

# Quality of Representation Issues

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INDIANA TASK FORCE ON PUBLIC DEFENSE

NOVEMBER 10, 2017



# Constitutional Basic: Measuring for Effective Assistance of Counsel

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**Gideon v. Wainwright (1962)** Sixth Amendment requires appointed counsel for people who can't afford an attorney on their own and face felony charges.

**Argersinger v. Hamlin (1972)** extended right to counsel to those charged with any crime punishable with imprisonment.

**Strickland v. Washington (1984)** – individualized backward looking analysis that established standards for post-conviction motions for when attorneys have been so ineffective that their client's Sixth Amendment right to counsel has been violated.

**U.S. v. Cronic (1984)** – “Circumstances may be present on some occasions when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry...”

## Constructive Denial of Counsel: Considerations for Sixth Amendment Violations

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(1) Failure to **appoint counsel at critical stages**;

(2) Substantial **structural limitations**, such as a severe lack of resources, unreasonably high workloads, or critical understaffing of public defender offices; and/or

(2) **Traditional markers of representation**-such as timely and confidential consultation with clients, appropriate investigation, and meaningful adversarial testing of the prosecution's case-are absent or significantly compromised on a system-wide basis.

# Indiana: Presence of Counsel at Critical Stages

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No counsel at  
initial hearings

High waiver rates  
due to inadequate  
resources

Inconsistent  
eligibility  
determinations

Crim Rule 26 pretrial release depends  
on lawyers

# Considering the Role of Structural Limitations: ABA and NJDC National Standards

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# Traditional Markers of Effective Representation

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Meaningful  
Attorney/client  
contact

Ability to  
investigate  
allegations

Advocacy for client  
through plea  
negotiations, trial  
or post-trial

# Indiana: Limited Independence and the Potential for Conflicts

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## **Freedom from judicial influence**

1/3 of counties do not participate in the Commission reimbursement program

## **Freedom from political interference**

Potential opportunities for political pressure in awarding PD contracts + pressure to save money

## **Potential conflicts with private cases**

No restrictions by Commission on non-public defender work for private contractors

# Indiana: Workload Limits and Attorney Compensation

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## ATTORNEY COMPENSATION

Private attorneys paid hourly - \$90/hour plus expenses

Public salaried defenders – for counties with public defender office – same compensation as prosecutors

Private contract attorneys – comparable to prosecutors in similar positions with similar experience

## ATTORNEY CASELOAD STANDARDS

- With adequate support staff
- Without adequate support staff
- Maximum allowable caseload



# Indiana Workloads Limits and Attorney Compensation Challenges

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What  
constitutes full  
time

