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June 17, 2008

Report: Public defense in Michigan 'crumbling'

Midday update

Kevin Grasha
Lansing State Journal

The report released today about Michigan's system for providing attorneys to people who can't afford them, says the state ranks 44th in the nation in public defense spending.

Michigan is one of seven states that requires counties to bear virtually the entire cost of publicly-funded attorneys, spending \$7.35 per capita - 38 percent less than the national average - according to the report by the National Legal Aid and Defender Association.

Ingham, Eaton, and Clinton counties were not described in the report, which its authors said analyzed a representative sample of 10 counties.

The study found that statewide, there are serious deficiencies in upholding the constitutional right to an attorney.

"Michigan's public defense system is crumbling under the strain of tight budgets and under-resourced systems," said David Carroll, the study's primary author. "By forcing counties to pay for and administer the public defender system, the state has wasted taxpayer money and increased the likelihood of wrongful convictions and lawsuits."

According to the report:

- Courts increasingly emphasize speed over quality.
- Many defendants in misdemeanor cases never meet with a public defender.
- There is no statewide oversight or standards to ensure justice is equal in every county - a problem when counties dealing with budget problems are forced to look for the cheapest possible options.

To read a summary, fact sheet or the full report, go to www.nlada.org/Defender/Defender_Evaluation/Michigan_Evaluation.

Contact Kevin Grasha at 267-1347 or kgrasha@lsj.com.



Report says public defense in state failing

Kevin Grasha Lansing State Journal

June 17, 2008 12:20 PM

The state's system for providing attorneys to people who can't afford them is failing, and Ingham County is no exception, according to the author of a study scheduled to be released today.

"There are serious deficiencies in upholding the constitutional right to counsel," said David Carroll, research director for the National Legal Aid and Defender Association, who was the primary author of the report.

Michigan has placed the burden of paying for public defense on each of its 83 counties. There are no uniform standards and funding is limited.

Statewide, the report says, court-appointed attorneys are often overworked, underpaid and rarely receive money to hire experts or private investigators.

The complete results of the year-long study, conducted in association with the State Bar of Michigan, will be released at a news conference at 10 a.m. today. The study looked at a representative sample of 10 counties, including Jackson and Shiawassee, but did not focus on Ingham, Eaton or Clinton counties.

"Criminal defendants are being rushed through the system without much investigation, without much forethought and without much inspection of the prosecution's files," said retired 55th District Court Judge Thomas Brennan Jr., who is heading an Ingham County Bar committee looking at ways to overhaul the county's public defense system.

Michigan is one of seven states that relies almost entirely on its counties to fund public defense, the report says. Most states have either complete state funding or a combination of state and county funding.

Like most counties in the state, Ingham relies on private attorneys who are appointed by the court to represent defendants who can't afford to hire their own.

Chief Circuit Judge William Collette said that although there are problems in other counties, "we have a fairly good system in our county that is not funded as well as I would like."

Collette said a tight county budget has impeded attempts to increase funding.

Attorneys on the county's "A Level" list handle the most serious cases. They can charge \$60 per hour.

Court-appointed attorneys in felony cases that don't involve a possible punishment of life in prison - "B Level" or "C Level" - are paid flat fees for each event. For example, they are paid \$60 for a plea or sentencing hearing.

A committee of county judges reviews the list annually.

"You lose money on those cases," said local attorney Mike Nichols, who has been practicing for nine years and handles some court-appointed cases.

"You take them to get in front of judges, hone your skills and do a service for the community."

About 60 percent of the more than 3,700 felony cases handled in 2007 by Ingham County's three district courts were court-appointed, according to statistics from court officials and the State Court Administrative Office. Equivalent data from Eaton and Clinton counties was not immediately available.

Brennan said it's obvious where a lawyer's focus will be if he or she has dozens of court-appointed cases, in addition to a \$200-per-hour case.

"It's only natural for an attorney to pay attention to the paying clients and give short shrift to the court appointments," he said.

The difficulty of getting the county to pay for experts in a court-appointed case can also create roadblocks to

effective representation.

"It creates a situation where the attorney is disincentivized to put up a defense," Nichols said.

Inadequate defense can end up reducing public safety, in addition to costing taxpayers more in the long run, particularly if there is a wrongful conviction, said Beth Arnovits of the Michigan Public Defense Task Force.

If the wrong person goes to prison, Arnovits said, "authorities stop looking for the person who actually perpetrated the crime."

While the case remains under investigation, the fact that Claude McCollum of Lansing had a court-appointed attorney has not emerged as a factor in his wrongful conviction for murder.

The report released today is only a first step, said Ron Keefe, president of the State Bar of Michigan.

It will be presented to the state Legislature this week.

"The overriding goal is to have a system that provides effective assistance of counsel to all defendants, regardless of their ability to pay," Keefe said. "We're hoping the Legislature will look at this and determine what they want to do."

Contact Kevin Grasha at 267-1347 or kgrasha@lsj.com.

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Public defender system denies justice to poor, report says

Posted by [tnowak](#) June 17, 2008 12:02PM

HOLLAND -- Grand Haven attorney Jim Piper admits to hearing the term "McJustice Day" a time or two on jam-packed district court arraignment days.

Attorneys go from client to client in a hallway often filled with people, sometimes trying to broker a deal.

"Plea-bargaining is a part of the system in any jurisdiction. If we didn't have it, the court would be logjammed," said Piper, a 30-year public defender in Ottawa County.

[A study issued today](#) on Michigan's public defender system claims Ottawa and several other counties are examples of a broken justice system, where the emphasis is on speed and savings rather than finding the best help for those charged with crimes.

The National Legal Aid & Defender Association, with the state Legislature's blessing, looked at 10 counties to gauge whether any met the "constitutional obligation" to provide defense for people who cannot pay.

The study suggests all failed, to varying degrees, and delivers a scathing indictment of the state's public defense system.

Michigan is one of a handful of states to rely solely on counties to fund their own public-defense systems.

In part, the year-long analysis identified problems such as judges handpicking defense attorneys, lawyers appointed to cases for which they are unqualified, defenders meeting clients on the eve of trial and holding non-

confidential discussions in public courtroom corridors, and attorneys failing to identify obvious conflicts of interest. It also cited failure of defenders to properly prepare for trials of sentencings, attorneys violating their ethical requirement to zealously advocate for clients and inadequate compensation for those appointed to defend the accused.

Part of the trouble, according to the study, is the lack of any standard for county public-defense systems.

Some counties have low-bid, flat-fee contracts where an attorney takes a fixed portion of cases for a pre-determined fee. Ottawa County pays assigned defense counsel by the hour. Some counties have public defender offices and other counties have mixed systems.

The study cites Ottawa County as an example where priority is placed on disposing cases quickly, possibly over fairness.

Holland District Court Judge Susan Jonas objected to any insinuation Ottawa County is trying to push cases through or has inexperienced counsel.

"It is really difficult to get on the (defender) list," she said. "They are all very experienced.

"You can't get appointed when you're just out of law school."

Jonas admits the court is packed on arraignment days, but said no one is pressured to enter a plea.

"You read horror stories about what happens in other states. I don't see that here," she said. "I think Ottawa County does a spot-on good job."

Piper believes accusations of judicial interference in the defender system are unfair.

"I've never had a judge pull me aside and say I couldn't file a motion," he said.

Still, advocates who call for the state Legislature to implement standards and oversight of the public defense system say drastic changes are needed, including stopping judges from appointing defenders.

