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Safeguarding Liberty, Justice & the Rule of Law

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Closing Gap in Right to Counsel at Bail Hearings Promotes Justice & Saves Taxpayers, Report Says

WASHINGTON, D.C. -- Providing indigent defendants with an attorney at initial bail hearings is critical to ensuring fairness and due process in our criminal justice system, according to a [new report](#) [LINK] released today by The Constitution Project [National Right to Counsel Committee](#). It would also lower the burden on taxpayers by limiting the number of people remaining in jail while awaiting a trial to only those who pose a genuine public safety risk.

"The lack of counsel early in the process is one of biggest gaps remaining in making certain that indigent people accused of a crime can exercise their constitutional right to a lawyer, as guaranteed by the Sixth Amendment," said Virginia Sloan, president of The Constitution Project, a bipartisan legal watchdog group that prepared the report.

"Our country's problem with mass incarceration begins long before a convicted defendant is sentenced," Sloan said. "Without effective representation at a pretrial release hearing, all too often poor defendants remain locked in jail at great cost to themselves, their families and society as a whole, and too frequently innocent people plead guilty to lesser crimes they did not commit simply to gain their freedom."

In its landmark 1963 decision in *Gideon v Wainwright*, the United States Supreme Court declared that the Constitution requires the government to appoint a lawyer for any criminal defendant who cannot otherwise afford one. Sloan noted that the new report was being released on the 52nd anniversary of the decision.

The report points out that too many states and localities continue to conduct their initial judicial hearings as pre-*Gideon* proceedings inside a police precinct, a jail, or via video to a court. The public is often not permitted at the hearings, which are conducted by judicial officers who frequently overlook the law's preference for release before trial, and poor defendants without a lawyer are unaware of the many less onerous, non-financial options available for pretrial release. And, even when public defenders are appointed early enough in the process, their caseloads are often so high and resources so sparse as to render representation of their clients ineffective.

Failure to have counsel early in the process can also result in harsher outcomes at trial, the report shows, either because an unrepresented defendant fails to assert certain rights or makes prejudicial statements during the initial hearing. Also, defendants incarcerated from the point of arrest experience substantial difficulty in their ability to prepare for trial and build a defense, leading to a greater likelihood of conviction and longer sentences.

The committee offered six consensus recommendations for reforms to make the promise of effective counsel during the first bail hearing a reality, including conducting the first appearance hearings in public, so defense counsel and family members can present information supporting the least onerous pretrial release provisions possible, and redirecting much of the money saved through reductions in jail populations toward supporting early assignment of counsel. The committee also urged state and federal agencies to do a better job at collecting data on pretrial representation and case outcomes.

The Constitution Project National Right to Counsel Committee is a bipartisan, blue-ribbon panel of criminal justice system experts including current and former judges, prosecutors, defense counsel, police, and victim advocates. Former Vice President Walter Mondale and former FBI Director William S. Sessions serve as honorary co-chairs of the committee.

The full report is [available online](#).

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[About The Constitution Project ®](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.

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