

Georgia



Primary Indigent Defense Delivery System: Public Defender/Assigned Counsel*

Population in 2002: 8,560,310**

**Percentage of State Plus County Expenditures in FY 2002 Attributable to State vs. Counties:
17.4% from State; 82.6% from Counties****

*Source: "Gideon's Broken Promise: America's Continuing Quest for Equal Justice," by the ABA Standing Committee on Legal Aid and Indigent Defendants, at page 5 (December 2004), available at <http://www.indigentdefense.org/brokenpromise/fullreport.pdf>.

**Source: "State and County Expenditures for Indigent Defense Services in Fiscal Year 2002," by The Spangenberg Group (on behalf of the ABA Standing Committee on Legal Aid and Indigent Defendants), at 4 and Table (September 2003), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/indigentdefexpend2003.pdf>.

During the 40th anniversary year of the U.S. Supreme Court's decision in *Gideon v. Wainwright*, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (ABA SCLAID) in 2003 held a series of public hearings to examine the implementation of the right to counsel in state court proceedings for poor persons accused of crimes. In January 2005, ABA SCLAID published its final report based on the testimony provided at the hearings, entitled "Gideon's Broken Promise: America's Continuing Quest for Equal Justice." This information sheet contains a short summary of the "Problems in Indigent Defense" and "Recent Reform Efforts" in Georgia that were reported by hearing witnesses. For the complete information regarding each of the statements listed below (including references to hearing transcripts, reports, and other supporting materials), please see "Gideon's Broken Promise: America's Continuing Quest for Equal Justice," available at <http://www.indigentdefense.org/brokenpromise>.

Problems in Indigent Defense

The following problems were reported by hearing witnesses (please note that these problems were reported in 2003 and may soon be addressed through the implementation of Georgia's new statewide public defender system, which will become effective January 2005—see **Recent Reform Efforts** following this section):

- Prior to the implementation of Georgia's new statewide public defender system in 2005, many of the indigent defense contracts in the state traditionally had been awarded on a flat fee basis to the lowest bidder without regard to qualifications or any other considerations, contrary to recommendations contained in national standards.
- Prior to the implementation of Georgia's new statewide public defender system in 2005, a witness testified that, in most places in Georgia, indigent defendants plead guilty without counsel and are fined substantially at sentencing without any inquiry as to whether they can afford to pay. The fines usually are required to be paid in installments as a condition of probation, and if a defendant misses a payment, imprisonment for violation of probation can result, in violation of relevant U.S. Supreme Court decisions.

- Although prosecutors receive full-time salaries in Georgia, prior to the implementation of a new statewide public defender system in 2005, indigent defense representation traditionally has been provided by private attorneys who work part-time pursuant to a flat-fee contract with the county while retaining private practices on the side.
- Prior to the implementation of Georgia's new statewide public defender system in 2005, a witness testified that counties in Georgia did not generally provide the type of constitutionally adequate defense representation as required by U.S. Supreme Court decisions, much less the type of quality representation recommended by national standards. The witness provided the following example: "I would suggest one thing you might do is go to a place like Crisp County, Georgia. At nine o'clock in the morning, they would be calling the arraignment calendar and no one except people who have paid lawyers would have a lawyer. Everyone else will be appointed a lawyer when his or her case is called. By twelve noon everybody will have pled guilty and been sentenced. That afternoon, court will convene at the jail. Generally, the contract lawyer there has met with the people the day before in jail and they will be paraded out and plead guilty and be sentenced. Sometimes, the judge will just wait and the lawyers will meet and conduct the plea negotiations in open court, and then the judge will come on the bench when everybody is ready to plead guilty and move the calendar along. This is obviously not legal representation. This is processing. High school students could do this." The witness added that "this sort of meet 'em and plead 'em is a pretty prevalent practice throughout the state of Georgia."
- The U.S. Supreme Court has recognized that indigent defendants are entitled to the effective assistance of competent counsel, and national standards recommend that quality representation should be provided. Yet, one witness provided several examples of inadequate representation in Georgia, including an example of a death penalty case in which the defense lawyers did not make a single objection and filed three boilerplate motions of one page each during a trial that lasted one and a half days. The jury sentenced the forty-five year-old defendant to death after a twenty-seven minute penalty hearing during which the defendant's lawyers failed to offer any mitigating evidence, despite the fact that the defendant had never been in trouble before, was a parent and volunteer firefighter, served during the Vietnam War, and was considered to be a good neighbor. Another example involved a defense lawyer who drank "a quart of vodka a day while trying a death penalty trial."
- In Georgia, prior to the implementation of its new public defender system in 2005, some counties traditionally required all attorneys (except those with conflicts of interest) to participate on a panel from which the court appoints counsel to represent indigent defendants, regardless of the attorneys' prior experience, training, or interest in criminal matters. According to a witness from Georgia, when a real estate lawyer with no criminal law experience sued to be removed from the mandatory panel in one county, the judge reacted by saying: "Well, if you didn't handle criminal cases like everybody else, you would have a financial advantage over the other lawyers here in town."
- National standards have long acknowledged the need for a statewide structure to oversee indigent defense services, ensure uniformity in the quality of services, and provide system accountability. However, until the implementation of the new statewide public defender system in 2005, there were between 600-700 different approaches to providing indigent services in Georgia, as each of the 159 counties traditionally decided upon its own system for providing services in each of the four courts (felony, misdemeanor, juvenile, and municipal) per county.