"People cannot possibly be getting quality representation under the current circumstances, and that costs all of us," said Beth Arnovits, chairwoman of the Michigan Public Defense Task Force.

Email John Tunison: jtunison@grpress.com

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Poor Mich. criminal defendants lack court access, study says

By DAVID EGGERT • ASSOCIATED PRESS • June 17, 2008

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LANSING — Michigan is violating the U.S. Constitution by failing to provide competent legal representation to criminal defendants who cannot afford a lawyer, a new study says.

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The year-long report being released today was requested by the state Legislature and evaluated public defense systems in 10 sample Michigan counties. It found that none are constitutionally adequate.

The study's authors said many of today's problems are the same as they were 75 years ago.

Defense lawyers are being appointed to cases for which they are not qualified. They are underpaid and do not have sufficient time, training, investigators, experts and resources to prepare cases.

Forty-three states spend more per capita on indigent defense than Michigan. Michigan also is among a minority of states to make county governments — not state government — pay for public defenders at the trial level.

Counties most in need of indigent defense services often are the ones that can least afford to pay for it, according to the report conducted by the National Legal Aid & Defender Association in conjunction with the State Bar of Michigan.

Many counties are controlling costs with low-bid, flat-fee contracts in which attorneys accept cases for a predetermined fee. That causes a conflict of interest between their duty to competently defend their clients and a financial self-interest to invest less time in cases to maximize profits, the study found.

"The majority of people requiring appointed counsel are simply the unemployed or underemployed — the


son of a co-worker, the former classmate who lost her job or the member of your congregation living paycheck to paycheck to make ends meet," the report's authors wrote in the executive summary.

Another key finding: Poor defendants accused of misdemeanors routinely are processed through the justice system without ever speaking to a lawyer.

"District courts across the state are prioritizing speed, revenue generation and non-valid waivers of counsel over the due process protections" afforded by the United States Constitution, according to the study.

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Report: Michigan fails to defend poor suspects

By DAVID EGGERT

Associated Press Writer

4:17 PM CDT, June 17, 2008

LANSING, Mich.



Criminal defendants who cannot afford a lawyer are routinely processed through Michigan's justice system without ever speaking to an attorney in violation of the U.S. Constitution, according to a new study.

The yearlong report released Tuesday was requested by the state Legislature and evaluated public defense systems in 10 sample counties. It found that none are constitutionally adequate.

The study said many of today's problems are the same as they were 75 years ago.

Defense lawyers are being appointed to cases for which they are not qualified. They are underpaid and do not have sufficient time, training, investigators, experts and resources to prepare cases and battle better-funded prosecutors and police.

"Defense reforms must start now. The Constitution does not allow justice to be rationed due to insufficient funds," said David Carroll of the National Legal Aid & Defender Association, which released the report in conjunction with the State Bar of Michigan.

Forty-three states spend more per capita on indigent defense than Michigan, which is among just seven states to provide no state funding for public defenders at the trial level. Because county governments pick up the expense, they spend unequal amounts.

Counties most in need of indigent defense services often are the ones that least can afford to pay for it, the study said.

Instead of having full-time public defender offices, many counties are controlling costs with low-bid, flat-fee contracts in which attorneys accept cases for a predetermined fee. That causes a conflict of interest between their duty to competently defend their clients and a financial self-interest to invest less time on cases to maximize profits,

the report found.

"The majority of people requiring appointed counsel are simply the unemployed or underemployed -- the son of a co-worker, the former classmate who lost her job or the member of your congregation living paycheck to paycheck to make ends meet," the study said.

While poor defendants accused of felonies get a lawyer, those charged with misdemeanors in district court often never speak to an attorney.

"District courts across the state are prioritizing speed, revenue generation and non-valid waivers of counsel over the due process protections afford by the United States Constitution," according to the report.

The Senate and House scheduled hearings Tuesday and Wednesday to hear the findings. Advocates also are holding a conference in Lansing Thursday in hopes of changing the system.

Sen. Alan Cropsey, a DeWitt Republican who sponsored a measure in 2006 asking for the study, said it is important and will be considered by lawmakers. But he said public safety and crime victims' rights are important, too.

The 10 counties studied were Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne. The report found faults in each of the counties, ranging from undue interference from judges to high caseloads to not providing court-appointed attorneys a confidential space to meet with their clients.

Last year, the American Civil Liberties Union sued the state on behalf of poor defendants and accused it of not spending enough on public defenders.

The lawsuit is pending.

Michigan counties spend about \$74 million a year on indigent defense. To rank near the middle nationally, they would have to spend about \$46 million more annually at a time the state and local governments are strapped for cash.

Carroll, however, said the extra money would be a "drop in the bucket" compared with the \$2 billion a year Michigan spends its prison system.

David Eggert can be reached at [deggert\(at\)ap.org](mailto:deggert@ap.org)

Read the report: <http://www.mynlada.org/michigan/michigan--report.pdf>

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Posted: Tuesday, 17 June 2008 6:37PM

Report: Michigan Fails To Defend Poor Suspects

Criminal defendants who cannot afford a lawyer are routinely processed through Michigan's justice system without ever speaking to an attorney in violation of the U.S. Constitution, according to a new study.

The yearlong report released Tuesday was requested by the state Legislature and evaluated public defense systems in 10 sample counties. It found that none are constitutionally adequate.

The study said many of today's problems are the same as they were 75 years ago. Defense lawyers are being appointed to cases for which they are not qualified. They are underpaid and do not have sufficient time, training, investigators, experts and resources to prepare cases and battle better-funded prosecutors and police.

"Defense reforms must start now. The Constitution does not allow justice to be rationed due to insufficient funds," said David Carroll of the National Legal Aid & Defender Association, which released the report in conjunction with the State Bar of Michigan.

Forty-three states spend more per capita on indigent defense than Michigan, which is among just seven states to provide no state funding for public defenders at the trial level. Because county governments pick up the expense, they spend unequal amounts.

Counties most in need of indigent defense services often are the ones that least can afford to pay for it, the study said.

Instead of having full-time public defender offices, many counties are controlling costs with low-bid, flat-fee contracts in which attorneys accept cases for a predetermined fee. That causes a conflict of interest between their duty to competently defend their clients and a financial self-interest to invest less time on cases to maximize profits, the report found.

"The majority of people requiring appointed counsel are simply the unemployed or underemployed - the son of a co-worker, the former classmate who lost her job or the member of your congregation living paycheck to paycheck to make ends meet," the study said.

While poor defendants accused of felonies get a lawyer, those charged with misdemeanors in district court often never speak to an attorney.

"District courts across the state are prioritizing speed, revenue generation and non-valid waivers of counsel over the due process protections afford by the United States Constitution," according to the report.

The Senate and House scheduled hearings Tuesday and Wednesday to hear the findings. Advocates also are holding a conference in Lansing Thursday in hopes of changing the system.



Sen. Alan Cropsey, a DeWitt Republican who sponsored a measure in 2006 asking for the study,

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Report: Michigan Doesn't Defend Poor Suspects

Last Update: 6/17 9:30 am



LANSING, Mich. (AP) - Michigan is violating the U.S. Constitution by failing to provide competent legal representation to criminal defendants who cannot afford a lawyer, a new study says.

The year-long report being released Tuesday was requested by the state Legislature and evaluated public defense systems in 10 sample Michigan counties. It found that none are constitutionally adequate.

