

# Massachusetts



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

**Population in 2002: 6,427,801\*\***

**Percentage of State Plus County Expenditures in FY 2002 Attributable to State vs. Counties:  
100% from State\*\***

\*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 40<sup>th</sup> 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 SCLAD) 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 SCLAD 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," "Recent Reform Efforts," and "Model Approaches to Providing Services" in Massachusetts that were reported by one of the 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

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The following problems were reported by the hearing witness:

- Although national standards recommend that indigent defense attorneys receive reasonable compensation for reasons of fairness and to encourage vigorous representation, in Massachusetts, hourly rates of compensation for assigned counsel are extremely low and have led to a shortage of private attorneys willing to take indigent defense cases.
- In addition, starting salaries for public defenders in Massachusetts are \$35,000 and rise to only \$50,000 after ten years. Low salaries have led to serious recruitment problems for that state's public defender program.
- Although national standards recommend the use of public defender programs wherever the population and caseload are sufficient to support such organizations, in many areas of Massachusetts, there is almost complete reliance on private assigned counsel, especially in misdemeanor and juvenile delinquency cases.

## **Recent Reform Efforts**

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The following recent reform efforts were reported by the hearing witness:

- In Massachusetts, lawsuits were filed in 2004 by the Committee on Public Counsel Services and the American Civil Liberties Union of Massachusetts on behalf of indigent defendants in Hampden County, alleging that the state's chronic under-funding of the assigned counsel system had led to a shortage of attorneys willing to accept assignments in the defendants' cases. The Massachusetts Supreme Judicial Court ruled that criminal cases must be dismissed against those indigent defendants for whom no attorney had filed an appearance within 45 days of arraignment and that indigent defendants cannot be held in jail more than seven days without counsel.
- Shortly after the two lawsuits challenging the constitutionality of Hampden County's indigent defense system were filed, the law firm of Holland & Knight filed an original petition in the Massachusetts Supreme Judicial Court challenging the assigned counsel system in all of Massachusetts.

## **Model Approaches to Providing Services**

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The following model approach to providing services was reported by the hearing witness:

- The statewide system in Massachusetts provides effective training and oversight of private assigned counsel. A single, independent organization, known as the Committee for Public Counsel Services, oversees both public defenders and approximately 2,000 private attorneys statewide and has adopted training and performance standards as well as caseload limits.