



# SIXTH AMENDMENT CENTER

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## ABA Indigent Defense Summit News from around the Nation

As we head into the 50th anniversary year of *Gideon v. Wainwright* the country experienced only a few successes amongst several disappointments. The Sixth Amendment Center’s blog, “Pleading the Sixth,” charts the success and failures in our nation’s efforts to provide a meaningful right to counsel. By providing historical, legal, and a standards-based context to local and national news stories, our goal is to provide our readers with the most useful and current information possible – placing critical tools into the hands of those with the power to enact positive change. As a free service, readers may subscribe to receive email notification whenever we add a new *Pleading the Sixth* blog post.



### Pleading the Sixth

### First the Good News

Maryland

In *DeWolfe v. Richmond*, the Maryland Supreme Court found that existing statutes require the right to counsel at bail hearings and reviews. The General Assembly reacted by increasing the budget of the Office of the Public Defender nearly 7.4% while contemporaneously passing legislation requiring police to issue citations — rather than arrest and detention — for many misdemeanor offenses.

New Mexico

Advocates in New Mexico have tried for years to insulate the state public defender from undue political interference with no success.

Then, on November 6, 2012, the New Mexico electorate passed a constitutional amendment requiring the creation of an independent public defender commission. In anticipation of the next legislative session, the House Committee for the Courts, Corrections and Justice held an initial hearing on November 30th to debate a new commission’s appointing authorities and duties.

Tennessee

The United States Department of Justice, Civil Rights Division (DOJ-CRD) delivered a report to Shelby County, Tennessee (Memphis) in April 2012 stating the Juvenile Court of Memphis and Shelby County (JCMSC) fails to ensure a meaningful right to counsel for children in delinquency proceedings. The Sixth Amendment Center explains why the local court is being cited when Tennessee supposedly has a “state-funded, state-administered” indigent defense system and concludes that the problems DOJ-CRD uncovered in Memphis are those of a “non-system.”

In a companion piece, we discuss the implications for future changes in Shelby County.

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Tennessee (cont.) | Then, on December 18, 2012, the U.S. Department of Justice announced an agreement with Shelby County, Tennessee (Memphis) to usher in major reforms of the county's juvenile court system and the method for representing children in delinquency proceedings. Sweeping changes are afoot, including systemic safeguards, such as "independence," "reasonable caseloads," "attorney performance standards," and "training" for the juvenile defense function, among others. The DOJ/Shelby County agreement is an acknowledgement that the American Bar Association's *Ten Principles* are not just the parameters of a functioning adult indigent defense system, but a juvenile justice system as well.

National | On December 11, 2012, U.S. Attorney General Eric Holder reaffirmed our country's Sixth Amendment "crisis" and called for a bi-partisan reevaluation "about how we do criminal justice in the United States."

International | The United Nations General Assembly adopted new Principles and Guidelines for how member states should deliver indigent defense services. Drafted to help emerging nations grappling with equal justice concerns, the U.N. document can help us hold a mirror up to our own deficient indigent defense systems here at home, as many of the U.N. principles mirror – or exceed – the ABA *Ten Principles*.

## Close but no cigar

Michigan | On June 22, 2012, a high-profile, bi-partisan commission appointed by Michigan Governor Rick Snyder unanimously adopted a set of findings and recommendations that will change the way the state provides right to counsel services, if legislatively passed in the coming months.

Then, a sweeping indigent defense reform bill was introduced in the Michigan legislature on August 15, 2012 that promised to bring accountability to and improve the quality of right to counsel services in the state. Initial signs were positive as 68% of the House of Representatives have already signed on as co-sponsors.

Next, on September 19, 2012, the Michigan House Judiciary Committee favorably voted the indigent defense reform bill on to the full House on an overwhelmingly bi-partisan basis. A week earlier, the bill was almost derailed in the committee by testimony from a representative of the Office of the Attorney General. Read about the difficulties, the leadership displayed by the members of the Governor's Advisory Commission, and how changes allayed concerns raised by the Attorney General, prosecutors, and counties.

Finally, at 4:30 AM on December 14, 2012, time ran out for indigent defense reform in Michigan, as HB 5804 was not able to make it through the Senate before the final bell of the legislative session.

## Continuing Crises

**Florida** | A new Florida statute allows judges to limit compensation for private attorneys handling conflict indigent defense cases. A June 2012 Florida Innocence Commission report says the law “invites ineffective assistance of counsel and wrongful convictions.” As some circuits impose the new requirements, the Florida Association of Criminal Defense Lawyers seeks to have law ruled unconstitutional.