The study's authors said many of today's problems are the same as they were 75 years ago.

Defense lawyers are being appointed to cases for which they are not qualified. They are underpaid and do not have sufficient time, training,

investigators, experts and resources to prepare cases.

Forty-three states spend more per capita on indigent defense than Michigan. Michigan also is among a minority of states to make county governments - not state government - pay for public defenders at the trial level.

Counties most in need of indigent defense services often are the ones that least can afford to pay for it, according to the report conducted by the National Legal Aid & Defender Association in conjunction with the State Bar of Michigan.

Many counties are controlling costs with low-bid, flat-fee contracts in which attorneys accept cases for a predetermined fee. That causes a conflict of interest between their duty to competently defend their clients and a financial self-interest to invest less time on cases to maximize profits, the study found.

"The majority of people requiring appointed counsel are simply the unemployed or underemployed - the son of a co-worker, the former classmate who lost her job or the member of your congregation living paycheck to paycheck to make ends meet," the report's authors wrote in the executive summary.

Another key finding: Poor defendants accused of misdemeanors routinely are processed through the justice system without ever speaking to a lawyer.

"District courts across the state are prioritizing speed, revenue generation and non-valid waivers of counsel over the due process protections afforded by the United States Constitution," according to the study.

David Eggert can be reached at [deggert\(at\)ap.org](mailto:deggert(at)ap.org)

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THE ANN ARBOR NEWS

Report: Michigan fails to defend poor suspects

Posted by [David Eggert | The Associated Press](#) June 17, 2008 14:42PM

Categories: [Crime](#), [State](#)

LANSING, Mich. (AP) -- Michigan is violating the U.S. Constitution by failing to provide competent legal representation to criminal defendants who cannot afford a lawyer, a new study says.

The year-long report released Tuesday was requested by the state Legislature and evaluated public defense systems in 10 sample Michigan counties. It found that none are constitutionally adequate.

Washtenaw and Livingston counties were not among the counties studied.

The study's authors said many of today's problems are the same as they were 75 years ago.

Defense lawyers are being appointed to cases for which they are not qualified. They are underpaid and do not have sufficient time, training, investigators, experts and resources to prepare cases and battle better-funded prosecutors.

"People of insufficient means in Michigan are routinely processed through the criminal justice system without ever having spoken to an attorney in direction violation of the U.S. Constitution," David Carroll, the report's author, said during a press conference.

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The 10 counties studied were Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne.

Last year, the American Civil Liberties Union sued the state on behalf of poor defendants and accused it of not spending enough on public defenders. The class-action lawsuit is pending.

Jack Lessenberry Essays and Interviews

Essay: Disgrace to Democracy - 6/17/2008

Michigan's public defender program is a scandal and a disgrace to democracy, and we should be embarrassed about it. Here's one small example of how bad it is.

In Chippewa County, where do you suppose clients meet with their court-appointed attorney to discuss their case? In the bathroom.

That's right. The court provides no place where these lawyers can meet privately with their clients. Instead, they wait in line to bring their clients into a unisex bathroom across from the judge's chambers to hurriedly discuss their cases.

That's from the report the legislature commissioned from the non-partisan, non-profit National Legal Aid and Defender Association. In fact, the title is an excellent snapshot of what's wrong with the system: "A Race to the Bottom: Speed and Savings Over Due Process. A Constitutional Crisis."

Indeed, you could make the argument that those words cover pretty much everything that's wrong with Michigan these days. We want to do everything quick and cheap, from educating our children to fixing our roads. Then we are perpetually astonished that we don't get good results. I am pretty used to seeing governmental failures. But the revelations about Michigan public defenders shocked even me.

Actually, I shouldn't have been surprised. I remember covering the various Kevorkian trials in a number of Michigan counties. From time to time, they would recess the proceedings for a bit, and drag in what Tom Wolfe called "the chow" of the legal system.

These were indigent clients represented by court-appointed counsel, nearly all of whom had encouraged their charges to plead guilty to lesser offenses. The judge, prosecutor and defense attorneys appeared to be in total cahoots, and would drone rapidly through the proceedings while the dazed or sullen defendant stood there. Once, in Wayne County, one defendant interrupted to suddenly plead his innocence. The judge was annoyed.

"I thought you had your client on board."

"I'm sorry, your honor," he defense council whimpered. "Bring him back tomorrow," the judge intoned. God knows what they did to him then.

The new report says prosecutors and defense lawyers are even more in cahoots in Ottawa County, where they call their system "McJustice."

Now, I know what a lot of people will say.

These defendants are mostly low-lives. Our state is cash-strapped. We don't need to pay more to provide these people with Cadillac counsel at taxpayer expense.

That's a nice theory. The state of Florida used to have an even better one. They refused to provide poor people with lawyers at all, unless accused of murder. Then a poor guy named Gideon was arrested and wrote a letter to the U.S. Supreme Court on the only medium he had, toilet paper.

That resulted in a unanimous 1963 decision that counsel be provided to everyone. Not doing so is a denial of due process.

Doing so poorly and unfairly could someday be ruled a denial of due process as well. Not fixing this system could, in the end, cost us much more than fixing it would.


You'd think we oughta know that by now.



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Wednesday, June 18, 2008

Report: Public defender offices underfunded

Charlie Cain and Mark Hornbeck / Detroit News Lansing Bureau

Poor people accused of crimes in Michigan generally get poor legal representation, and it could cost the state millions to bring it up to snuff, according to a study published Tuesday by a national legal aid group.

"With each passing day, Michigan's public defense system is crumbling under the strain of tight budgets and under-resourced systems, and Michigan residents are bearing this burden," said David Carroll, research director for the Washington-based nonprofit National Legal Aid & Defender Association, which produced the report requested by the state Legislature two years ago.

"People are wholesale not being appointed counsel they are entitled to. And even if you get a public defender, they often don't have the time, tools and training to do the job right."

Michigan's spending on public defense ranks 44th among the states, according to the 107-page report.

"If Michigan were to spend the national average per capita, it would have to spend roughly \$120 million," Carroll said. The state's counties, he said, spend about \$70 million, leaving "a gap of about \$50 million" between what's spent and what's needed.

Chief Justice Clifford Taylor said the Michigan Supreme Court is concerned about the findings -- but it's also concerned about finances.

"As (the study) recognizes, lack of funding is a serious issue. Given Michigan's economic climate, which has included repeated cuts to state and local budgets over the years, some of the recommendations may not be possible to carry out until the Michigan economy improves," Taylor said.

"The (Supreme) Court will review the findings with an eye to those issues that the court may be able to address without legislative action or additional funding."

Liz Boyd, spokeswoman for Gov. Jennifer Granholm, called the report "a sobering assessment.

"We want time to study that report," Boyd said. "It's important that constitutionally adequate legal representation is being provided to those who need appointed counsel."

The yearlong study looked at 10 counties: Wayne, Oakland, Alpena, Bay, Chippewa, Grand

Traverse, Jackson, Marquette, Ottawa and Shiawassee. Michigan was at the forefront of states in 1857 when it required the appointment of representation for poor defendants. But it put the financial burden entirely on the counties, where it remains 150 years later.

The report recommends that the state pick up all the costs of defending poor people, and lawmakers will hold hearings to consider that proposal. Michigan is one of seven states that requires counties to pay the full costs of the system.

