



Public Defense in the United States

A National Perspective on South Dakota

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Sixth Amendment Center



Presentation to the South Dakota Indigent Defense Task Force
Pierre, South Dakota – March 31, 2023



Sixth Amendment Center

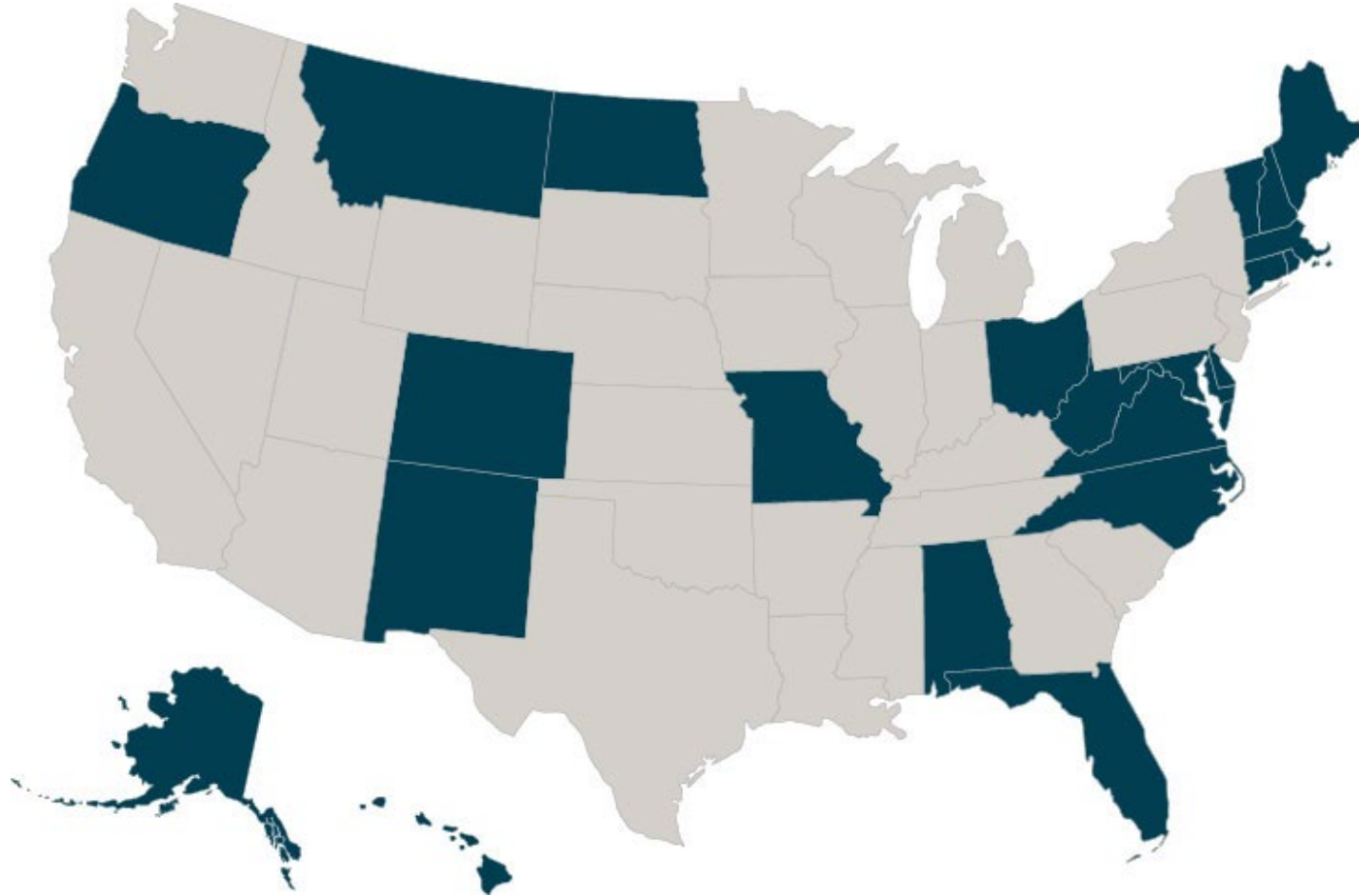
3 Guiding Principles

- ✓ Non-partisan
- ✓ Only go where and when invited
- ✓ No litigation



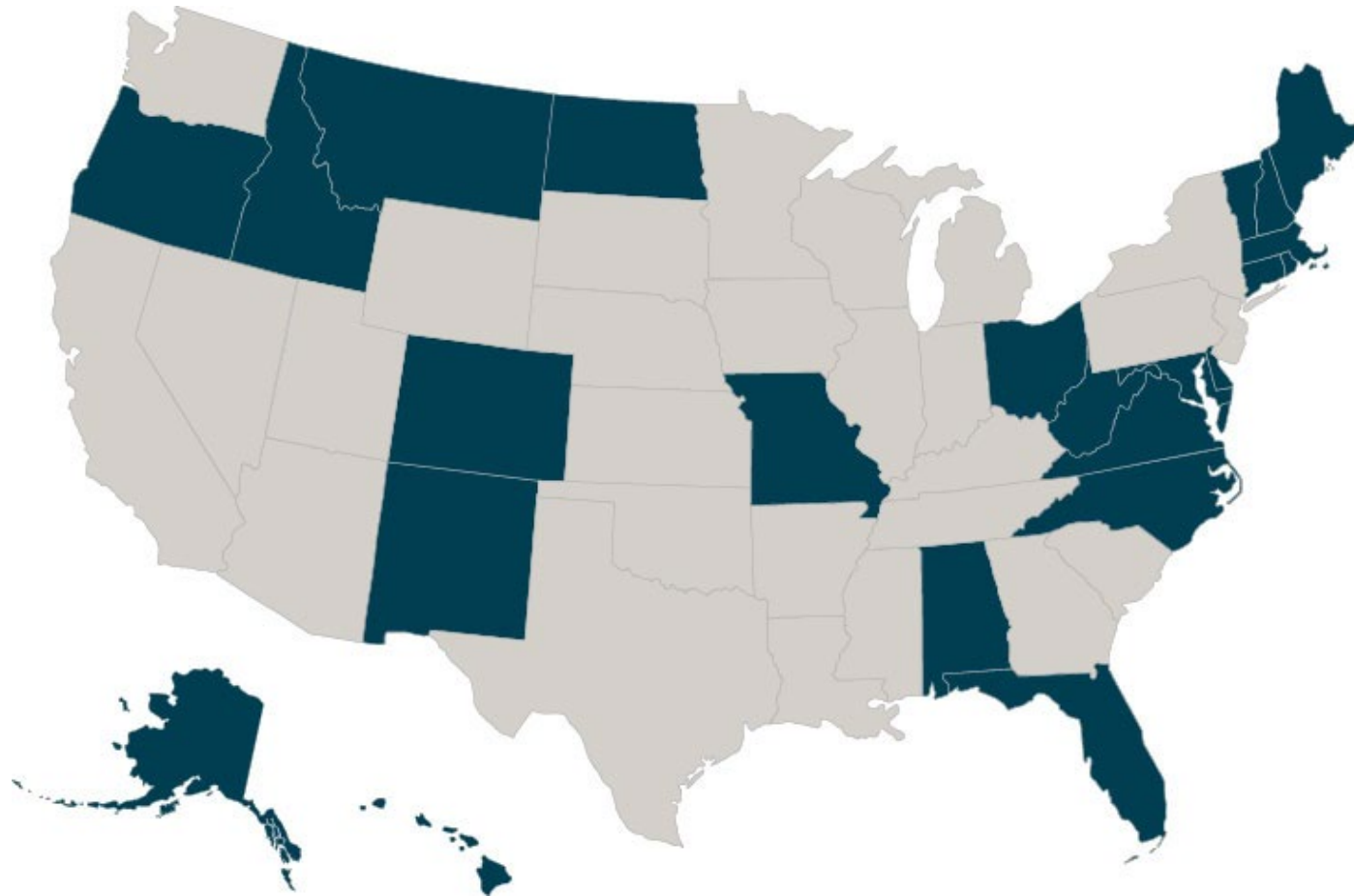
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The right to counsel in America



