

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on “Protecting the Constitutional Right to Counsel
for Indigents Charged with Misdemeanors”
May 13, 2015**

Good morning. Today the Senate Judiciary Committee holds a hearing on indigent misdemeanor representation. According to the Sixth Amendment Center, and certainly in my memory, this is the first time the Senate Judiciary Committee has ever held a hearing on this subject.

The Sixth Amendment provides criminal defendants with the assistance of counsel. For more than 50 years, following the Gideon decision, it has been clear that it is necessary to give poor people accused of crimes the right to a lawyer to help them navigate the system, preserve their rights, and make sure innocent people don't go to jail. Clarence Gideon himself, when retried with a lawyer representing him, was acquitted.

And that landmark ruling was extended in 1972 to misdemeanor defendants for good reason. The overwhelming majority of people who face criminal charges are prosecuted for misdemeanors. In Iowa, for example, 80% of all criminal prosecutions are for misdemeanors, among the highest rate in the country.

Some states have adhered to the Constitution. In Iowa, the county courts do an excellent job of providing counsel to misdemeanor defendants. I am pleased that Chief Justice Cady of Iowa is with us today. Last month, his court extended the right to counsel by not permitting uncounseled convictions to be used as sentencing enhancements in subsequent crimes. Uncounseled convictions must exist in Iowa, however, or the decision wouldn't be necessary.

But many states are not providing counsel as the Constitution requires. It is a widespread problem. In reality, the Supreme Court's Sixth Amendment decisions regarding misdemeanor defendants are violated thousands of times every day. No Supreme Court decisions in our history have been violated so widely, so frequently, and for so long.

Consider what is happening just in some of the states represented on this Committee. Defenders are not present at arraignments. Large numbers of misdemeanor defendants plead guilty without lawyers. Defendants who have been locked up pending their first appearance are told that they can plead guilty and be sentenced to time served. But if they choose to be represented by counsel, they will wait in jail until one is appointed. And problems exist on a smaller scale in the federal system.

When misdemeanor defendants aren't given counsel, no one can challenge the legality of a traffic stop or to make the prosecution prove every element of an offense beyond a reasonable doubt. So innocent people may be going to jail. In locations where lawyers are provided at every stage of the process, about 25% of all cases are dismissed.

There are members of the Senate who want to reduce sentences for felons. At least those individuals have been proven beyond doubt to have, for instance, sold large quantities of drugs that poison our children and bring violence to our streets. But to really address sentencing reform, we should also be looking at the vast majority of crimes in this country – misdemeanors – and the uncounseled prison sentences that punish them.

These constitutional violations cause serious repercussions. People who are convicted of misdemeanors, whether they received legal representation or not, may have problems obtaining a job for the rest of their lives. That hurts them. It hurts the economy. It hurts all of us.

Misdemeanor convictions give rise to other collateral consequences. Housing assistance and student loan eligibility might be compromised. Some misdemeanor convictions can lead to loss of gun ownership rights. Some misdemeanors, when repeatedly violated, become felonies. Yet prior uncounseled misdemeanors should not count toward felonies and their consequences. Misdemeanor convictions can also make defendants ineligible for the federal safety valve. That is a provision that allows first time, low level drug offenders to avoid mandatory minimum sentences. In many instances, misdemeanor defendants are unaware of those consequences when they enter into guilty pleas. People concerned about sentencing reform should start here.

I don't think that the solution to the problem is another federal grant program. According to a 2012 GAO report, there are already 13 such programs. And of the 9 that can be used for indigent defense and for other purposes, states haven't used the grants for counsel. Indigent representation isn't their priority. In fact, barely half of all defender offices even knew that these funds could be used for indigent defense. Perhaps we need a better federal effort in coordinating and maybe even dispensing these funds, combined with transparency and accountability for why states aren't spending available funds for indigent defense.

One way to address the problem would be for states to reclassify some misdemeanors as civil offenses or eliminate prison sentences for various misdemeanors. Perhaps civil fines would be just as effective without making states pay for lawyers or causing collateral consequences. We will hear testimony today about diversion programs that take some offenses out of the criminal justice system. Again, there are Committee members who are concerned about overcriminalization. This is the place to begin.

States often make lawyers sit through CLE programs of dubious value. Perhaps they would render a better public service by requiring lawyers to provide assistance to indigent misdemeanor defendants instead.

What is particularly troubling about these constitutional violations is who is committing them. It is our judicial system. The states and the state courts must adhere to the Bill of Rights. Respect for our courts as well as the rule of law demands that.

Widespread, intractable violations of the Sixth Amendment have existed for more than 40 years. Few prospects exist that the states will soon remedy those violations. State systems need to be reformed. We need to know what is happening. We pride ourselves on a legal system that provides equal justice for all. For that to be real, we must make sure that poor people receive representation.

I thank our witnesses for being with us today.