



Senator Elgie R. Sims, Jr.

Pretrial Fairness Act: Access to Counsel

Gideon v. Wainwright

March 18, 2023, marked the 60th anniversary of *Gideon v. Wainwright*, the Supreme Court's landmark decision on the right to counsel.

In *Gideon*, the Court found that *“reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided.”*

The Court held that it is an “obvious truth” that anyone accused of a crime who cannot afford the cost of a lawyer *“cannot be assured a fair trial unless counsel is provided for him.”*

The Court has subsequently clarified that the Sixth Amendment right to counsel means every person who is accused of a crime is entitled to have an attorney provided at government expense to defend him in all federal and state courts whenever that person is facing the potential loss of his liberty and is unable to afford his own attorney.

Under *Gideon*, it is the state that is obligated to provide the Sixth Amendment right to effective assistance of counsel in the state courts.



Other US Supreme Court Decisions

- **Strickland v. Washington**, the United States Supreme Court says that independence of defense counsel is “constitutionally protected.”
- **Ferri v. Ackerman**, the Court explains that the “independence” of appointed counsel to act as an adversary is an “indispensable element” of “effective representation.”
- **Polk County v. Dodson**, stating that government has a “constitutional obligation to respect the professional independence of the public defenders whom it engages,” and that public defenders are “not amenable to administrative supervision” like other government employees.
- To uphold these requirements of U.S. Supreme Court case law, national standards as compiled in *ABA Principle 1* state that the “selection, funding, and payment of defense counsel” should be “independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.”



Access to Counsel

A study by the Sixth Amendment Center outlined two overarching issues impacting the State of Illinois' constitutional right to counsel obligations.

1. The state requirement that counties and courts provide and predominantly fund indigent defense systems in a way that builds governmental interference into the right to counsel.
2. Illinois was one of only seven states with no state-level mechanism to oversee any aspect of trial-level right to counsel services.

One of the many reasons mass incarceration persists is because people too poor to afford their own lawyers are denied meaningful representation in court. This injustice happens because public defense systems — the systems tasked with providing attorneys to those in need — are severely underfunded and overburdened.



Legal Deserts in Illinois

More than 95,000 attorneys registered to practice in Illinois

- But that statistic masks a severe shortage of solo practitioners able to take on new individual clients, particularly in rural communities.
- Much like food deserts in areas underserved by grocery stores, some neighborhoods and towns are considered legal deserts. And like many food deserts, legal deserts are growing in size.

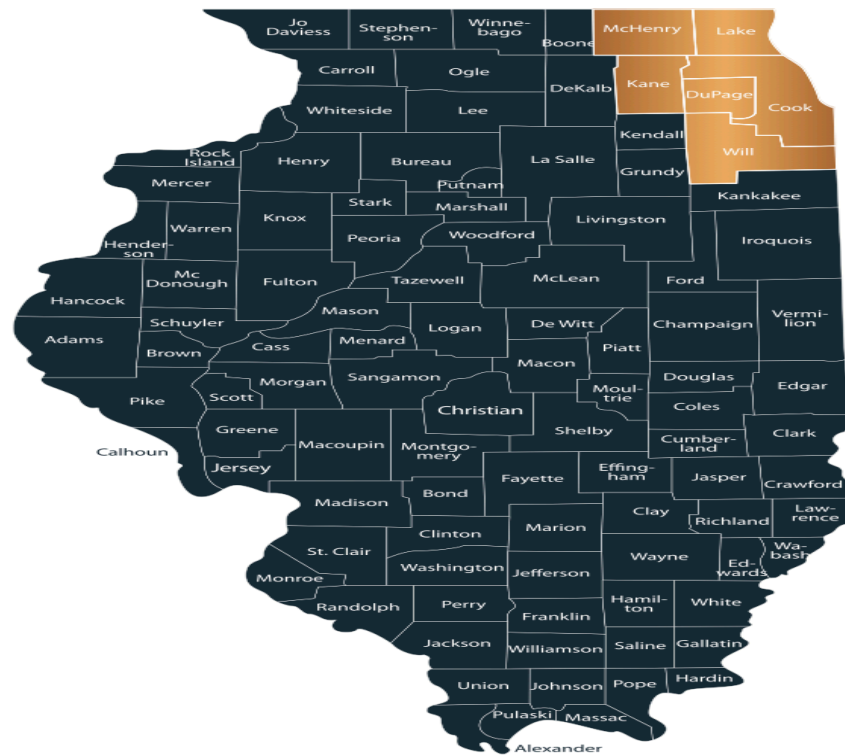
Out of Illinois' 102 counties, data in 2020 shows that 35 Illinois counties have 10 or fewer attorneys in private practice and 13 counties have five or fewer attorneys in private practice.