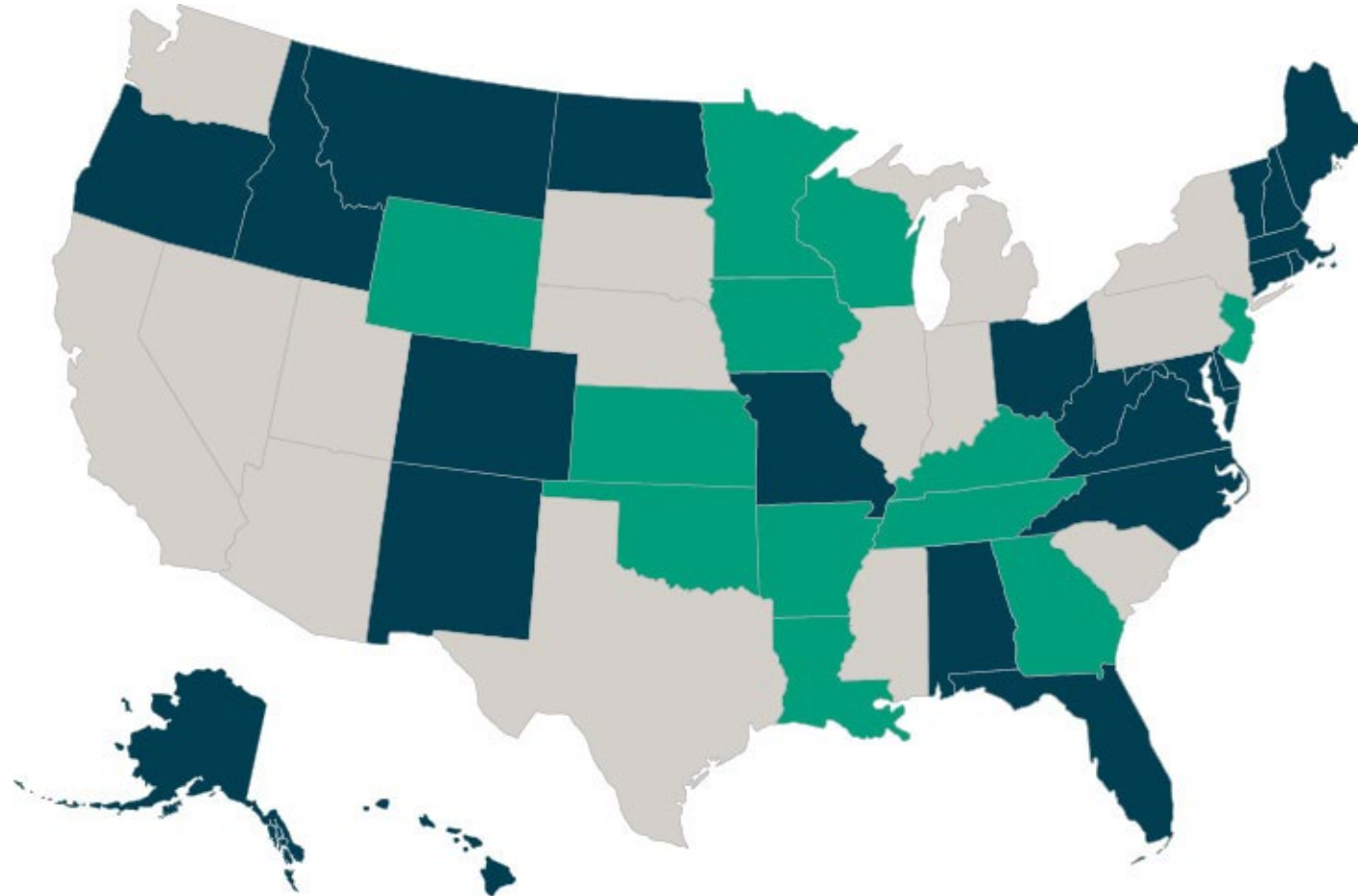
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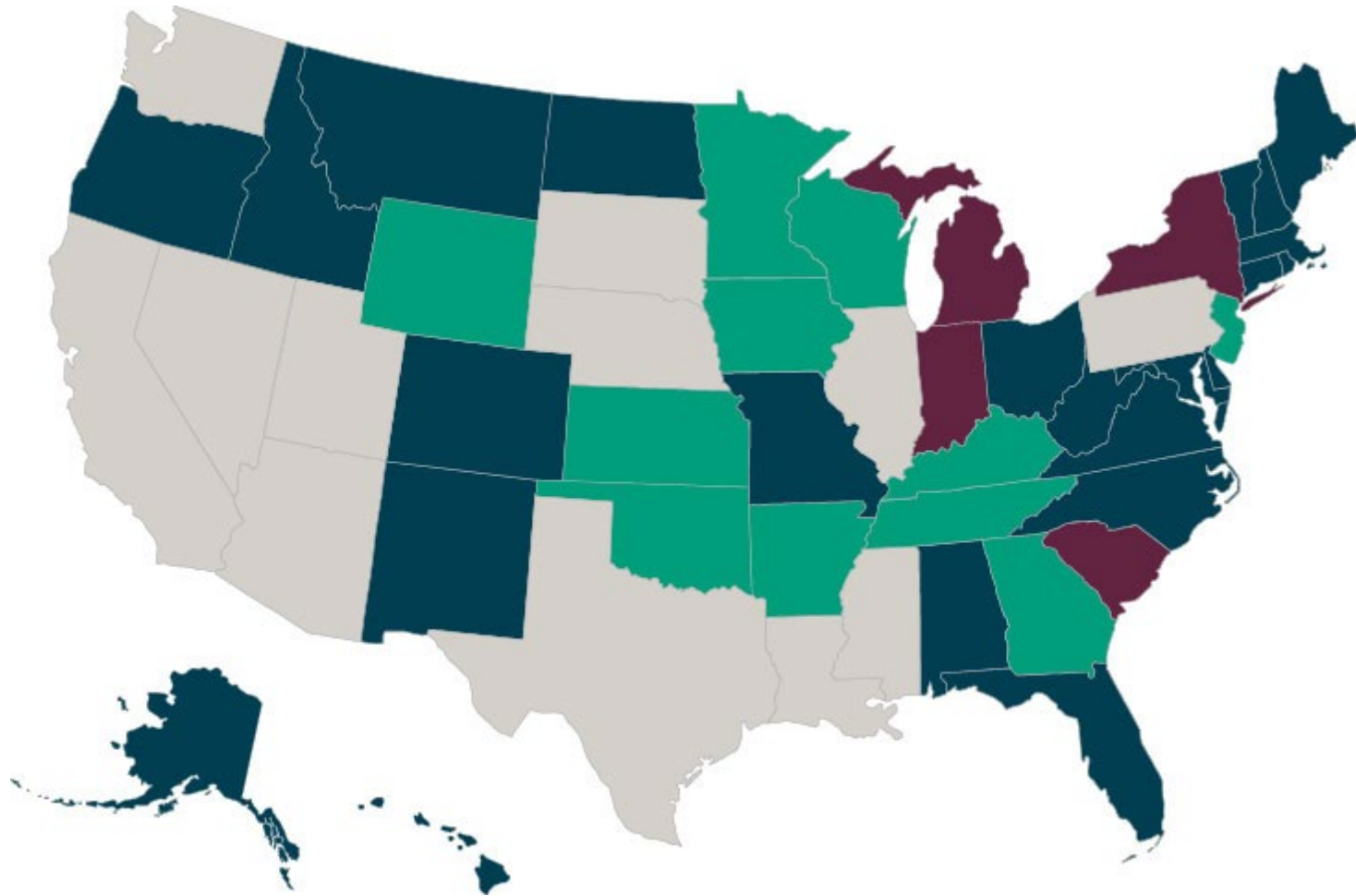


