

Government Lacks Basic Data on Extent of Indigent Defense System Failures, ACS Issue Brief Author Says

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Washington, D.C. — The system for providing lawyers to indigent criminal defendants in the United States has been broken for years, yet we still lack “even the most basic data” on how the system operates, writes the author of a new ACS Issue Brief, who calls for data collection and analysis as a necessary first step in improving the nation’s indigent defense system.

“We cannot continue to ignore this enormous gap in the data, and the sooner we recognize that fact, the more quickly we can begin to collect the data,” writes Erica J. Hashimoto, associate professor of law at the University of Georgia School of Law.

The limited information we do have “certainly suggests that many jurisdictions are violating defendants’ constitutional right to counsel,” Hashimoto writes in her Issue Brief, “[Assessing the Indigent Defense System](#).” According to the limited estimates available, 30 percent of defendants charged with misdemeanors are denied their right to counsel. But these results omitted many defendants with suspended terms of incarceration who may have also had a right to counsel. Anecdotal evidence in some states, such as North Dakota, shows that systems fail to appoint counsel routinely in misdemeanor cases, “despite the fact that most defendants pled guilty at the hearing and many were sentenced to jail time.”

“Unfortunately, although we have known for years that many defendants who have a right to counsel are being denied representation, we simply do not have sufficient data to assess the extent of the problem. Perhaps more than any other category of data, collection of these data – which would allow us to assess not only whether defendants who have a right to counsel are receiving counsel but also the number of cases the indigent defense system is handling on a yearly basis – is critical for assessing the state of the indigent defense system,” Hashimoto writes.

Hashimoto’s Issue Brief is the third in an ACS series on strengthened roles the federal government can play in addressing the persistent crisis in indigent defense. The 1963 landmark Supreme Court decision, *Gideon v. Wainwright*, established that states have an obligation to provide legal assistance to criminal defendants who cannot afford an attorney, but many states have abdicated that responsibility, law professor Cara H. Drinan [wrote](#) in the first Issue brief in the series, “[A Legislative Approach to Indigent Defense Reform](#).” Attorney General Eric Holder, Congress, and many other federal policymakers have identified reform of the indigent defense system as a priority.

In the second Issue Brief in the series, "[From Error Toward Quality: A Federal Role in Support of Criminal Process](#)," James M. Doyle suggested that the federal government model indigent defense reform on the medical community's practice of systematically analyzing routine errors.

Hashimoto's ACS Issue Brief is [available here](#) (pdf). Please contact the ACS Communications Department to arrange interviews with the author.

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