



REPORT

# Getting *Gideon* Right

Eligibility for Appointed Counsel  
in Texas Misdemeanor Cases

## FROM THE DIRECTOR

In the landmark case of *Gideon v. Wainwright*, the United States Supreme Court guaranteed that the Sixth Amendment right to counsel would protect every person accused of a crime—rich and poor. But nearly sixty years later, *Gideon's* promise remains unfulfilled.

Every year, thousands of people in Texas are charged with misdemeanor crimes. If convicted, they can be jailed, fined, placed on probation, fired from their jobs, or separated from their families. If they cannot afford a lawyer, the Constitution guarantees them a court-appointed defense attorney.

But is Texas honoring that promise? *Getting Gideon Right* is the first in a series of reports that will tackle this critical question.

Deason Center researchers conducted a groundbreaking assessment of indigent defense plans in Texas' 254 counties. Drawing on that data, *Getting Gideon Right* investigates the financial standards that determine an accused person's eligibility for appointed counsel in Texas county courts. The report reveals a patchwork of county court policies that are both complex and severe.

In almost every Texas county, eligibility standards are unrelated to the true costs of living, much less the high costs of hiring a lawyer. People who cannot afford basic necessities must prove that they are entitled to court-appointed counsel. And they must make that case before they can begin to defend themselves.

Although they are presumed innocent, people who cannot assemble the requisite proof of indigence, or who fail to satisfy strict local eligibility standards, must make harrowing choices: Will they represent themselves in court with a jail sentence at stake? Or will they deplete their savings, raid their retirement accounts, sell their only car, or skip their next rent payment to hire a lawyer who will fight for their freedom?

*Getting Gideon Right* does more than simply expose this injustice. The report provides Texas policymakers with actionable recommendations for honoring *Gideon's* promise and vindicating the right to counsel in county court misdemeanors.

We look forward to working with concerned Texans across the state. Together, we can give new life to the Sixth Amendment in Texas.

Sincerely,

**Pamela R. Metzger**  
Director, Deason Criminal Justice Reform Center  
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# Shortchanging *Gideon's* Promise in Texas

Almost 60 years ago, the United States Supreme Court recognized that a lawyer's assistance is essential for a fair criminal trial. In *Gideon v. Wainwright*, the Court held that the government must provide a criminal defense lawyer for any accused person who cannot afford one.

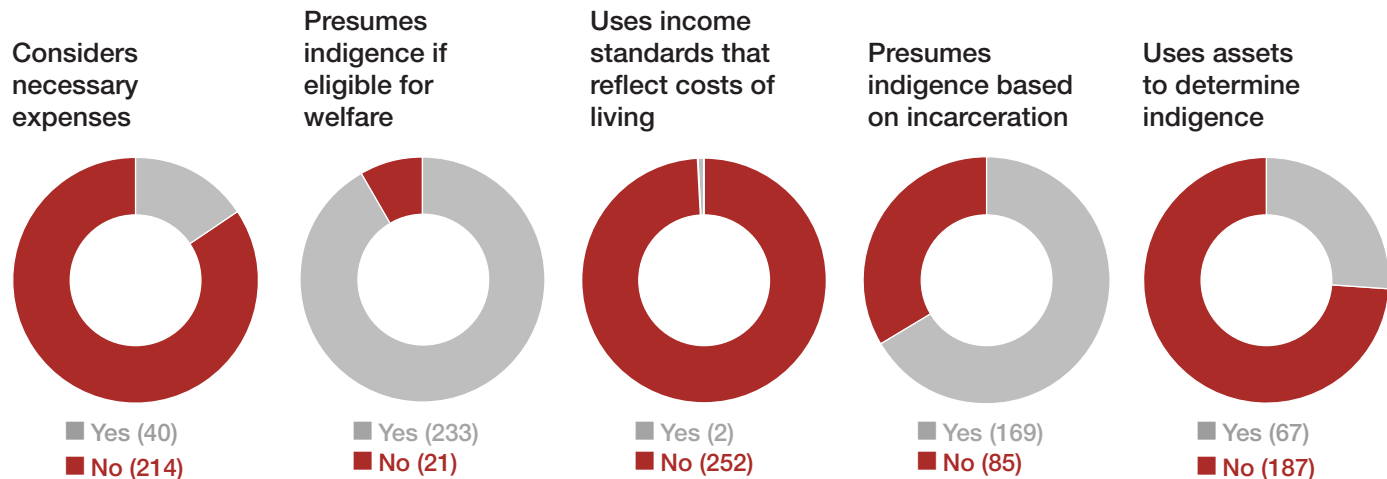
This constitutional protection applies to any person who is at risk of losing their liberty. But for too many people, *Gideon's* promise is unfulfilled.

In Texas there are no statewide guidelines about who is entitled to a court-appointed lawyer. Instead, counties create their own rules.

In 2019, Texas' 254 counties used 181 different indigent defense plans for providing appointed counsel in misdemeanor cases.<sup>1</sup>

In most Texas counties, these eligibility standards create serious gaps in constitutional protection. It is far too easy for Texans to fall through those cracks.

## Factors Used to Determine Indigence Vary Across Texas



### Policies across Texas' 254 Counties

# Recommendations

No person should stand in criminal court without a lawyer by their side. Fortunately, there are practical steps that Texas policymakers can take to get *Gideon* right. The Texas Indigent Defense Commission can set minimum standards that both honor *Gideon's* promise and respect local governance. Properly implemented, these recommendations would help ensure that no Texan has to choose between feeding their family and fighting for their freedom.

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## To deliver *Gideon's* promise, policymakers in Texas should:



**Establish statewide minimum standards for determining indigence.**



**Presume that people who are incarcerated and people who qualify for welfare are entitled to a court-appointed attorney.**



**Use more accurate measures of indigence.**



**Protect an accused person's essential assets.**



**Holistically assess a person's income, assets, and expenses, including the high cost of a defense lawyer.**

## ACKNOWLEDGMENTS

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## About the Deason Center

The Deason Criminal Justice Reform Center takes a Stats and Stories approach to criminal justice reform. The Stats: we collect, analyze, and assess qualitative and quantitative data about our criminal justice system. The Stories: we uncover, recount, and amplify the experiences of people who live and work in that system. Together, these Stats and Stories make a compelling case for compassionate criminal justice reform.

The Sixth Amendment right to counsel is at the heart of the Center's expertise. We study public defense and appointed counsel systems, and advocate for best practices in the delivery of this fundamental right. The Center also studies early-stage criminal process, from a person's first post-arrest court appearance through the prosecutorial decisions associated with screening and charging. These early stages of the criminal process may determine how the case ends. Accordingly, we conduct research and make recommendations about providing accused people with legal help as soon as possible.