



## *The Collaboration for Justice:*

### Chicago Appleseed Fund for Justice

An Affiliate of the Appleseed Network of Social Justice Centers

### Chicago Council of Lawyers

Chicago's Public Interest Bar Association

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## Executive Summary

### Ensuring the Public Defense of Indigent Criminal Defendants in Cook County

August 2015

The Criminal Justice Advisory Committee (“CJAC”) of the Chicago Appleseed Fund for Justice and the Chicago Council of Lawyers has been engaged in collaborative efforts with the Office of the Chief Judge of the Circuit Court of Cook County to help prevent ongoing unconstitutional practices in the appointment of public defenders in Chicago criminal courts. As explained in the Supreme Court’s landmark decision in *Gideon v. Wainwright*, the Sixth Amendment to the U.S. Constitution guarantees criminal defendants who cannot afford an attorney the right to a state-financed public defense. The Sixth Amendment and Illinois law both require that courts respond to a request to appoint a public defender with a specific inquiry into the defendant’s available resources. From this inquiry, the court must determine whether the defendant can afford to hire an attorney to provide a constitutionally-adequate defense. The right to a public defense is a personal one that depends solely on the defendant’s resources and not those of others.

Defendants charged with felony offenses in Chicago make their first court appearance at Central Bond Court, which is held at the George N. Leighton Criminal Courts Building, commonly known as “26<sup>th</sup> and California.” There, a judge presides over a bond hearing and sets bail. After the bond hearing,

prosecutors may elect to proceed to a preliminary hearing before a judge for a determination that probable cause exists to hold the case over for trial. In Chicago, felony preliminary hearings are held daily at five branch courts located throughout the city. The preliminary hearing judge (who is a different judge than the one who set bail) is responsible for appointing the public defender to represent indigent defendants.

Court watching by the CJAC in 2013 revealed that in many cases in felony courtrooms in Chicago, preliminary hearing judges were routinely denying appointment of a public defender based solely on the fact that a criminal defendant was able to post bond. But the ability to post bond does not indicate whether a defendant personally has the resources to hire an attorney to pay for a sufficient criminal defense, in part because bonds are often paid for by family or friends. Even in cases where a public defender was not categorically denied because the defendant posted bond, judges frequently failed to inquire about or take into consideration the defendant's available assets, instead inquiring about the available resources of others to hire an attorney. Judges often make only cursory inquiries into the defendant's economic status, or conduct no inquiry at all. Anecdotal reports from criminal defense attorneys indicated that similar practices occurred in misdemeanor courtrooms as well. In short, defendants requesting public defenders were frequently denied a meaningful hearing regarding their indigence and entitlement to a public defense. This failure flatly violated the Constitution and Illinois law.

The CJAC presented its findings to Chief Judge Evans along with a legal analysis explaining the problem. Chief Judge Evans responded quickly by issuing General Administrative Order 2013-11 on August 13, 2013, which required all judges hearing criminal and quasi-criminal matters to receive a standard affidavit of assets and liabilities from defendants requesting a public defender, and to consider this information and any other relevant information in deciding whether to appoint one. In circulating GAO 2013-11, Chief Judge Evans made clear that a defendant may not be denied a public defender simply because the defendant posted bond.

Following the implementation of GAO 2013-11, CJAC conducted follow-up court watching in felony branch court preliminary hearings in Chicago. Practices were markedly improved, with far greater compliance with constitutional standards. Nonetheless, many preliminary hearings remained constitutionally deficient, with no meaningful examination of defendants' indigence.

The CJAC again approached Chief Judge Evans with its findings and with a proposed permanent solution to the problem. The CJAC outlined best practices for indigence hearings from other jurisdictions, and recommended that judges conducting preliminary hearings presume that defendants are indigent when their assets fall below 250% of the Federal Poverty Level, as is done in Utah and Florida.

For defendants whose assets exceed 250% of the Federal Poverty Level, the presumption disappears and judges must conduct an individualized inquiry into whether to appoint a public defender. CJAC also recommended that judges use a proposed standard worksheet that would outline eligible assets to be assessed in making this determination. The worksheet requires a judge to indicate whether a public defender was requested, whether one was granted, and the specific findings that led the judge to appoint or deny one, based on assets and liabilities tracking those listed in the Court's standard affidavit for defendants requesting a public defender.

This approach has many merits. This presumption employs specific, objective criteria that can be applied uniformly in all court rooms. It focuses on the only constitutionally relevant factor: the available resources of the defendant. It is also administratively efficient, allowing judges to conduct an individualized inquiry into the relevant available assets of the defendant while avoiding extended colloquies into irrelevant considerations. Additionally, by using a standard worksheet, it allows for retrospective analysis of the rates at which public defenders are requested, granted, or denied, and other pertinent data.

The CJAC presented its updated findings and proposed solution to Chief Judge Evans in a meeting in January 2015. In March 2015, Chief Judge Evans agreed in principle to implement the 250% presumption and worksheet going forward. The CJAC encourages Chief Judge Evans to implement the reforms by the end of 2015.

The CJAC commends Office of the Chief Judge for its prompt and diligent action to correct ongoing, serious constitutional violations in Cook County. The substantial reduction in constitutionally-deficient preliminary hearings and ongoing efforts to reform are a testament to the significant benefits that can be obtained through the collaboration between the legal community and the judiciary. The CJAC plans to continue its court-watching efforts in both felony and misdemeanor courtrooms to ensure that criminal defendants are provided with the public defense required by the Constitution and Illinois law. A complete history of this project and the accompanying legal analysis are available online at

[http://www.chicagoappleseed.org/?attachment\\_id=3079](http://www.chicagoappleseed.org/?attachment_id=3079)



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