**Indiana** | In holding that the right to the assistance of counsel is a guarantee of our federal Constitution, the U.S. Supreme Court in *Gideon v. Wainwright* made that right obligatory on state governments by virtue of the Fourteenth Amendment – it was not an obligation of the courts, nor the duty of the legal profession, nor county government, but the states. Despite this, many states pass on this constitutional obligation to their counties. Small-town America simply cannot keep up with increasing demands for services in the face of decreasing revenue, as demonstrated in a spotlight feature on Putnam County, Indiana.

**Louisiana** | The chairman of the Louisiana Public Defender Board (LPDB) warns that the state’s reliance on unpredictable revenue streams to fund the right to counsel makes public defense service restrictions “inevitable” in the coming months. A new report on the dire financial situation of New Orleans’ public defender office serves to underscore this point.

**Missouri** | On July 31, 2012, the Missouri Supreme Court ruled that the state public defender commission has the authority to declare unavailability due to case overload. In response, the Missouri Association of Prosecuting Attorneys issued a press statement on August 3rd that the “public defender system is not in a caseload crisis” and used a U.S. Department of Justice report to support their position.

In a companion piece the 6AC analyzed the same DOJ report to refute the prosecutors’ position.

Then, on October 10, 2012, the Missouri state auditor released a report on the state public defender system that the Missouri Association of Prosecuting Attorneys claims “shatters the unsupported claims” of excessive caseloads across the state and accuses the public defender of manufacturing a workload crisis “myth.” The Sixth Amendment Center read the same audit report and reached very different conclusions.

Finally, The Missouri Association of Prosecuting Attorneys (MAPA) have placed opinion pieces in several leading newspapers admitting that the indigent defense system is broken but blaming the crisis on a lack of public defender leadership. The Sixth Amendment Center again takes issue with MAPA’s interpretation of the facts countering with our own opinion piece.

Nevada | In January 2008, the Nevada Supreme Court removed the judiciary from the oversight of indigent defense services. On June 8, 2012, a Washoe County (Reno) District Judge tested that mandate with his own administrative order imposing an early case resolution pilot project that will do an end-around the county's institutional public defenders. In early July, the Washoe Public Defender asked the Nevada Supreme Court to rescind the judge's order. The Sixth Amendment Center explains the brewing showdown in advance of the Nevada court's ruling, expected later in the summer.

North Dakota | Though the successful implementation of oil fracking technologies has created a large budget surplus for North Dakota, it has also had the unintended side effect of overwhelming the state's indigent defense system, as unemployed workers from across the country flood oil "boom towns" in the northwest regions of the state that were unprepared to deal with rising populations and subsequent crime. A new report by the State Bar Association of North Dakota warns of a constitutional crisis if part of the state's budget surplus is not dedicated to indigent defense.

Washington | In 2011, the Washington State Supreme Court affirmed a lower court ruling that employees of the four independent, non-profit public defense organizations in King County (Seattle) must be considered as county employees for the purposes of participation in the public employee retirement fund. As a settlement in the case looms, King County announced in November 2012 its intent to stop contracting with the public defender agencies and create a new county-employee public defender office. The 6AC asked the question: will the push for "parity" result in a loss of independence for a right to counsel system that is regarded nationally as one of the best?

The answer appears to be "yes," because King County, Washington released a plan for the reorganization of its right to counsel system in January 2013. The County proposes to eliminate independence while transitioning the staff of the four non-profit public defender agencies to county employees. King County points to other jurisdictions, like Los Angeles County, California, to assure the community that having a chief public defender appointed by and reporting to the County Executive will not impact quality. But is Los Angeles really the model King County wants to emulate?

## Other Critical Stories

National/Federal | On May 9, 2012, the United States Government Accountability Office (GAO) released its report on the right to counsel in America. According to the GAO, only a very small percentage of federal funding dedicated to enhancing state criminal justice systems ever makes its way to the indigent defense function. GAO then concludes that the funding imbalance between criminal justice components can be rectified by “increasing grantees’ awareness that funding can be allocated for indigent defense.” Really? The Sixth Amendment Center reaches a very different conclusion.

National | A recent report by the PEW Center on the States concludes that states wasted \$10 billion incarcerating people with little impact on public safety to show for the investment. The Sixth Amendment Center adds to the story by linking the long-standing right to counsel systemic deficiencies to the high cost of corrections, using Mississippi as the poster child.

National | Two new independent reports out of Texas conclude that the public defender model provides better, more cost-efficient representation than the assigned counsel model.

In a companion piece, a 2011 U.S. Department of Justice report makes the same argument. The Sixth Amendment Center read all three reports and reached a very different conclusion.

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The Sixth Amendment Center (6AC) is a Massachusetts non-profit, tax-exempt organization seeking to ensure that no person faces potential time in 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 by measuring public defense systems against established national and local standards of justice.