Carroll said his study attempted to determine how many poor people were represented by court-appointed defenders, but "we weren't able to come up with any figure I would feel comfortable with, because there is no uniformity at all in how counties collect and report data.

"No one cares enough," he said.

Among his report's findings:

- Michigan spends \$7.35 per capita, yearly, on public defense, ranking 44th in the nation and 38 percent below the \$11.86 national average. Alaska has the highest support. It spends \$40.96 per resident to represent indigent defendants.
- Many counties use a flat-fee contract system to hire attorneys to represent the poor -- and that's an incentive for lawyers to spend as little time as possible on those cases.
- State courts value speed over quality, leading to lack of sufficient time for defenders, investigators and others to prepare a case.
- Many poor defendants facing district court trials, for lesser crimes, are never given a chance to meet with an attorney.
- Oakland and Macomb counties have no public defender's office, with a stable of attorneys whose job it is to represent poor defendants. The Legal Aid and Defender Association of Detroit gets 25 percent of Wayne County's indigent assignments; the rest are handled by private practice lawyers appointed by the courts.
- The level of legal services varies from county to county, and there is no state oversight.
- Lawyers are appointed to cases for which they are not qualified.
- Attorneys appointed to defend indigent clients are inadequately paid.

The American Civil Liberties Union of Michigan sued the governor and the state last year for "failing to fulfill their constitutional obligation to provide adequate defense services to those who cannot afford private counsel." The suit is pending.

Ron Keefe, president of the State Bar of Michigan, with more than 39,000 members, agreed that "Michigan is failing to meet the constitutional requirement that states be the ones to provide funding and oversight.

"This study recommends that the Legislature begin to create a fairer system that protects the welfare of all Michigan residents," he said.

"When the system doesn't work the way it should, it costs taxpayers money for mistakes and lawsuits that result.

"There's also a public safety issue because if the system is not working and an innocent person is imprisoned, the real criminal remains on the street."


Maria C. Miller, assistant Wayne County prosecutor, said the report's findings are "revealing and very important. Upholding the constitutional rights of the accused is the foundation of our system of justice," Miller said.

"It is guaranteed; it is not a luxury. Justice must be equally applied to rich and poor alike for our system to work."

You can reach Mark Hornbeck at (313) 222-2470 or mhornbeck@detnews.com.

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THE BAY CITY TIMES

State report: Bay County public defenders have excess workloads

Wednesday, June 18, 2008

By Mike Blasky

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The sixth amendment of the U.S. Constitution guarantees every citizen a right to an attorney, no matter their income level.

But residents of Bay County with a few more zeroes at the end of their paychecks might be better served, a report issued Tuesday by the National Legal Aid & Defender Association revealed.

Public defenders in Bay County - whose majority of clients can't afford to hire a private attorney - were said to be in violation of several American Bar Association principles, the most prominent being excess workload.

"In calendar year 2006, the five attorneys in the two offices were assigned the following number of defendants: 806 felony defendants (or 161.2 per attorney); 694 misdemeanor defendants (or 138.8 per attorney); 453 traffic defendants (90.6 per attorney); and 212 circuit court violations of probation (42.4 per attorney)," the report stated.

"In other words ... each attorney in the public defender offices exceeded the national caseload standard for felony representation by 12 percent before factoring in all of the other work."

Ken Malkin, one of the five public defenders for Bay County, agreed with the assessment - there are times when he feels overworked, he said.

"It depends. It varies. There are times when the amount of work to do can be overwhelming, and you might not have the ability to, say, clear my desk and devote time to one case," he said.

"There are times when I think if you don't have a good system in place it can happen."

It's the system that the NLADA, Malkin and other Bay County officials believe is flawed.

There are 83 counties in Michigan, each with 83 different systems for assigning public defenders, Malkin said.

Because the counties are responsible for providing funding - Michigan is one of only four states without state funding for public defense - it's difficult for counties to organize a consistent, working system, Malkin said.

"Sometimes (counties) pay attorneys on the hour, by the event. Some have flat fee contracts," he said. "(Flat fee) contracts are notorious for being a poor way to provide work, because of the conflict - the attorneys realize the less they do on the case, the more they get paid."

Bay County uses a public defender system with staff defenders who specialize in public defense.

Until six months ago, the five defenders handled all the cases. Bay County recently began contracting out misdemeanor cases to private attorneys to ease the strain on the five defenders.

Even with fewer cases, they still don't meet their ethical standards, Malkin said.

"Ethically, an attorney shouldn't take on more work than they have to. But in a position with a contract or a public defender, you keep being pressured to do more work," he said. "It does raise ethical issues to devote all the time you need to an individual case."

The NLADA report stated that county officials pressure public defenders to accept too many new defendants for representation each month to keep the cost per defendant down.

Bay County Executive Thomas L. Hickner said there's been a historic relationship between the judges, the public defenders and his office, and workload has never been raised as a significant issue.

"They have worked cooperatively to insure we maximized the number of cases handled by the staff while maintaining assignment levels that are reasonable," he said.

Hickner said he hadn't read the report yet, but would address the issues by scheduling a meeting of judges, his staff, and representatives from the local bar association if the matter appeared significant.

Malkin said it wasn't the county's fault, because the county has limited resources.

"They want to cut our costs. The problem isn't at the county level. They're doing the best they can with limited resources. This needs to be funded by the state," he said.

Bay County Circuit Judge William J. Caprathe said he hasn't seen the statistics in the report, but suspected the system's inconsistency across the state would be revealed as the major problem.

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Study shows Michigan violating Constitution when providing lawyers

By Staff reports

The Holland Sentinel

Posted Jun 18, 2008 @ 07:45 AM

Lansing, MI —

Michigan is violating the U.S. Constitution by failing to provide competent legal representation to criminal defendants who cannot afford a lawyer, a new study says.

The year-long report released Tuesday, June 17, was requested by the state Legislature and evaluated public defense systems in 10 sample Michigan counties, including Ottawa.

The report found that none are constitutionally adequate.

Ottawa County defense attorney David Zessin said one frustration public defenders face is that they often have little influence on their defendant's choice on how to plea.

"If people are paying you, they are more likely to listen to your advice," he said.

Zessin has worked as a public defender for Ottawa County for 27 years, but most of his work now is private.

The report conducted by the National Legal Aid & Defender Association in conjunction with the State Bar of Michigan. The study's authors said many of today's problems are the same as they were 75 years ago.

Defense lawyers are being appointed to cases for which they are not qualified. They are underpaid and do not have sufficient time, training, investigators, experts and resources to prepare cases and battle better-funded prosecutors.

The work Zessin does as a public defender is his contribution to the court.

"I don't do this for a living, but some attorneys do," he said. "Do some of them take shortcuts? I don't know, but it would be tempting.

"It's obvious that we need to allocate more resources to our court system," he added.

Ottawa County Court Administrator Kevin Bowling released a statement on Tuesday which stated that the county will look at the report as a "blueprint for improvement."

"The judges of Ottawa County appreciate the research conducted by NLADA and are committed to providing the best possible public defender system with available funds," the statement said. "To the extent system problems are identified by the NLADA report, they will be examined by our courts and every reasonable effort will be made to implement improvements."

Forty-three states spend more per capita on indigent defense than Michigan. Michigan also is among a minority of states to make county governments — not state government — pay for public defenders at the trial level.

Counties most in need of indigent defense services often are the ones that least can afford to pay for it, according to the report.

