

May 20, 2015

The Honorable Charles E. Grassley  
Chairman  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Grassley and Senator Leahy:

We are writing to thank you for holding a hearing on the issues surrounding the provision of counsel for individuals facing misdemeanor charges. The problems related to misdemeanor proceedings are often overlooked or minimized in light of more harshly punished felony offenses. As Chairman Grassley has rightly pointed out, misdemeanors carry serious direct and indirect consequences for the accused, our justice system, and society at large. The denial of the 6th Amendment right to effective assistance of counsel in adult and juvenile misdemeanor cases has serious repercussions, undermining citizens' faith in the fairness and reliability of our criminal justice system. Shining a light on these issues is the first step in bringing accountability and justice to a system that has been ignored for too long.

This neglect is regrettable given that most jailable offenses are misdemeanors and that most contact with our criminal justice system is at the misdemeanor level. It is estimated that misdemeanors account for approximately 80% of the criminal docket in state courts across the country. One study found that in 2006, there were over 10 million non-traffic misdemeanor prosecutions.<sup>1</sup> By comparison, that same year there were over 1.1 million persons convicted of a state felony and approximately 58,000 federal felony cases filed in the nation's largest urban counties. Traffic offenses and civil infractions also lead to incarceration in many jurisdictions, yet counsel is often unavailable or unconstitutionally waived in these cases in courtrooms across the United States.

The most glaring examples of these deficiencies occur at first appearance, the proceeding at which charges are read and, when applicable, pretrial release conditions are determined. Throughout the country, individuals charged with relatively petty, victimless offenses are pleading guilty in abbreviated proceedings without being granted or informed of their right to an attorney.<sup>2</sup> The level of process provided in such courts often does not comport with constitutional requirements and is simply not adequate to ensure that convictions correspond

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<sup>1</sup> National Association of Criminal Defense Lawyers, *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Court*, available at <http://www.nacdl.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=20808> . This estimate is based on the extrapolation of caseload statistics collected from twelve states in 2006.

<sup>2</sup> National Association for Criminal Defense Lawyers, *Three-Minute Justice: Haste and Waste in Florida's Misdemeanor Courts*, available at <http://www.nacdl.org/WorkArea/DownloadAsset.aspx?id=20794&libID=20764> .

with culpability.<sup>3</sup> Even when counsel is available, misdemeanor caseloads are so high as to all but prevent meaningful investigation and preparation, virtually ensuring ineffective lawyering on behalf of a misdemeanor defendant.

Individuals – including juveniles – caught up in this system frequently do not appreciate the life-altering collateral consequences that flow from a misdemeanor conviction. Aside from the stigma of a criminal conviction and a jail sentence, misdemeanors carry the potential loss or denial of professional licenses, benefits and employment opportunities. Fines that exceed financial ability to pay and sentencing regimes that include enhancements for prior misdemeanors are other pitfalls that may ensnare certain individuals.

Every year, thousands of individuals' first and only exposure to our criminal justice system is a misdemeanor court system that does not reflect American values or the Constitution precepts. Thank you again for your attention to this important issue. We stand ready to assist you and the committee as the discussion moves forward to potential solutions.

Sincerely,

**National Association of Criminal Defense Lawyers**

**The Constitution Project**

**American Civil Liberties Union**

**American Council of Chief Defenders**

**Faith & Freedom Coalition**

**Federal Public and Community Defenders**

**FreedomWorks**

**Justice Fellowship / Prison Fellowship Ministries**

**National Association for Public Defense**

**National Juvenile Defender Center**

**Right on Crime**

**R Street Institute**

**Southern Center for Human Rights**

cc: Members, Senate Committee on the Judiciary

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<sup>3</sup> The Constitution Project, *Don't I Need A Lawyer? Pretrial Justice and the Right to Counsel at First Judicial Bail Hearing*, available at [http://www.constitutionproject.org/wp-content/uploads/2015/03/RTC-DINAL\\_3.18.15.pdf](http://www.constitutionproject.org/wp-content/uploads/2015/03/RTC-DINAL_3.18.15.pdf).