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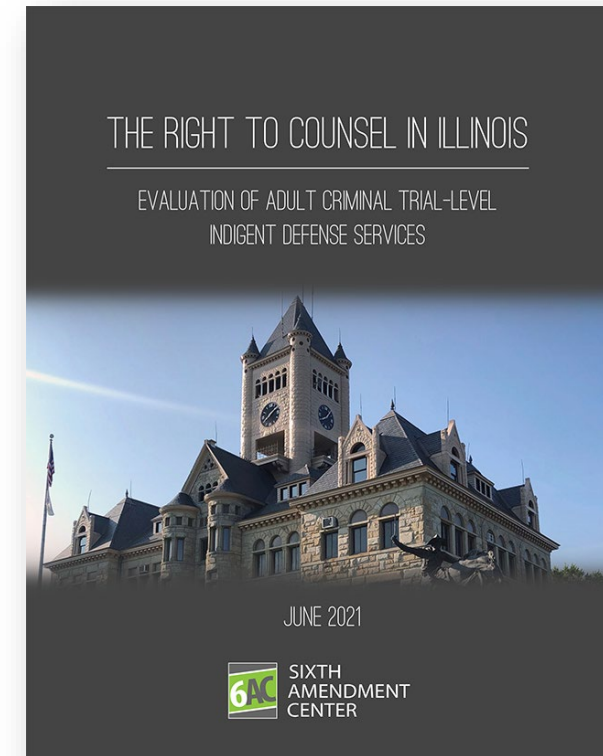
The right to counsel in Lake County, California

6AC study in 2023 found:

- No trial-level state structure

Lake County:

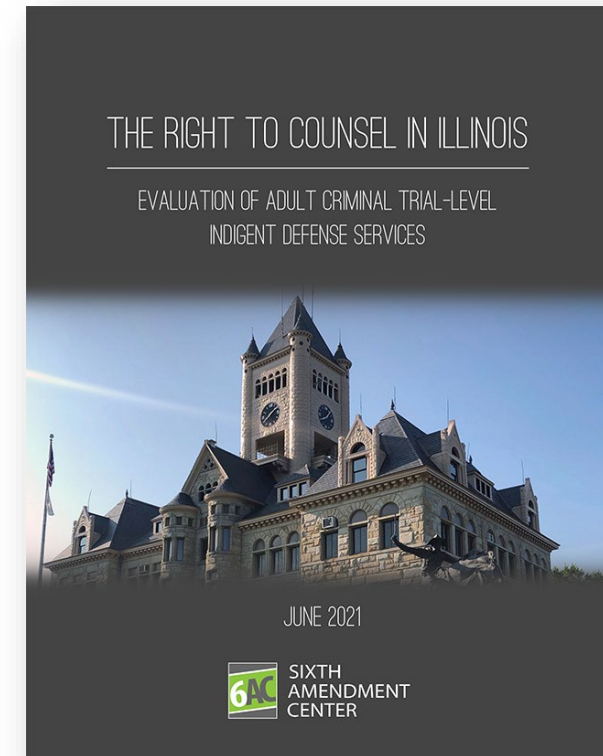
- ✓ Rural
- ✓ High poverty rate
- ✓ Aging workforce
- ✓ Low median income