Another key finding: Poor defendants accused of misdemeanors routinely are processed through the justice system without ever speaking to a lawyer.

The 10 counties studied were Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne.

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Report: Ottawa County fails to defend poor suspects

Wed, Jun 18, 2008

BY CHRIS EPPLETT

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Ottawa County is violating the U.S. Constitution when it comes to providing proper counsel for defendants who cannot afford a lawyer, according to a new study.

These defendants, the study said, are routinely processed through Michigan's justice system without ever speaking to an attorney — speed is prioritized.

"In fact, the emphasis on (expediting) case processing has led many of the criminal justice stakeholders we interviewed in one jurisdiction — Ottawa County — to colloquially refer to the district court arraignment dockets as 'McJustice Day,'" the study said.

The study referred to the so-called "McJustice Day" as "assembly-line justice."

"To be clear, many of the criminal justice stakeholders expressed some embarrassment at the use of the term," the study continued. "Still, our general observations across the state suggest that the Ottawa local vernacular is apt for describing Michigan's valuing of speed over substance."

However, Joseph Legatz, who has worked as a public defender in Ottawa County for 35 years, said the report distorts the truth and that the term "McJustice Day" is misused.

"It's used in kind of a funny way in the district court, referring to walk-in arraignment day," Legatz said. "It's quick access to an attorney for someone who is charged with a misdemeanor crime. They have distorted that word to mean something entirely different and they're wrong."

The year-long report released Tuesday was requested by the Michigan Legislature and evaluated public defense systems in 10 sample counties. It found that none are constitutionally adequate.

"The judges of Ottawa County appreciate the research conducted by NLADA and are committed to providing the best possible public defender system with available funds," Ottawa County Court Administrator Kevin Bowling said in statement released Tuesday. "To the extent system problems are identified by the NLADA report, they will be examined by our courts and every reasonable effort will be made to implement improvements."

"The report is inaccurate, misleading and plain wrong," Legatz said, adding that he read through the entire 33-page report. "These people came in with a conclusion ahead of time. They have distorted the facts. ... I would not call the report junk science — because it does not reflect science — it is junk and nothing more."

The study said many of today's problems are the same as they were 75 years ago. Defense lawyers are being appointed to cases for which they are not qualified. They are underpaid and do not have sufficient time, training, investigators, experts and resources to prepare cases and battle better-funded prosecutors and police.

"Defense reforms must start now," said David Carroll of the National Legal Aid & Defender Association, which released the report in conjunction with the State Bar of Michigan. "The Constitution does not allow justice to be rationed due to insufficient funds."

Legatz said Ottawa County's public defenders take time and properly prepare cases.

"All of us in the criminal justice system are willing to look at legitimate for improvement, but this report is not

at all helpful because it is so poorly done," he said.

Forty-three states spend more per capita on indigent defense than Michigan, which is one of just seven states to provide no state funding for public defenders at the trial level. Because county governments pick up the expense, they spend unequal amounts.

Counties most in need of indigent defense services often are the ones that least can afford to pay for it, the study said.

Instead of having full-time public defender offices, many counties are controlling costs with low-bid flat-fee contracts in which attorneys accept cases for a predetermined fee. That causes a conflict of interest between their duty to competently defend their clients and a financial self-interest to invest less time on cases to maximize profits, the report found.

"The majority of people requiring appointed counsel are simply the unemployed or underemployed — the son of a co-worker, the former classmate who lost her job, or the member of your congregation living paycheck to paycheck to make ends meet," the study said.

While poor defendants accused of felonies get a lawyer, those charged with misdemeanors in district court often never speak to an attorney, the report said. "District courts across the state are prioritizing speed, revenue generation and non-valid waivers of counsel over the due process protections afford by the United States Constitution."

The state Senate and House scheduled hearings Tuesday and today to hear the findings. Advocates also are holding a conference in Lansing on Thursday in hopes of changing the system.

State Sen. Alan Cropsey, a DeWitt Republican who sponsored a measure in 2006 asking for the study, said it is important and will be considered by lawmakers. But he said public safety and crime victims' rights are important, too.

The 10 counties studied were Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne.

The report found faults in each of the counties, ranging from undue interference from judges to high caseloads to not providing court-appointed attorneys a confidential space to meet with their clients.

Last year, the American Civil Liberties Union sued the state on behalf of poor defendants and accused it of not spending enough on public defenders. The lawsuit is pending.

Michigan counties spend about \$74 million a year on indigent defense. To rank near the middle nationally, they would have to spend about \$46 million more each year at a time state and local governments are strapped for cash.

Carroll, however, said the extra money would be a "drop in the bucket" compared with the \$2 billion a year Michigan spends for its prison system.

The Associated Press contributed to this story.

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Public defender system criticized

Wednesday, June 18, 2008

By **Steven Hepker**

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Pending contracts with public defenders in Jackson County could be reworked before the ink dries.

County commissioners opened bids from area attorneys Tuesday, the same day a group declared the indigent-defense network is broken here and across Michigan.

The report by the National Legal Aid & Defender Association concluded public defense in Jackson County and nine other counties is constitutionally inadequate.

The group contends counties take financial shortcuts that spread public defenders too thin, leaving minimal time to fully represent each client, and that outsiders should select public defenders.

The report is not binding on state or county policy, but Jackson County Chief Circuit Judge Chad Schmucker said changes are coming.

"We will probably re-bid the contracts," Schmucker said of pending contracts that will run through 2011. "If we have a constitutionally defective system, I cannot wait two and a half years to make changes."

Instead of allowing firms to bid on up to 20 percent of the contract, for instance, the county could drop the limit to 10 percent, Schmucker said.

The legal defense group praised Schmucker and the Jackson County courts for trying to provide fair legal service to all, but called Jackson County "the poster child for reform in the state."

Among the findings was that Jackson County public defenders exceed national caseload standards considerably. In 2006, Paul Adams handled 219 indigent cases, while Michael Dungan handled 218. Each had 50 percent more clients than the national standard.

Dungan scoffed at the notion he is stretched too thin.

"Personally, national standards don't mean a thing to me. All I care is that I am comfortable with my case-load, and that my clients get my best shot," Dungan said. "There are some attorneys I wouldn't feel comfortable giving them 10 cases a year."

In that regard, the study recommended continuing education for public defenders, including encouraging young lawyers to "crack the insular old boys network."

Another big issue is who picks public defenders. The defense advocacy group said letting judges choose the attorneys who work in their courts gives the appearance of partiality.

For instance, if a certain defense attorney pushed every case to trial, filed repeated motions and generally blocked the flow of cases, judges could weed him out.

Part of the conclusion stemmed from interviews with defense attorneys who say they rarely file motions. However, the attorneys also said prosecutors freely exchange evidence and reports, with minimal legal sparring.

"There has never been a discussion among judges about blocking defense attorneys because they might be too vigorous in defending clients," Schmucker said.

The legal aid group recommends removing defender appointments from the counties and establishing a

state agency to perform the hiring, training and appointing, possibly on a regional basis.

Jackson County Chief Assistant Prosecutor Mark Blumer, a former state attorney general, likes that idea.

“Those of us in the system seek equal justice and fair justice, but we are swimming with both hands tied behind our backs because of financial constraints,” he said. “Poorer counties have higher crime rates and more indigent people who require public defenders. A state-run system would equalize it across the state.”

Indigents are supposed to be people who don't have the means to pay a lawyer. Jackson County does not do background checks but relies on the person's word.

