



Testimony of the Pennsylvania Bar Association Before the Senate Judiciary Committee Regarding Senate Bill 979 and Indigent Defense Legal Representation

Good morning, Chairman Greenleaf, Chairman Leach, and members of the Judiciary Committee. I am Forest N. Myers, President of the Pennsylvania Bar Association, here today representing the 27,000 members of the PBA. Thank you for inviting the PBA to testify in favor of indigent defense legal representation and Senate Bill 979.

In the famous 1963 case of *Gideon v. Wainwright*,¹ the United States Supreme Court concluded that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” The Court required that states provide counsel to indigent defendants in felony cases. This requirement has been extended to any case that may result in the potential loss of liberty including misdemeanors,² juvenile delinquency cases,³ direct appeals,⁴ and other critical stages⁵ in criminal and delinquency proceedings. In addition, the Pennsylvania State Constitution, Article 1, Section 9, recognizes the right of the accused “to be heard by himself and his counsel”; and the Pennsylvania Supreme Court, through its rule making authority⁶ and case decisions⁷ has continued to recognize and to expand the right to counsel.

Stated plainly, equal access to justice is a basic constitutional right, and crucial for a well-functioning civil society. Should the indigent not have effective legal representation in criminal matters, the very basis of justice is called into question. Moreover, the justification of our political

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and legal system becomes uncertain for a large segment of society when the perception exists that sufficient legal assistance to defend oneself is dependent on income.

The Commonwealth has delegated to the counties the funding and delivery of indigent defense legal representation, through the establishment of public defender and assigned counsel services. Pennsylvania, though, is the only state that does not provide state funds for indigent defense, which is particularly problematic for more impoverished counties.⁸

The indigent defense system, however, is not working well, as made clear by the 2011 Joint State Government Commission Report, *A Constitutional Default: Services to Indigent Criminal Defendants in Pennsylvania*.⁹ The Report quotes an earlier report by the Pennsylvania Supreme Court Committee on Racial and Gender Bias¹⁰ that accurately summarizes the problems: First, there is a lack of accountability, with respect to those representing the indigent and those running the system for indigent defense. Second, there are problems with legal representation. Guidelines are lacking for attorney appointment; flat fees discourage engaging in sufficient legal work; insufficient payment discourages criminal defense specialization; support services to attorneys like paralegals and investigators are insufficient; and caseloads are too large to give counsel the ability to sufficiently prepare for cases. Third, there is a lack of political independence on the part of public defenders given that their budgets are controlled by county politicians.

Because of these shortcomings, there have been cases where innocent people have been incarcerated.¹¹ In fact, as discussed in the Joint State Government Report, in the “Kids for Cash” tragedy, there were “1,866 cases in which juveniles appeared before Judge Ciavarella without counsel or where the right to counsel was not properly waived.”¹² The chief public defender in Luzerne County had given instructions to “deemphasize juvenile cases because of a lack of resources.”¹³ It is also quite possible that these shortcomings will lead an appellate court to

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overturn a criminal conviction of a defendant who is truly guilty due to insufficient legal assistance, leaving the prosecutor with two unpleasant choices: spend more public funds to retry the case, or let the defendant walk free.

Senate Bill 979 addresses the shortcomings with indigent defense. The bill would establish the Pennsylvania Center for Effective Indigent Defense Legal Representation, to be overseen by representatives of the Pennsylvania criminal defense bar. The Center would be responsible for “continuing education, training and skill development programs and resources for” those representing criminal defendants who are indigent; “programs for capital case defense skills training, adult criminal defense training, juvenile delinquency defense training and management and leadership training for chief defenders and public defender office leaders;” and “establish[ing] a virtual defender training library consisting of all of the programs generated by the training programs sponsored through the center.” In addition, SB 979 provides \$1 million to the Center.

At the end of the day, the Commonwealth has a responsibility to ensure that the indigent receive a fair legal defense. If we fail, as noted, we weaken the functioning of our civil society and do a disservice to the cause of equal justice under the law.

Thank you.

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Notes

¹ 372 U.S. 335 (1963).

² *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

³ *In re Gault*, 387 U.S. 1 (1967).

⁴ *Douglas v. California*, 372 U.S. 353 (1963).

⁵ Line-ups: *U.S. v. Wade*, 388 U.S. 218 (1970); custodial interrogation: *Miranda v. Arizona*, 384 U.S. 436 (1967); preliminary hearings: *Coleman v. Alabama*, 399 U.S. 1 (1970); and misdemeanors involving a suspended sentence: *Shelton v. Alabama*, 535 U.S. 654 (2002).

⁶ See, Pennsylvania Rules of Criminal Procedure, Rules 121 & 122; Pennsylvania Rules of Juvenile Court Procedure, Rule 151.

⁷ See: *Commonwealth v. Richman*, 320 A.2d 351 (Pa. 1974); *Commonwealth v. Karash*, 518 A.2d 537, 541 (Pa. 1986); *Commonwealth v. DeHart*, 516 A.2d 656, 665-666 (Pa. 1986), cert denied, 485 U.S. 1010 (1987); *Commonwealth v. Brown*, 476 A.2d 381 (Pa. Super. 1984).

⁸ <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2011-265-Indigent%20Defense.pdf> (hereinafter "Report"), at 2.

⁹ Report.

¹⁰ *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System (Racial and Gender Bias Report)* (n.p.: Pennsylvania Supreme Court, 2003).

¹¹ Report, at 3.

¹² Report, at 3.

¹³ Report, at 3.