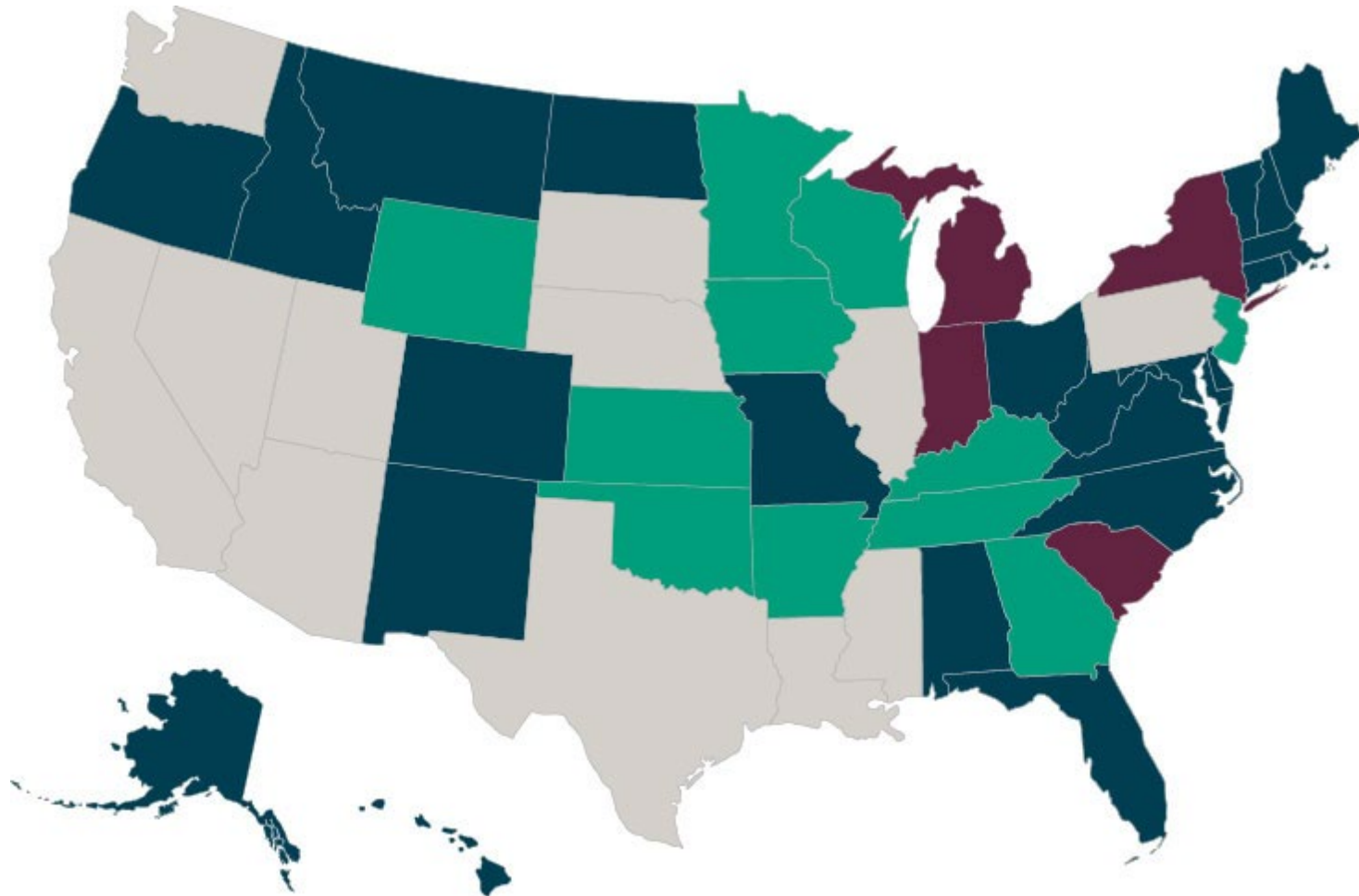
The right to counsel in Lake County, California

6AC study in 2023 found:

- Flat fee contract to 3 attorneys
- Flat fee sub-contracts to 12 others
- No required attorney qualifications
- Excessive caseloads
- Attorneys taking cases in other counties
- No data collection



The right to counsel in America



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The right to counsel in America

“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

– U.S. Supreme Court’s decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963).