The report said hiring someone to screen defendants for tax-funded legal service would cost more than it is worth. An alternative to the current system is to assume everyone gets a public defender and let those who can afford it hire their own.

Much of the report was valid, Blumer said, but he criticized a conclusion that defendants are overcharged initially. Schmucker estimated that half of felonies do not go beyond District Court.

“The fact a case is plea-bargained is not an indication it was overcharged,” Blumer said. “If we charged lower, that would be the new starting gate for pleas.”

In short, charging at the high end gives prosecutors leverage.

Some felony cases fall apart because evidence is not strong enough, or the charge was not correct, Blumer said.

Also misleading, he said, was a conclusion that District Court runs misdemeanor defendants through the system like cattle.

“They criticized District Court for defendants pleading out at the teller window,” Blumer said. “If they know they were speeding, why fight it? Why burden the system?”

Blumer said the public defender system statewide could stand a major overhaul, but not because of the quality of Jackson County attorneys who represents indigents.

“Our defense attorneys are good attorneys who care about doing the right thing for their clients and to fight hard for each one. They are simply overwhelmed,” he said.

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Report: Michigan fails to defend poor

Some suspects never allowed to speak to attorney

LANSING (AP) — Criminal defendants who cannot afford a lawyer are routinely processed through Michigan's justice system without ever speaking to an attorney in violation of the U.S. Constitution, according to a new study.

The yearlong report released Tuesday was requested by the state Legislature and evaluated public defense systems in 10 sample counties. It found that none are constitutionally adequate.

The study said many of today's problems are the same as they were 75 years ago.

Defense lawyers are being appointed to cases for which they are not qualified. They are underpaid and do not have sufficient time, training, investigators, experts and resources to prepare cases and battle betterfunded prosecutors and police.

"Defense reforms must start now. The Constitution does not allow justice to be rationed due to insufficient funds," said David Carroll of the National Legal Aid & Defender Association, which released the report in conjunction with the State Bar of Michigan.

Forty-three states spend more per capita on indigent defense than Michigan, which is among just seven states to provide no state funding for public defenders at the trial level.

Because county governments pick up the expense, they spend unequal amounts.

Counties most in need of indigent defense services often are the ones that least can afford to pay for it, the study said.

Instead of having full-time public defender offices, many counties are controlling costs with low-bid, flat-fee contracts in which attorneys accept cases for a predetermined fee.

That causes a conflict of interest between their duty to competently defend their clients and a financial self-interest to invest less time on cases to maximize profits, the report found.

"The majority of people requiring appointed counsel are simply the unemployed or underemployed — the son of a coworker, the former classmate who lost her job or the member of your congregation living paycheck to paycheck to make ends meet," the study said.

While poor defendants accused of felonies get a lawyer, those charged with misdemeanors in district court often never speak to an attorney.

"District courts across the state are prioritizing speed, revenue generation and nonvalid waivers of counsel over the due process protections afforded by the United States Constitution," according to the report.

The Senate and House scheduled hearings Tuesday and Wednesday to hear the findings. Advocates also are holding a conference in Lansing Thursday in hopes of changing the system.

Sen. Alan Cropsey, a DeWitt Republican who sponsored a measure in 2006 asking for the study, said it is important and will be considered by lawmakers. But he said public safety and crime victims' rights are important, too.

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The report found faults in each of the counties, ranging from undue interference from judges to high caseloads to not providing court-appointed attorneys a confidential space to meet with their clients.

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The lawsuit is pending.

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To rank near the middle nationally, they would have to spend about \$46 million more annually at a time the state and local governments are strapped for cash.

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Report Finds Significant Flaws in Michigan's Public Defender System

June 18, 2008 2:27 PM | [Permalink](#) | [Comments \(0\)](#)

The [National Legal Aid & Defender Association](#), a non-profit legal group promoting equal justice for all Americans, has released [a new report](#) exploring Michigan's public defense system. The system--which is designed to ensure the constitutional right to counsel for all--is under stress in Michigan based on a lack of funding and bureaucratic issues.

The report finds that Michigan ranks 44th in the nation on spending for public defense, spending only \$7.35 per capita. Moreover, suspects are frequently tried in district courts without lawyers and innocent people are being sentenced for crimes they did not commit.

[A fact sheet](#) has been prepared highlighting important findings in the report:

Troubling Findings

Michigan ranks 44th of the 50 states in public defense funding. By spending only \$7.35 per capita, or 38 percent less than the national average, Michigan ranks lower than Alabama (34th). (Page iii of the report) This can be contrasted with spending on corrections, in which Michigan is one of the highest ranking states and expects to spend well over \$2 billion this year.

Michigan is one of only seven states that place the entire burden for funding trial-level public defense on its counties as an unfunded mandate, ignoring the constitutional requirements identified by the United States Supreme Court. (Page 5)

Counties across the state fail to meet the vast majority of the American Bar Association's Ten Principles of a Public Defense Delivery System -- the minimum criteria for effective representation as guaranteed by the U.S. Constitution. For example, Jackson County judges routinely control the awarding of public defender contracts, which violates the first ABA principle -- Independence -- and creates clear conflicts of interest. As the report finds, all too often a public defender's financial success hinges on making the judge happy. (Jackson County Case Study, Pages 35-56)

Throughout Michigan, speed is emphasized over quality and due process to such an extent that in Ottawa County, the days on which the district court arraigns people -- typically without any legal representation whatsoever -- are referred to as "McJustice Days" in the criminal justice community. (Page 15)

Broken System

"The counties most in need of indigent defense services are often the ones that least can afford to pay for it." (Page 6)

Inadequate Funding

While *Gideon v. Wainwright* obliges states to provide constitutionally adequate public defense, Michigan deflects the burden to individual counties. This creates wide disparities in the quality of defense from county to county. (Pages 6, 22, 45)



Economic hardship and depressed property values mean many counties cannot adequately invest in the social services needed to reverse or slow rising crime rates. The result is that public defender offices in cash-strapped

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counties are often under-resourced, which in turn increases the opportunity for mistaken convictions and waste of taxpayer dollars. (Page 6)

Counties grappling with budget problems are forced to look for the cheapest possible options for providing indigent defense -- with no statewide oversight or standards to ensure justice is equal across county lines.

Patchwork Solutions

Financially strained counties often choose low-bid, flat-fee contracts, which guarantee lawyers will not have the resources necessary to prepare a full and fair defense. Forty-one of Michigan's 83 counties currently use a contract system, deemed by national legal experts to be one of the worst solutions because of the ethical conflicts that it creates. (Page 9)

In Detroit, five part-time public defenders spend an average of 32 minutes per case, handling 2,400 to 2,800 cases each, while the national standard for a full-time public defender is only 400 cases per year. (Page 23)

Some Michigan residents may never even have the opportunity to speak to an attorney if their case is heard in district court. District courts throughout the state often fail to provide counsel in misdemeanor cases. In other instances, the courts offer to let people get out of jail for time served if they agree not to ask for an attorney. Some courts have threatened to charge residents large amounts of money for access to a public defender. (Page 15)

Citizen Toll

"Despite the overall dedication and professionalism of the hundreds of thousands of citizens employed in the police and prosecution functions in Michigan, it is simply impossible to always arrest and prosecute the right defendant for the right crime and mete out accurate and just sentences in every instance." (Page vi)

Every Resident Impacted - The ripple effect of this broken criminal justice system is far-reaching and extends to every Michigan resident. By failing to meet its responsibility for funding and overseeing a vital part of the justice system, the state is wasting taxpayer money and endangering public safety.

