Handout: Public Defense Background

In *Gideon v. Wainwright*, the Supreme Court ruled that people accused of serious crimes have the right to a government-provided lawyer when tried in state courts. But the Court did not address how states should provide lawyers when defendants cannot afford them. States have struggled to do this effectively. More people are being prosecuted now than when the Court decided Gideon’s case in 1963, and about 80% of people charged with a serious crime cannot afford a lawyer.

Some cities or states use **public defender** systems. In this type of system, lawyers work full time defending indigent clients in a government office. This is often the most expensive system, but the full-time public defenders become experts in criminal defense and are usually very committed to the people they represent.

Other states or localities appoint counsel from the community to represent poor people. A judge appoints a private attorney to represent an indigent defendant in each case where a lawyer is required. This system can spread the workload around to many attorneys, but sometimes the appointed lawyers are not experts in criminal defense.

Some jurisdictions use contract attorneys for indigent defense. Governments enter into contracts with individual attorneys, non-profit organizations, or law firms to provide representation to defendants who cannot afford a lawyer. Sometimes, the group providing the defense gets a flat fee for their work, and has no monetary incentive to spend a lot of time or effort on each case.

In any of these systems, the funding for lawyers, paralegals, case investigators, and expert witnesses comes from the state or local government. While the number of indigent defense cases has gone up across the country, funding has not typically kept pace. Many taxpayers are not enthusiastic about providing additional money to pay for the defense of people charged with crimes. However, the fairness of our justice system depends on everyone having adequate defense.