Allegheny County's Fork in the Road" American Civil Liberties Union of Pennsylvania, 2011. [http://www.nlada.net/sites/default/files/pa\\_alleghenycounty\\_aclureport\\_2011.pdf](http://www.nlada.net/sites/default/files/pa_alleghenycounty_aclureport_2011.pdf)

On December 8, 2011, Pennsylvania's Joint State Government Commission issued its report, *A Constitutional Default: Services to Indigent Criminal Defendants in Pennsylvania*, concluding that public defense providers labor "under an obsolete, purely localized system," and that the structure of services "impedes efforts to represent clients effectively."  
<http://jsg.legis.state.pa.us/resources/documents/ftp/documents/Indigent%20Defense.pdf>