



MARK V. HOLDEN
SENIOR VICE PRESIDENT
GENERAL COUNSEL & SECRETARY

May 6, 2015

The Honorable Charles Grassley, Chairman
Senate Judiciary Committee
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

RE: Sixth Amendment Right to Counsel in Misdemeanor Cases

Dear Senator Grassley:

On behalf of Koch Industries, thank you for convening a hearing on the vitally important issue of the circumstances under which the United States Constitution's Sixth Amendment right to counsel applies to misdemeanor defendants. We commend you for convening this hearing and support efforts to ensure that a criminal defendant in any jurisdiction, whether charged with a misdemeanor or felony, is provided with effective counsel, if incarceration or a suspended sentence/probation is possible.

The Sixth Amendment provides that those accused of a crime have the right to counsel, and over 50 years ago *Gideon v. Wainwright* unanimously upheld the right to counsel at state expense for the indigent. This right to counsel attaches and should apply when adversarial proceedings commence to determine if the accused will lose liberty and potentially face a prison sentence or a suspended sentence/probation, regardless of whether it is a misdemeanor or felony charge.¹ The text of the Sixth Amendment makes no distinction between felony or misdemeanor cases, and none should apply in these circumstances.

Traditionally, the focus on the right to counsel has been on those accused of a felony and the prospect of a prison sentence if convicted. However, the vast majority of the accused make first contact with the criminal justice system through a misdemeanor charge.

¹ In fact, in *Rothgery v. Gillespie County*, the U.S. Supreme Court held that the right to counsel must attach at the point that adversarial proceedings have commenced, and that "adversarial proceedings" commence when the suspect learns about the charge against him and his liberty is at stake. Furthermore, counsel must be appointed within a "reasonable time" after the right to counsel attaches.

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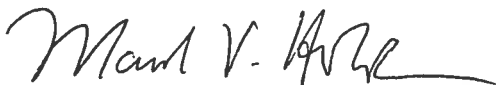
A misdemeanor is a less serious offense, for which punishment is generally limited to one year in jail. Nationally, the number of annual admissions to jail for misdemeanor convictions have nearly doubled, from 6 million in 1983 to approximately 12 million in 2013, about 19 times the number of those entering state and federal prisons for felony convictions.²

Whether an individual has a misdemeanor or felony conviction, the collateral consequences faced because of a criminal record exist. This makes it even more vital that the individual liberties guaranteed by the Sixth Amendment are provided in both situations. Currently, 1 in 3 Americans have some type of criminal record (felony, misdemeanor, or arrest) and this often means limited access to jobs, professional licenses, housing, education and/or certain constitutional rights. Even if the criminal record is for a misdemeanor, the individual and his/her family could bear collateral consequences. Had the individual been provided effective counsel when charged, there may not have been a guilty plea and the resulting negative consequences of a criminal record. Thus, it is essential the Sixth Amendment right to counsel apply in misdemeanor cases when there is any chance of incarceration, probation or suspended sentence.

We unconditionally support the Sixth Amendment and the entire Bill of Rights, which is the bedrock of our free society. As a result, last year, we made a grant to the National Association of Criminal Defense Lawyers (NACDL) to fund training for court-appointed lawyers in criminal cases and to examine state level indigent defense delivery systems to ascertain strengths in the systems that can be replicated elsewhere, as well as weaknesses and the ways in which those can be rectified.

Once again, thank you for convening a hearing to highlight this important issue and thank you for the opportunity to submit this letter of support. We hope your leadership will strengthen the Sixth Amendment and protect the freedom and rights of all Americans, including those who are most negatively impacted by lack of access to a competent defense lawyer.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark V. Holden", with a stylized flourish at the end.

Mark V. Holden

² Todd D. Minton and Daniela Golinelli, Jail Inmates at Midyear 2013—Statistical Tables, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2014, p. 4. E. Ann Carson, Prisoners in 2013, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2014.