Disparities  
among  
counties

Pay parity  
issues with  
prosecutors

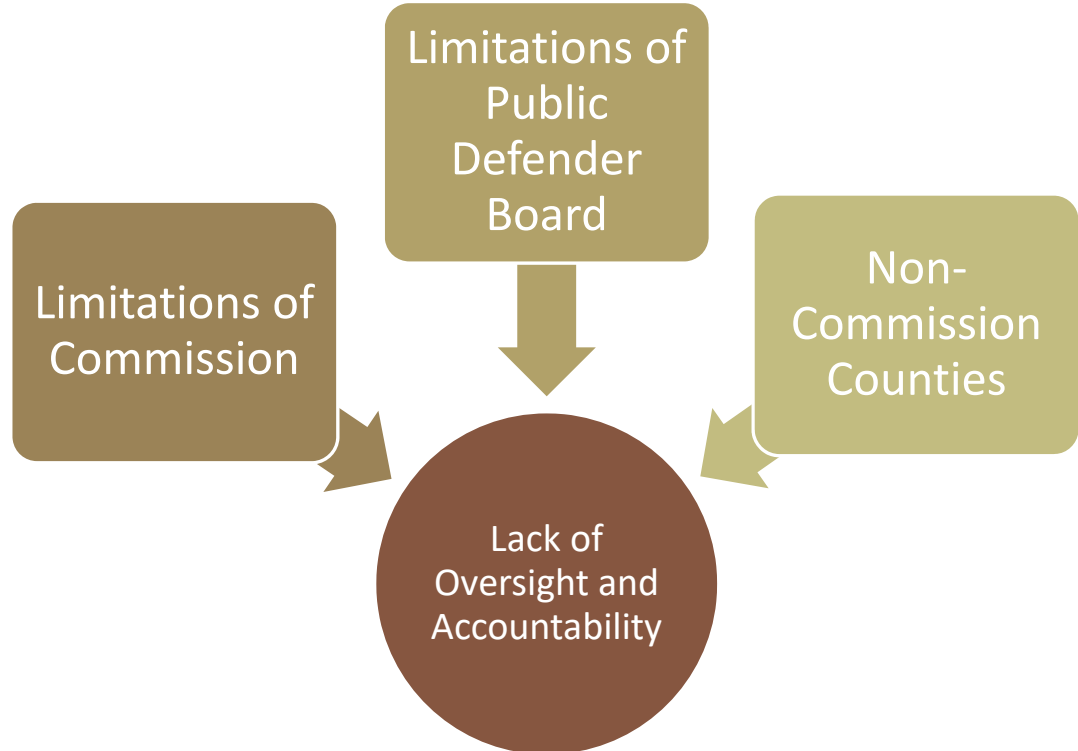
Limitations on  
private  
practice

# Challenges for Commission

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INDIANA'S  
CHALLENGES TO  
MEETING 6<sup>TH</sup>  
AND 14<sup>TH</sup>  
AMENDMENT  
REQUIREMENTS



# Findings of 6<sup>th</sup> Amendment Center Report

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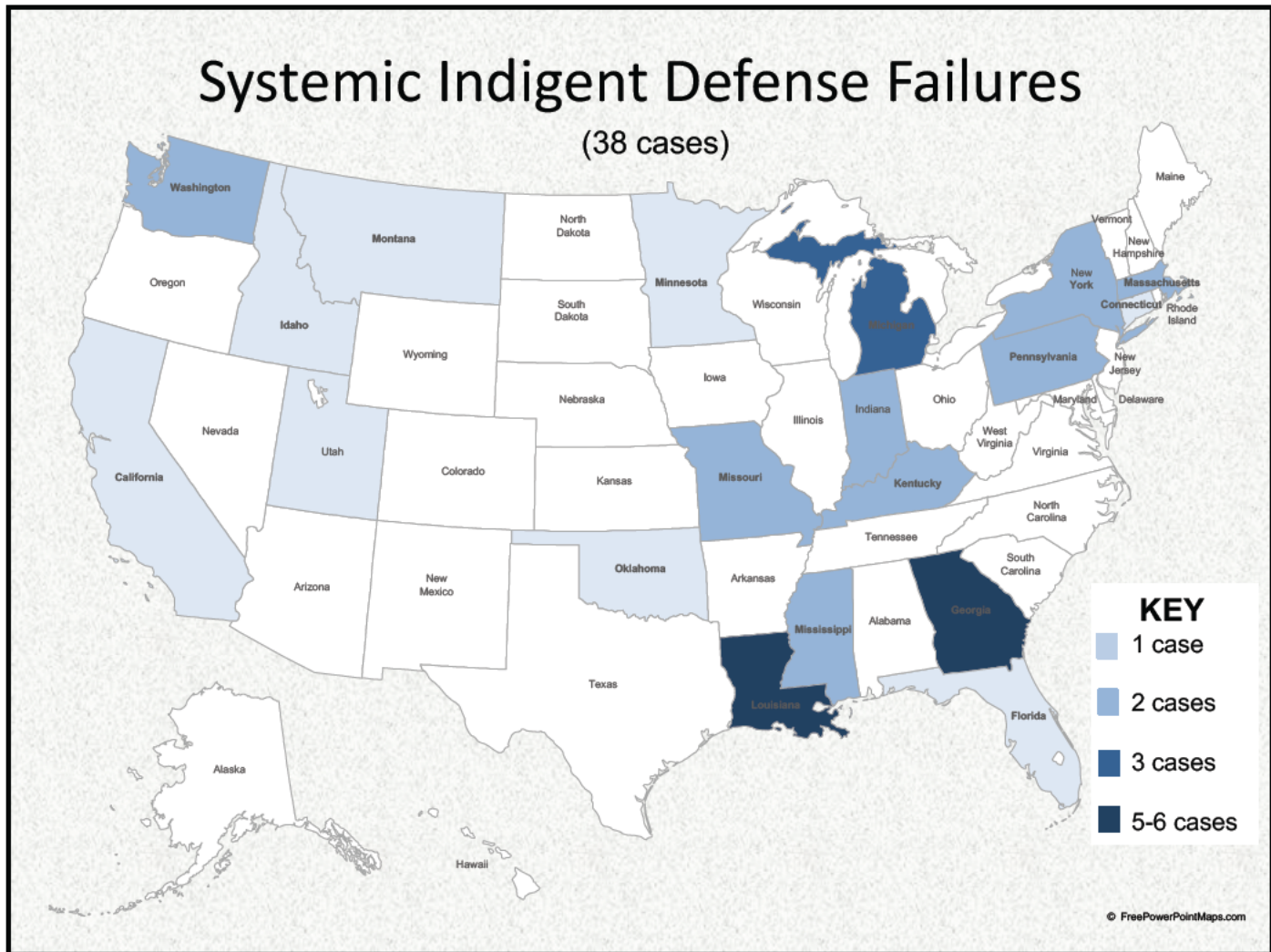
## **State has no mechanism to ensure effectiveness in:**