- Despite national standards recommending that counsel be provided as soon as feasible after custody begins, according to a witness from Georgia, indigent defendants in that state have often languished in jail without representation. As an example, the witness cited a defendant who was arrested for loitering and spent thirteen months in jail without seeing a lawyer or judge—or even being formally charged—before local civil rights advocates ultimately secured his release.
- Despite the prohibitions contained in ethics rules and national standards, witnesses testified that prosecutors in Georgia sometimes improperly seek waivers of counsel, and subsequent pleas of guilty, from unrepresented indigent defendants, while judges either ignore or openly encourage such practices. Some judges make no attempt to determine whether an accused’s waiver is knowing, voluntary, and intelligent before accepting it, as required by Supreme Court decisions, and many judges do not follow the additional guidance contained in national standards. For example, a witness described observing a mass arraignment of defendants charged with jailable misdemeanors during which the judge informed defendants of their rights and then left the bench. Afterwards, three prosecutors told defendants to line up and follow them one by one into a private room. When the judge reentered the courtroom, each defendant approached with the prosecutor, who informed the judge that the defendant intended to waive counsel and plead guilty to the charges.
- Another witness testified that in many Georgia courts, the clerk provides defendants with a complicated form that, if signed, serves as a waiver of counsel and plea of guilty. Defendants are told their case will not be called unless they sign the form. Often, judges accept signed forms from defendants who are illiterate or who only speak Spanish and cannot read the English in which the form is printed. In Coweta County, Georgia, where a lawsuit was brought to challenge inadequate indigent defense representation, a witness reported that about half of the felony defendants were not provided with lawyers and described the following courtroom routine: “The judge typically would call a defendant forward, ask the prosecutor what the offer was, and then tell the defendant he would follow the prosecutor’s recommendation. There was no mention of counsel. The defendant would have no idea what to do, being thoroughly intimidated by the courtroom, judge, etc., and often turned to the prosecutor, who was always happy to discuss the offer. The defendant would then enter the plea. He/she would not be asked about the right to counsel until halfway through the plea colloquy, when the judge was going over all of the rights waived with a guilty plea. Defendants were assigned counsel only if they affirmatively asked for a lawyer.”
- Prior to the implementation of the new statewide defender system in 2005, a witness testified that counsel frequently had not been provided to indigent defendants in violation of federal constitutional rights, state law, or national standards. According to the witness, “[w]hat we are finding all over Georgia is that in these lower level courts, where people go to jail all of the time because these courts are basically money-making courts that send people to jail when they can’t make money off of them, nobody has a lawyer. There are no lawyers in these courts to represent people. It raised the questions: how do you enforce the right to counsel if there is no counsel to begin with?”
- Strong opposition to indigent defense reform in that Georgia traditionally has come from superior court judges seeking to retain control over court appointments. Further, in discussing a lawsuit challenging inadequate indigent defense representation provided in the Cordele Judicial Circuit, a witness noted the following: “One of the things that I think has been most disappointing about this lawsuit is that none of the county’s attorneys, unlike

other places we have sued, seem to be the least bit bothered by the fact that the system there is a complete farce. You would think they would be embarrassed, that some of them would have thought that we, the local bar, should have done something about this years ago.”

Recent Reform Efforts

The following recent reform efforts were reported by hearing witnesses:

- In 2003, Georgia enacted legislation to overhaul its indigent defense system, effective January 2005, by establishing defender offices within each judicial circuit to provide representation in felonies and juvenile court cases. Local governments are authorized by statute to contract separately with the offices for representation in lower level courts. The legislation also established a state oversight commission responsible for creating standards and supervising the new public defender system. Legislation to provide state funding for the system was enacted during a 2004 special legislative session.