- The American Bar Association says nationwide, there's about one lawyer for every 300 people in the country. But most attorneys practicing today represent corporations or businesses, not individual clients.



Legal Deserts

87% of lawyers in Illinois practice in six counties



Access to Justice

Illinois Supreme Court Commission on Access to Justice

- **Purpose.** The Illinois Supreme Court Commission on Access to Justice is established to promote, facilitate, and enhance equal access to justice with an emphasis on access to the Illinois civil courts and administrative agencies for all people, particularly the poor and vulnerable. The purpose is to make access to justice a high priority for everyone in the legal system and, to the maximum extent possible, the Commission is intended to complement and collaborate with other entities addressing access to justice issues.

Illinois Supreme Court Rule 10-100

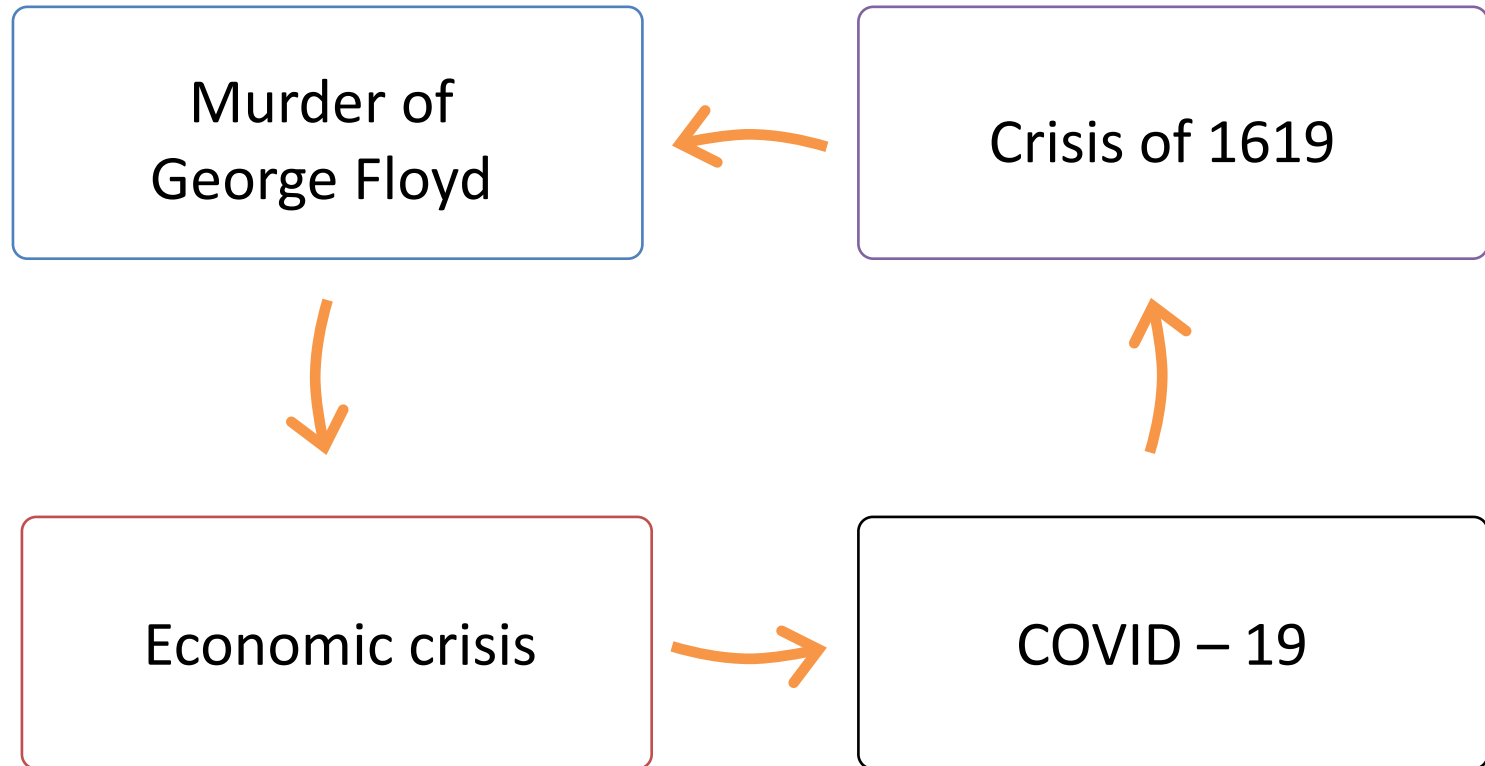


Access to Counsel

- The state reimburses each county for 66 2/3 percent of the appointed public defender's compensation, "subject to appropriation" of funding by the legislature.
 - Aside from this reimbursement and limited financial assistance provided primarily for training, Illinois has delegated to its counties all of the responsibility for funding the right to counsel of indigent people.
- Each county sets the amount of and pays its public defender's compensation, with the only state-imposed constraint based on whether the public defender is full-time or part-time.
- State law requires the Cook County public defender to serve in a full-time capacity, but it allows the county boards in all other counties to make the public defender a part-time position if they so choose.
 - *Full Time*: The county must pay the public defender 90% of the appointed state's attorney's salary.
 - *Part Time*: The county board sets the public defender's compensation at whatever amount it sees fit, and the public defender is allowed to also have a private law practice. In **57 counties**, the county boards have chosen to have only a part-time public defender.



Origins of the SAFE-T Act



Illinois Legislative Black Caucus' Four Pillar Agenda

**CRIMINAL JUSTICE,
POLICE ACCOUNTABILITY,
AND VIOLENCE REDUCTION
PILLAR**



**EDUCATION
AND WORKFORCE
DEVELOPMENT
PILLAR**



**ECONOMIC ACCESS,
EQUITY AND
OPPORTUNITY
PILLAR**



**HEALTH CARE
AND
HUMAN SERVICES
PILLAR**



Access to Counsel