- Misdemeanor cases
- All cases in non-participating counties
- Capital cases if no reimbursement is sought

## **State has limited capacity to ensure:**

- Assess quality of counsel

# Litigation – Indiana and Other States



# State Structures for Overseeing Right to Counsel Services

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**A. Statewide Commission:** One or more commissions or boards that oversee all indigent defense services for all case-types for all regions of the state.

**B. Limited Commission:** Commissions or boards that either a) oversee some, but not all, case-types; or, b) oversee some, but not all, regions of the state.

**C. No State Commission:** No commissions overseeing any portion of indigent defense services.



**TABLE 1: STATE OVERSIGHT**

<b>A. Statewide Commission</b>	<b>Independent Commissions</b>			<b>Non-Independent</b>	
	Connecticut	Massachusetts	New Mexico	Arkansas	Oregon
<b>21 States</b>	Kentucky	Michigan	North Dakota	Colorado	West Virginia
<b>42%</b>	Louisiana	Minnesota	Utah	Hawaii	Wisconsin
	Maine	Montana	Virginia	Missouri	
	Maryland	New Hampshire			
<b>B. Limited Commission</b>	<b>Independent Commissions</b>			<b>Non-Independent</b>	
	Idaho	New York	South Carolina	Georgia	Kansas
<b>13 States</b>	Indiana	North Carolina	Tennessee	Illinois	Oklahoma
<b>26%</b>	Nebraska	Ohio	Texas		
<b>C. No Commission</b>	Alabama	Delaware	Mississippi	Pennsylvania	Vermont
	Alaska	Florida	Nevada	Rhode Island	Washington
<b>16 States</b>	Arizona	Iowa	New Jersey	South Dakota	Wyoming
<b>32%</b>	California				



# How States Fund Right to Counsel

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State-funded services

Mixed state and local-funded services

Minimal or no state funded services





**TABLE 2: FUNDING**

Funding Classification	States				
<b>A. State Funded</b>	Alabama	Florida	Maryland	New Mexico	Virginia
	Alaska	Hawaii	Massachusetts	North Carolina	West Virginia
<b>27 States (54%)</b>	Arkansas	Iowa	Minnesota	North Dakota	Wisconsin
	Colorado	Kentucky	Missouri	Rhode Island	
	Connecticut	Louisiana	Montana	Oregon	
	Delaware	Maine	New Hampshire	Vermont	
<b>B. Mixed Funding</b>	Georgia	New Jersey	Oklahoma	Texas	
	Indiana	New York	South Carolina	Wyoming	
<b>11 States (22%)</b>	Kansas	Ohio	Tennessee		
<b>C. Minimal State Funds</b>	Arizona	Illinois	Nebraska	Utah	
	California	Michigan	Pennsylvania	Washington	
<b>12 States (24%)</b>	Idaho	Mississippi	South Dakota		



# Delivery of Trial Level Services

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State run  
services

Mixed state  
and locally run  
services

Minimal or no  
state-run  
services

**TABLE 3: ADMINISTRATION OF TRIAL-LEVEL SERVICES**

Administration Classification	States				
<b>A. State-run services</b>	Alaska	Hawaii	Massachusetts	New Mexico	Virginia
	Arkansas	Iowa	Minnesota	North Dakota	West Virginia
<b>24 States (48%)</b>	Colorado	Kentucky	Missouri	Oregon	Wisconsin
	Connecticut	Maine	Montana	Rhode Island	Wyoming
	Delaware	Maryland	New Hampshire	Vermont	
<b>B. Mixed-run services</b>	Florida	New Jersey	New York	Ohio	
	Kansas	Nevada	Oklahoma		
<b>7 States (14%)</b>					
<b>C. Local-run services</b>	Alabama	Idaho	Michigan	Pennsylvania	Texas
	Arizona	Illinois	Mississippi	South Carolina	Utah
<b>19 States (38%)</b>	California	Indiana	Nebraska	South Dakota	Washington
	Georgia	Louisiana	North Carolina	Tennessee	



# Questions?

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Where do we go from here?

What should we discuss next time?