

January 22, 2019

The Honorable Brian Bosma  
Speaker of the House  
Indiana House of Representatives

The Honorable Rod Bray  
President Pro Tempore  
Indiana State Senate

The Honorable Phil GiaQuinta  
Minority Leader  
Indiana House of Representatives

The Honorable Tim Lanane  
Minority Leader  
Indiana State Senate

Dear Speaker Bosma, Senator Bray, Representative GiaQuinta and Senator Lanane:

We, the undersigned organizations, write to express our support for the current efforts to address the public defense needs of the citizens of Indiana. We share the commitment to supporting the development of effective public defense systems that assure all those who stand accused have access to the effective assistance of counsel guaranteed in our Constitution. We, therefore, urge the Indiana General Assembly to take the necessary steps to strengthen the state's public defense delivery system.

Few rights are as fundamentally American as the accused's right to counsel when facing the awesome power of the government. Enshrined in the Sixth Amendment, this right is a critical bulwark against government overreach and abuse of power and ensures the protection of other constitutional rights. An effective defender can examine the criminal charge, conduct a critical review of the government's conduct, investigate the allegations, and identify and pursue defenses and mitigating evidence. These actions all help preserve the robust Fourth, Fifth, and Sixth Amendment rights of the greater community.

In *Gideon v. Wainwright*,<sup>1</sup> the U.S. Supreme Court made clear that the obligation to fulfill the Sixth Amendment's right to counsel at the state and local level rested entirely with the state. States may elect to wholly or partially delegate decisions about the structure, oversight, and funding of public defense systems to their counties, but doing so does not eliminate the states overarching responsibility to assure there are sufficient resources, support, and structure for a constitutionally effective defense.<sup>2</sup> This is vital as nationally approximately 80% of those facing criminal charges rely upon public defense.

Currently this Constitutional right is being denied in many states. In some places individuals remain incarcerated for weeks or even months waiting for the court to assign them an attorney<sup>3</sup>; in others the accused are assigned attorneys who are juggling 500, 600, or even 900 cases a year, leaving the lawyers with little more than a few minutes to devote to a case, or are provided counsel who lack the proper

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<sup>1</sup> *Gideon v. Wainwright*, 372 U.S. 375 (1963)

<sup>2</sup> See e.g. *Duncan v. State of Michigan*, No. 07-242 CZ (2007) ("While it's true the defendants have delegated the responsibility for funding and administering the indigent defense programs to the counties, it does not mean that [the State] defendants are off the hook." Motion to Dismiss hearing transcript at p. 35, May 15, 2007). *Duncan* was a class action case which asserted the state abdicated its responsibility for providing indigent defense to individuals in Michigan by delegating the responsibility to the counties without providing sufficient oversight or funding. While the case was pending, the Michigan legislature created a task force to examine the state's indigent defense system. The resulting report documented that the state's failures to provide appropriate oversight and funding had resulted in a "patchwork quilt" of varied levels of representation and funding. In 2013 the plaintiffs voluntarily dismissed the suit following the passage of legislation aimed to create a new, more extensive, state-directed public defense system.

<sup>3</sup> Examples include: Mississippi (<http://www.jacksonfreepress.com/news/2018/mar/19/indigent-defendants-denied-counsel-speedy-trials-1/>), Missouri (<https://www.columbiatribune.com/news/20180221/boone-county-public-defender-waiting-list-approaches-400>); and Wisconsin (<https://www.wpr.org/justice-delayed-those-who-can-least-afford-it>)

training, supervision, or guidelines to provide a meaningful defense.<sup>4</sup> Indiana is no exception. A 2016 evaluation of indigent defense services in Indiana showed that the state's constitutional obligation to provide counsel at all critical stages of a criminal proceeding is not consistently being met.<sup>5</sup> This problem is especially true in misdemeanor cases and in those counties which currently do not participate in the Indiana Public Defense Commission (IPDC) reimbursement program.<sup>6</sup>

The benefits of counsel, especially at the earliest stages of the criminal process, go far beyond protection of the accused. Resources saved from unnecessary pretrial detention, wrongful convictions, and excessive or unnecessary incarceration lead to taxpayer savings which can be reallocated to fund other state budget priorities. According to a 2015 report, on any given day there are more than 730,000 people in local jails, resulting in \$22.2 billion in spending on jails.<sup>7</sup> State spending on corrections rose from \$19 million in 1987 to \$49 billion in 2007.<sup>8</sup> Similarly, over that same period both the pretrial incarceration population and the jail populations in Indiana have steadily risen. Whereas in the 1980s and 1990s Indiana ranked nationally as a state with a mid-level of per capita incarceration, over the past 15 years the rates have grown significantly, placing the state among the upper third of the national rankings.<sup>9</sup>

The cost of incarceration is not only felt in the dollars spent on detention, but in the economic and social costs to the community. The state loses tax revenues, as those who are incarcerated are not working and, as research demonstrates, upon their release, individuals who have been convicted of even minor crimes, will earn less over their lifetimes.<sup>10</sup> In addition, the incarceration of one person in a household impacts the entire family. With less income, families are forced to limit spending or may come to rely upon government assistance for food, housing, and utilities. Children experiencing the incarceration of a parent face long-term emotional, educational, and health impacts.<sup>11</sup> A robust, active, and supported public defense system helps to mitigate these harms—facilitating pretrial release of those who do not pose a public safety risk, connecting individuals with needed mental health and substance abuse services, and facilitating considerations of the long-term impact of case decisions.