To ensure all individuals who need a public defender are granted access, Illinois took steps to:

- Create a new state special purpose fund, the Public Defender Fund, to provide funding to counties for public defenders and public defender services.
- Require the Public Defender Quality Defense Task Force to provide recommendations to the General Assembly and Governor on legislation to provide for an effective statewide public defender system by **December 31, 2023**.



What is the Pretrial Fairness Act?

The Pretrial Fairness Act:

- Abolished the use of cash bail to ensure that individuals who are arrested are evaluated for pretrial detention based on their danger to a person or the community instead of their ability to pay bail.
- Created a framework for hiring and training for pretrial services agencies in circuit courts currently without pretrial service systems in place, through the Illinois Supreme Court's Office of Statewide Pretrial Services.
- Created a grant program, overseen by the Administrative Office of the Illinois Courts, for increasing public defenders to handle the expected increase in caseloads.
- Provides people in custody with their phones to get phone numbers and make three phone calls once they are detained.



Public Defender Grant Program

The Pretrial Fairness Act requires defendants to be appointed a public defender or other legal representation prior to their first court appearance – leading to the creation of the Public Defender Grant Program.

The program assists in the training and hiring of attorneys on contract to assist the county public defender in pretrial detention hearings.

Last month, the Administrative Office of Illinois Courts – which oversees the program – equitably distributed nearly \$10 million to the 101 counties outside of Cook as part of the Public Defender Grant Program.



Funding of the Pretrial Fairness Act

Since the passage of the Pretrial Fairness Act, the Illinois General Assembly has allocated more funding for public safety than ever before.

The Fiscal Year 2024 budget included:

- \$76.1 million to the Illinois Supreme Court
 - Including a \$21 million increase over FY 23 for the Statewide Office of Pretrial Services
- \$50 million to the Office of the State Appellate Defender to implement the provisions of the Pretrial Fairness Act
- \$50 million to the State Appellate Prosecutor to implement the provisions of the Pretrial Fairness Act





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