The right to counsel in America

- **Felonies:** Gideon v. Wainwright, 372 U.S. 335 (1963)
- **Direct appeals:** Douglas v. California, 372 U.S. 353 (1963)
- **Delinquency proceedings:** *In re Gault*, 387 U.S. 1 (1967)
- **Misdemeanors:** Argersinger v. Hamlin, 407 U.S. 25 (1972)
- **Misdemeanors with suspended sentences:** Alabama v. Shelton, 505 U.S. 654 (2002)
- **Appeals challenging a sentence resulting from a guilt plea:** Halbert v. Michigan, 545 U.S. 605 (2005)



The right to counsel in America

- **Custodial interrogations both before and after commencement of prosecution:** Brewer v. Williams, 430 U.S. 387, 399 (1977); Miranda v. Arizona, 384 U.S. 436, 444-45 (1966); Massiah v. United States, 377 U.S. 201, 205-06 (1964).
- **Preliminary hearings prior to commencement of prosecution where “potential substantial prejudice to defendant[s]’ rights inheres in the . . . confrontation”:** Coleman v. Alabama, 399 U.S. 1, 9-10 (1970).
- **Lineups and show-ups at or after commencement of prosecution:** Moore v. Illinois, 434 U.S. 220, 231 (1977); Kirby v. Illinois, 406 U.S. 682, 689-90 (1972); United States v. Wade, 388 U.S. 218, 236-38 (1967).
- **During plea negotiations and at the entry of a guilty plea:** Lafler v. Cooper, 132 S. Ct. 1376, 1386 (2012); Padilla v. Kentucky, 559 U.S. 356, 373 (2010); McMann v. Richardson, 397 U.S. 759, 771, 771 n.14 (1970).
- **Arraignments:** Hamilton v. Alabama, 368 U.S. 52, 53-55 (1961).



The right to counsel in America

- During the pre-trial period between arraignment and the beginning of trial: *Hamilton v. Alabama*, 368 U.S. 52, 53-55 (1961).
- **Trials:** *Hamilton v. Alabama*, 368 U.S. 52, 53-55 (1961).
- **Sentencing:** *Lafler v. Cooper*, 132 S. Ct. 1376, 1386 (2012); *Wiggins v. Smith*, 539 U.S. 510, 538 (2003); *Glover v. United States*, 531 U.S. 198, 203-04 (2001); *Mempa v. Rhay*, 389 U.S. 128, 134, 137 (1967).
- **Direct appeals as of right:** *Halbert v. Michigan*, 545 U.S. 605, 621 (2005); *Douglas v. California*, 372 U.S. 353, 357 (1963).
- **Probation revocation proceedings** (to some extent): *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973).
- **Parole revocation proceedings** (to some extent): *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972).



The right to counsel in America

“Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.”

– U.S. Supreme Court’s decision in *United States v. Cronin*, 466 U.S. 648 (1984).



The right to counsel in America

“The right to effective assistance of counsel is thus the right of the accused to require the prosecution’s case to survive the crucible of meaningful adversarial testing. . . . [I]f the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated.”

– U.S. Supreme Court’s decision in *United States v. Cronin*, 466 U.S. 648 (1984).