Fiscally Irresponsible - Taxpayers shell out millions of dollars to foot the bill for delays, mistakes and lawsuits that result from the broken public defense system. One such lawsuit forced the state and Wayne County to pay out more than \$4 million to a man who had been wrongfully convicted.

Public Safety at Risk - In recent years, several wrongful convictions have come to light, exposing the state's failure to provide for a functioning justice system that keeps communities safe. The impact extends far beyond the defendant: when an innocent person is imprisoned, the real criminal remains on the streets. (For a case study, see the story of Eddie Joe Lloyd, an innocent Michigan man imprisoned for 17 years. Page 14)

Report Recommendations

There is no single "cookie-cutter" indigent defense model that guarantees adequate representation. However, at a minimum, a fully functioning public defense system must be adequately funded by the state and meet all of the ABA's Ten Principles.

NLADA recommends that policymakers immediately convene legislative hearings to address current funding and oversight failures in order to begin to create a fair and efficient system that protects the welfare of all Michigan residents.

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KALAMAZOO GAZETTE

Study says state failing to defend poor suspects

Wednesday, June 18, 2008

BY DAVID EGGERT

Associated Press AND LYNN TURNER

Kalamazoo Gazette

LANSING -- Michigan is violating the U.S. Constitution by failing to provide competent legal representation to criminal defendants who cannot afford a lawyer, a new study says.

The yearlong report released Tuesday was requested by the state Legislature and evaluated public-defense systems in 10 sample Michigan counties. It found that none is constitutionally adequate.

The study's authors said many of today's problems are the same as they were 75 years ago.

Defense lawyers are being appointed to cases for which they are not qualified. They are underpaid and do not have sufficient time, training, investigators, experts and resources to prepare cases and battle better-funded prosecutors.

"People of insufficient means in Michigan are routinely processed through the criminal-justice system without ever having spoken to an attorney in direct violation of the U.S. Constitution," David Carroll, the report's author, said during a press conference.

Neither Kalamazoo nor surrounding southwestern Michigan counties were among the 10 counties studied by the National Legal Aid & Defender Association in conjunction with the State Bar of Michigan.

Included were Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne counties.

J. Richardson Johnson, presiding judge for Kalamazoo County Circuit Court's trial division, said Tuesday that he is satisfied with Kalamazoo County's current system for indigent defense, which was approved by the State Court Administrative Office.

"We review the attorneys, counsel the attorneys if appropriate and remove them if appropriate," he said. "We see very few appeals out of this county and even fewer reversals" from the Court of Appeals because of ineffective counsel during trials.

Johnson said he's seen no increase in complaints about defense attorneys since a change last year in the way attorneys are paid for indigent-defense work caused a number of veteran defense attorneys to leave the Kalamazoo County roster. Vacancies were filled by other local lawyers as well as those based in other counties.

Attorney Kathy Brickley was among those who quit accepting county cases in 2007. Her concern today is the same as when she was representing indigent clients: There is no quality-control system for the attorneys.

"When there's a bad apple, there's no one standing right above them to knock them off," she said.

Brickley is a proponent of a public defender's office, which she said would be similar to a prosecutor's office in that it would have a stable of attorneys focused on criminal work, compatible resources and monitoring.

"You get justice when you get parity. ... When you have one side greatly outweighing the other in funding, staffing and training, you get injustice.

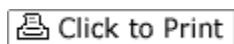
But, Brickley added, ``It's not going to happen unless the state orders it, probably not in my lifetime."

The Senate and House scheduled hearings for Tuesday and today to hear the findings of the state study. Advocates also are holding a conference Thursday in Lansing in hopes of changing the system.

Last year, the American Civil Liberties Union sued the state on behalf of poor defendants and accused it of not spending enough on public defenders. The class-action lawsuit is pending.

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Thursday, June 19, 2008

Poor deserve better treatment in criminal court

Defense for the indigent is uneven and often inadequate

The Detroit News

The legal defense provided poor people who are accused of crimes is often inadequate, uneven or unfair, according to a new report from a national legal defense organization. The cost of bringing Michigan's expenditure on legal defense up to average spending across the nation would be \$50 million, the report notes.

It will be very difficult to come up with the money to solve all of the problems revealed in the report. But some things can be done immediately both by the Legislature and members of the legal profession that would improve the situation.

The report by the National Legal Aid and Defender Association was produced at the request of the Legislature. The report notes that Michigan leaves the provision of defense attorneys for the poor to the counties, which have varying approaches.

Some have public defender offices, some have judges assign attorneys on a case-by-case basis and some hire attorneys on a contract basis to provide criminal defense work. The report favors state-funded public defender offices as providing the most independent and vigorous representation to poor defendants. Contract defense work is the most problematic, the report contends, because defense attorneys have an incentive to save money by doing as little work as possible on their cases.

The problems are most acute at the district court level in some jurisdictions, the report found, where poor defendants often receive no criminal defense for the relatively minor offenses handled at that level, often through maneuvering by court officials to have the defendants unwittingly give up their right to an attorney to speed court dockets.

What can be done to remedy the situation? First, the Legislature should adopt state standards clearly outlining the income and asset levels that would qualify individuals for tax-paid criminal defense. Now, it is left to local officials and the standards unfairly vary across the state.

Next, if more money can't be found, the associations of judges -- particularly district judges -- can adopt standards of conduct for their own members that emphasize the importance of making sure all

criminal defendants are fully aware of their rights to an attorney at all stages of any criminal proceeding. No defendant should be tricked out of a valid defense, and such actions by judges ought to be a subject of review by the Judicial Tenure Commission.

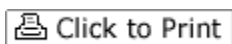
If the provision of defense attorneys stays at the county level, counties could benefit from looking at the Macomb Circuit Court's process for assigning defense lawyers. In criminal cases, there are three lists of attorneys assigned to cases on a rotating basis. The lists are compiled by a committee of judges and the county bar and are based on the experience level of the attorneys.

The most serious cases have the most experienced attorneys assigned to them. Others have attorneys with a moderate amount of experience, and the least experienced attorneys are assigned minor cases. In this way, attorneys are matched with the seriousness of the offense, and the rotating system of assignments removes opportunities for favoritism or patronage by the judges.

Providing an adequate defense for the poor is a basic function of government and should not be an afterthought in state and county budgets.

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argus-press.com

Thursday, June 19, 2008

News

Study: Mich. fails to defend poor suspects

[Print Page](#)

By **DOMINIC ADAMS** Argus-Press Staff Writer
Thursday, June 19, 2008 10:18 AM EDT

CORUNNA - Although a statewide study claims Michigan violates indigent criminal defendant's Constitutional rights, local attorneys and judges claim that's not the case in Shiawassee County.

A year-long report studying 10 counties across Michigan - including Shiawassee - contends each county fails to provide competent legal representation to defendants requesting a court-appointed attorney.

"They said they got a representative sample across the state," said Barbara Baker Omerod, an Owosso-based attorney appointed on cases in both Shiawassee County's 66th District Court and Shiawassee County Probate Court. "The problems they find with the court-appointed defender system are not problems in Shiawassee County."

The study shows Michigan ranks 44th nationally on public defense spending, spending \$7.35 per capita, 38 percent below the national average of \$11.86.