One of the most prevalent places where the erosion of the Sixth Amendment right to counsel occurs is in misdemeanor offenses. These seemingly minor crimes can lead to significant consequences for the

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<sup>4</sup> See e.g. Fresno, California (<https://www.motherjones.com/politics/2015/07/aclu-lawsuit-public-defense-fresno-california/>), Louisiana

([https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_louisiana\\_project\\_report.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf)) and Utah ([https://sixthamendment.org/6ac/6AC\\_utahreport.pdf](https://sixthamendment.org/6ac/6AC_utahreport.pdf))

<sup>5</sup> *The Right to Counsel in Indiana: Evaluation of Trial Level Indigent Defense Services*. The Sixth Amendment Center, Oct. 2016, [http://sixthamendment.org/6ac/6AC\\_indianareport.pdf](http://sixthamendment.org/6ac/6AC_indianareport.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Christian Henrichson, Joshua Rinaldi, and Ruth Delaney. *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*. New York: Vera Institute, 2015.

<sup>8</sup> State Reforms Reverse Decades of Incarceration Growth. The Pew Charitable Trusts.

<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/03/state-reforms-reverse-decades-of-incarceration-growth>

<sup>9</sup> According to the Vera Institute's data in 1970 Indiana's rate of jail incarceration per 100,000 residents ages 15-64 was 84 (its pretrial rate for that same period was 56.6), in 1980 the rate was 77.2 (pretrial was 56.3), in 1990 the rate was 177.4 (pretrial was 97.7), in 2000 the rate was 311 (pretrial was 170.2), in 2010 the rate was 408.7 (pretrial was 258.7) and in 2015 the rate was 363.3 (pretrial was 271.7). See Vera Incarceration Trends map, <http://trends.vera.org/incarceration-rates?data=pretrial&geography=states> (last visited Jan. 8, 2019)

<sup>10</sup> <https://www.theatlantic.com/politics/archive/2015/12/how-families-pay-the-never-ending-price-of-a-criminal-record/433641/>

<sup>11</sup> <https://www.sciencedaily.com/releases/2018/07/180717102807.htm>; <https://www.prisonfellowship.org/resources/training-resources/family/ministry-basics/impact-of-incarceration-on-children/>

accused and for the state.<sup>12</sup> As former Chair of the Senate Judiciary Committee Chuck Grassley (R-IA) has stated, “When misdemeanor defendants aren’t given counsel, no one can challenge the legality of a traffic stop or make the prosecution prove every element of an offense beyond a reasonable doubt. So innocent people may be going to jail. In locations where lawyers are provided at every stage of the process, about 25% of all cases are dismissed.”<sup>13</sup>

Further, misdemeanor convictions give rise to serious collateral consequences, with negative repercussions for state budgets, the economy and the workforce. In many jurisdictions, unrepresented accused persons are permitted or encouraged to enter guilty pleas at an initial appearance, notwithstanding that a guilty plea to even a minor charge can trigger significant negative collateral consequences of which the accused may not be aware. According to the National Inventory of Collateral Consequences, individuals convicted of a misdemeanor or felony offense in Indiana face up to 679 collateral consequences for their conviction. Research has shown that the ability to earn a living is the best way to keep someone from committing another crime; however, the excessive barriers confronting those with a criminal conviction make the task of being able to provide for oneself and family nearly impossible. Ensuring an effective public defense delivery system will decrease the number of people burdened with collateral consequences, resulting in more people remaining contributing members of society. As a result, we strongly support efforts to ensure effective and meaningful representation in misdemeanor cases.

The presence of meaningful and effective representation protects the state’s coffers, promotes public safety, and increases the community’s confidence in its justice system. For these reasons, we urge the Indiana General Assembly to take the necessary steps to strengthen the state’s public defense delivery system.

Sincerely,

Mark Holden  
Chairman, Freedom Partners Chamber of Commerce

Marc Levin  
Vice President of Criminal Justice, Right on Crime

Shana O’Toole  
Founder & President, Due Process Institute

Jason Pye  
Vice President of Legislative Affairs, FreedomWorks

Craig DeRoche  
Senior Vice President, Advocacy & Public Policy, Prison Fellowship

Justin Stevens  
State Director, Americans for Prosperity—Indiana

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<sup>12</sup> Minor Crimes, Massive Waste, NACDL 2009  
([https://www.opensocietyfoundations.org/sites/default/files/misdemeanor\\_20090401.pdf](https://www.opensocietyfoundations.org/sites/default/files/misdemeanor_20090401.pdf))

<sup>13</sup> *Protecting the Constitutional Right to Counsel for Indigents Charged with Misdemeanors*, hearing before the U.S. Senate Committee on the Judiciary, May 13, 2015 (prepared statement of Senator Chuck Grassley, Chairman), <https://www.judiciary.senate.gov/imo/media/doc/05-13-15%20Grassley%20Statement1.pdf>