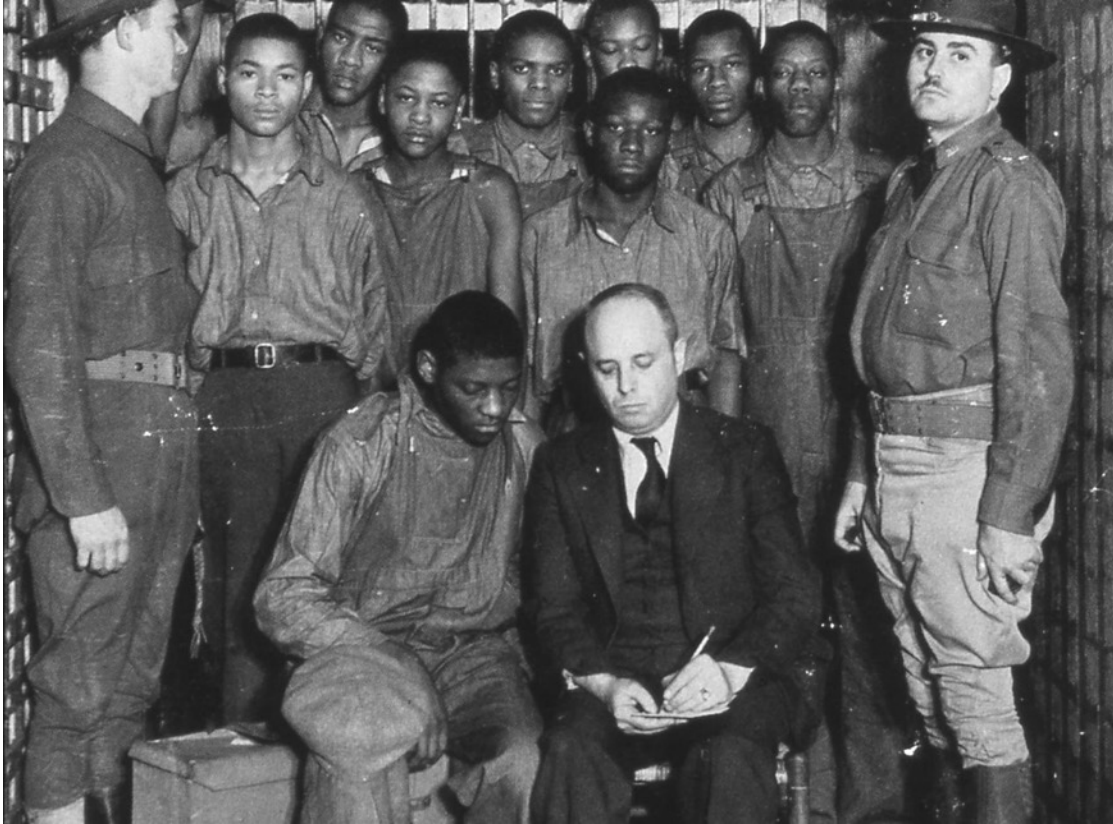
The right to counsel in America

“[There are] certain circumstances where the structure is so deficient that any lawyer would fail to provide effective assistance of counsel.”

– U.S. Supreme Court’s decision in *United States v. Cronin*, 466 U.S. 648 (1984).



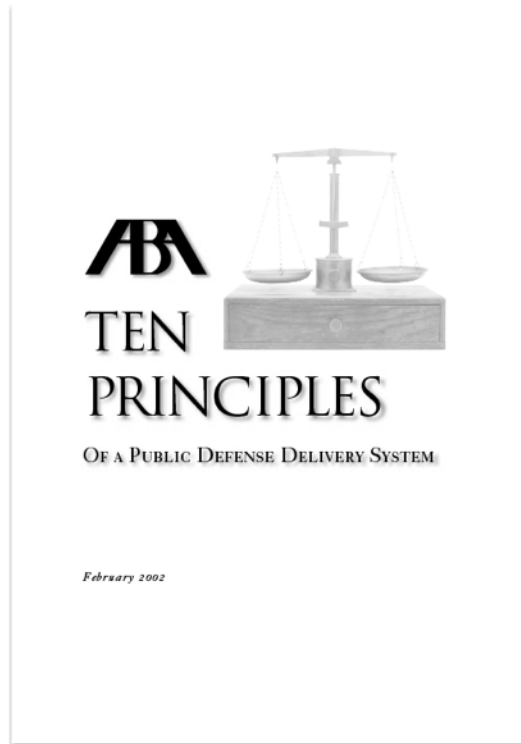
The right to counsel in America



Powell v. Alabama, 287 U.S. 45 (1932)

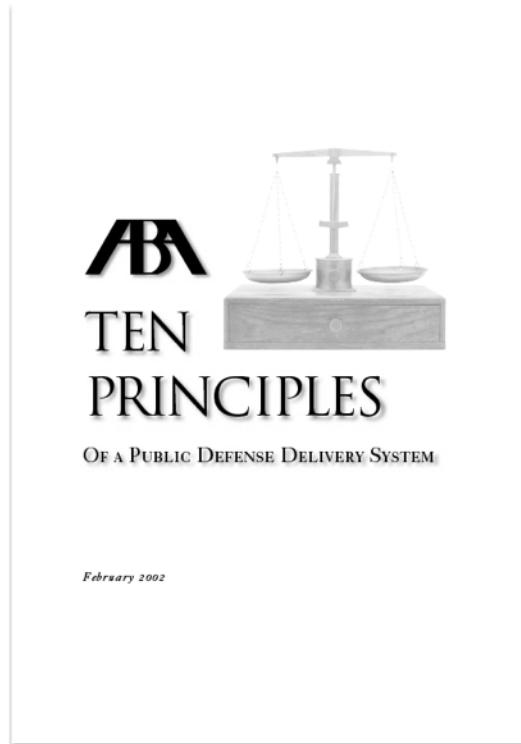
- Judge hand-picked attorneys
- Lawyers had insufficient time to prepare a defense
- Lawyers were unqualified to handle the complexity of the case

The ABA Ten Principles



“The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.”

