



## **ACS Issue Brief Author Urges Federal Response to Reforming Indigent Defense System**

### **First in a Series of Issue Briefs to Explore Federal Role in Shoring Up System Providing Legal Representation to the Poor**

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**Washington, D.C.** – Evidence that the nation’s indigent defense system is woefully lacking is the subject of an Issue Brief released today by the American Constitutional Society for Law and Policy (ACS), the author of which urges Congress and the administration to take action to correct the situation.

In its landmark 1963 decision in *Gideon v. Wainwright*, the Supreme Court ruled that states have an obligation under the Sixth Amendment to provide legal representation to criminal defendants who cannot afford attorneys, writes Cara H. Drinan, assistant law professor at Catholic University of America’s Columbus School of Law. But, she explains, in “A Legislative Approach to Indigent Defense Reform,” that in 16 states “more than half of the indigent defense costs are paid for by the county; and in two states, Pennsylvania and Utah, there is no state funding at all. These states abdicate their constitutional obligations under *Gideon* when they require counties to fund indigent defense services.”

Drinan says that the indigent defense services nationwide are hobbled because of “drastic underfunding of indigent defense delivery systems; crushing attorney workloads that force committed defenders to compromise their ethical obligations on a daily basis; a lack of investigative and expert assistance; a chronic inability to develop meaningful attorney-client relationships; and, of course, unnecessary and sometimes unlawful imprisonment.”

In calling for a federal response, Drinan writes that there is reason “to be optimistic” that lawmakers are serious about reform. She cites both Attorney General Eric Holder’s statements that reforming indigent defense is a top priority of the Department of Justice and the administration’s creation of an initiative to reform indigent defense, which is spearheaded by Harvard law professor and constitutional law expert Laurence Tribe.

Drinan urges the Department of Justice to become more involved in reforming states’ “delivery of indigent defense services.” She maintains, for example, that “DOJ could file amicus briefs in

ongoing lawsuits designed to generate systemic reform, such as the suits pending in New York and Michigan.”

Congress should also take action, Drinan writes, because it “can make a more lasting improvement to indigent defense services by enacting legislation that will provide a long-term incentive for states to meet and maintain their obligations under the Sixth Amendment.”

In her ACS Issue Brief, Drinan explains that federal legislation intended to reform and bolster indigent defense “needs to incorporate several critical elements: (1) it must confirm that the burden of providing indigent defendants with counsel rests with the states; (2) it needs to give some weight to the notion of ineffective assistance of counsel without running afoul of Supreme Court precedent; (3) it must address who will be appropriate parties to a suit brought under the statute; and (4) it needs to address the question of appropriate remedies.”

Drinan concludes by responding to potential objections to the federal action she urges. Writing that many will likely argue that criminal justice is traditionally in the realm of state sovereignty, she asserts that such “criticism is undermined by the fact that the states have had nearly five decades to translate the *Gideon* mandate into practice, and they have failed to do so across the board with rare exceptions. States cannot avoid their obligations under the Sixth Amendment by raising a vague claim of states’ rights.”

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

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