The ABA Ten Principles

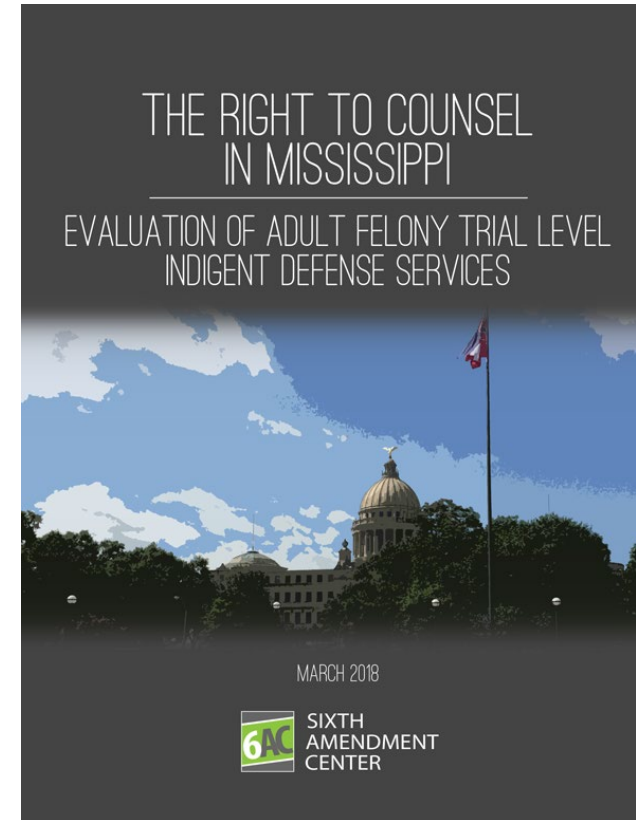


- ✓ Early appointment of counsel
- ✓ Attorney qualifications, training & supervision
- ✓ Independence of the defense function
- ✓ Sufficiency of time

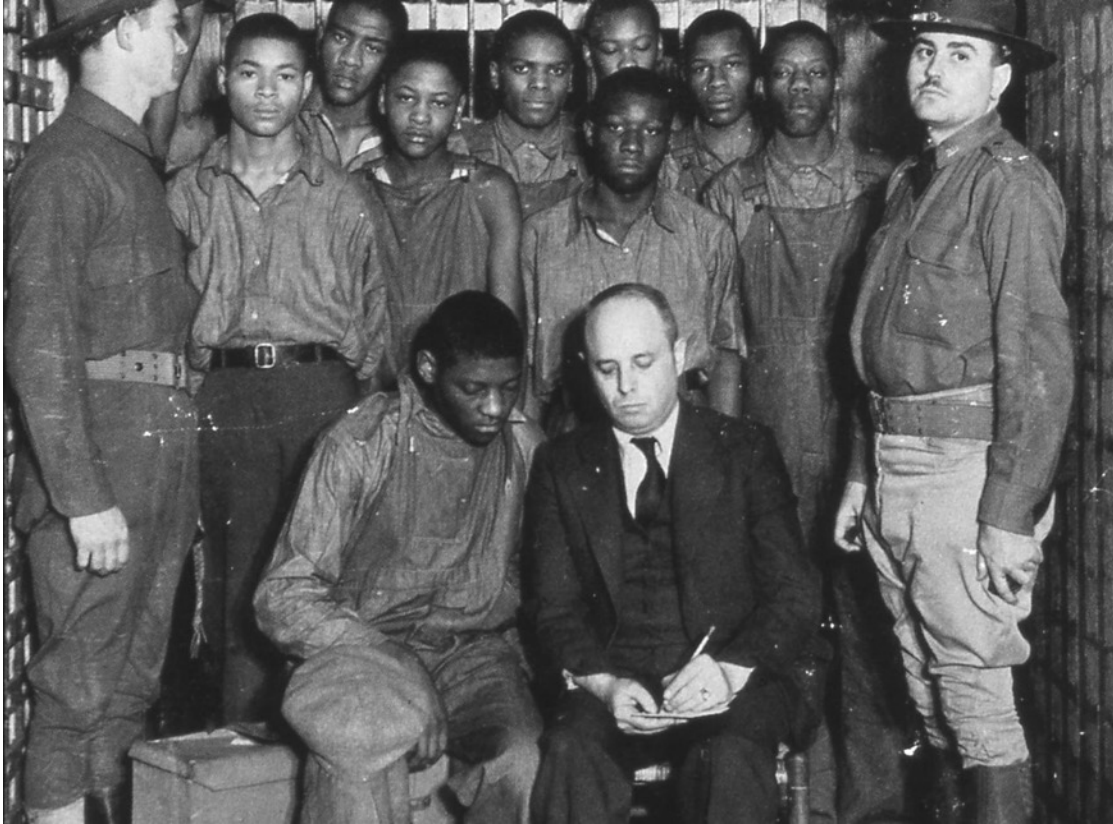
The right to counsel in Mississippi

6AC study found:

- Felonies by indictment
- Grand juries sit infrequently
- Defendants sit for months if not years



The right to counsel in America



Powell v. Alabama, 287 U.S. 45
(1932)

Impeding counsel's time "is not to proceed promptly in the calm spirit of regulated justice, but to go forward with the haste of the mob."



MICHIGAN



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The right to counsel in Michigan



Since the 2013 reforms

- Established independent commission
- Implemented standards
- \$176 million state funding (FY22)
- Expansion of public defender offices
- Abolished judicial control of direct services



“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

- Gideon v. Wainwright

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