Defense attorneys are appointed to cases which they are not qualified for, the study shows. The pay also is marginal for lawyers assigned by three judges in Shiawassee County - it increased \$10 within the past year to \$60 per hour.

The study also said Michigan is among a minority of states that make county governments rather than state government pay for public defenders at trial.

"It would be a better system if the state would adequately fund indigent defense, but with the economic outlook in Michigan, that's just not going to happen," said 66th District Court Judge Ward Clarkson. "In the meantime the judges here do the best they can to balance the rights of the people and the spending of the taxpayers and try to treat everyone fairly."

The legislature requested the study, which was performed by the National Legal Aid & Defender Association in conjunction with the State Bar of Michigan.

The report said counties most in need of indigent defense services usually can't afford to pay for them.

Many counties use low-bid, flat-fee contracts in which attorneys accept cases for a predetermined fee. This causes a conflict of interest between their duty to competently defend clients and a financial self-interest to invest less time on cases to maximize profits, the study reported.

"I agree that there are issues that need to be addressed with the lack of uniformity from county to county to pay a court appointed attorney," said Shiawassee County Circuit Court Judge Gerald Lostracco. "The report is helpful in some ways, and I agree with what's presented as a reason for the study. That's where we need the help - Shiawassee County and a lot of counties are financially strapped."

Lostracco suggested lawmakers use a percentage of money collected from case filing fees and put it toward court-appointed attorney fees. This would increase the pool of attorneys, he said.

"What is clear, however, is that there is no mechanism in place for taking into account the 'workload' of the lawyers, all of whom maintain private practices in a variety of legal disciplines. Absent too, it appears, is any way of determining how many (if any) cases from other jurisdictions are assigned to the lawyers on the list," the study said specifically of Shiawassee County.

"How would we possibly know who's got what kind of caseload? We have no way of knowing. The attorney's not here when we assign them," said 66th District Court Judge Terrance Dignan. "I think that's a ridiculous supposition. If the attorney wants to decline, he can. I thought that was ill-conceived criticism. If someone's so busy, why would they want to work for \$60 an hour if they're so busy at \$200 (per hour)?"

David Carroll, author of the study and director of research for the National Legal Aid & Defender Association, said Massachusetts requires attorneys log the hours worked on each case in order to determine court-appointed case loads.

"I think this is one of the issues in Michigan, that the systems are so vulcanized and isolated that they can't see how the rest of the country has evolved on this front," said Carroll, who is in Lansing today testifying before the House Judiciary Committee.

Lostracco said he spent more than \$176,000 on court-appointed attorneys in 2007. The county recouped less than half of that through defendant repayment.

Circuit court has \$180,000 budgeted for indigent defense in 2008.

The other nine counties studied were Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa and Wayne. The report found faults in each of the counties, ranging from undue interference from judges to high caseloads to not providing court-appointed attorneys a confidential space to meet with their clients.

Last year, the American Civil Liberties Union sued the state on behalf of poor defendants and accused it of not spending enough on public defenders.

The lawsuit is pending.

Michigan counties spend about \$74 million a year on indigent defense. To rank near the middle nationally, they would have to spend about \$46 million more annually at a time the state and local governments are strapped for cash.

Carroll said the extra money would be a "drop in the bucket" compared with the \$2 billion a year Michigan spends on its prison system.

The three judges in Shiawassee County said inexperienced attorneys are not assigned to serious or extreme cases.

"Defendants need a competent attorney for the system to work," Shiawassee County Prosecutor Randy Colbry said. "There's not really any standard in terms of what experience you need to have had before you start taking appointments as a criminal defense attorney."

- The Associated Press contributed to this report.
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KALAMAZOO GAZETTE

Constitution demands access to legal counsel

Friday, June 20, 2008

Is there any connection between the facts that Michigan ranks 44th among all states on how much is spent on legal defense for poor defendants and ranks fourth for how much is spent imprisoning people?

This week, a report commissioned by the Michigan Senate to examine inequities in the way indigent defendants are represented in court was presented to the Legislature.

It found that Michigan's system of public defenders and court-appointed attorneys for poor defendants was inadequate to the point of being unconstitutional.

Defendants have complained that they have been pushed through court proceedings and pressured to plead guilty by their overworked, underpaid court-appointed attorneys. They say they've had insufficient defense -- and that they've landed in jail or prison because of it.

Last year, the American Civil Liberties Union filed suit against the state of Michigan, saying the defense system violates the U.S. Constitution.

The Constitution's 6th Amendment guarantees right to counsel in criminal cases. But, until 1963, state courts interpreted the amendment in such a way that it exempted state courts from the mandate. Because of that, thousands of indigent defendants attempting to represent themselves in court wound up in prison.

That year, the U.S. Supreme Court ruled in *Gideon vs. Wainwright* that the 6th Amendment's guarantee of access to counsel extended to trials in state courts as well.

Since then, states have set up a variety of ways to offer legal defense to those who can't pay for it themselves. The more expensive option is the setting up of public defender's offices, akin to county prosecutor's offices.

Kalamazoo County relies on court-appointed attorneys to represent defendants who can't pay for their own defense. But in 2006 many attorneys quit taking court-appointed defendants in a dispute over pay.

Kalamazoo County officials have been studying whether to set up a public defender's office to offer better representation. But cost is certainly an issue. And assistance from the state is unlikely; Michigan is only one of seven states that forces counties to shoulder the entire cost of legal defense for the poor.

It is difficult to get the public to take action on behalf of people accused of crimes -- especially if they're poor, especially if they're racial minorities.

But perhaps the public should be concerned about the nearly \$2 billion that the state pours into its corrections system each year. That's more than is spent by the state on higher education.

Michigan's incarceration rate is second highest in the 12-state Midwest region.

It should come as no surprise that Michigan's incarceration rate is so high, especially if legal counsel for poor defendants is inadequate.

If it lowered the rate to that of other Great Lakes states, it could save up to \$500 million on incarceration costs, said Tom Clay of the Citizens Research Council of Michigan last year.

To bring 44th-ranked Michigan's per-capita spending on indigent defense to 26th place would cost an extra \$50 million a year, according to the study conducted by the American Bar Association and the National Legal Aid Defender Association.

But that could be a worthwhile investment if it cuts incarceration costs by \$450 million and saves that money

for state taxpayers.

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Article published Friday, June 20, 2008

Equal justice under law? Not necessarily so in Michigan



ANN ARBOR - Everyone who has ever seen a TV courtroom drama knows that if you are charged with a crime and are too poor to afford a lawyer, the state will appoint one for you.

Yet, if you think that means everyone gets "equal justice under law," you are sadly mistaken - especially if you live in Michigan. A just-released, extensive new study of public-defender programs in the state has revealed shocking failures in the system.

"This is a disgrace. Michigan has utterly failed to live up to its constitutional obligations," said David Carroll, who is director of research for the nonprofit National Legal Aid and Defender Association, which did the study for the state legislature.

The report found that the state, which once prided itself on the modernity and effectiveness of its justice system, is close to being worst in the nation in terms of its public-defender services.

Michigan spends less per capita to defend people than all but six other states.

The title of the association's final report pretty effectively captures it all: "A Race to the Bottom: Speed and Savings over Due Process: A Constitutional Crisis." Among other horrors, the investigation found:

- In Chippewa County, the district court provides no confidential meeting space where a court-appointed lawyer can meet with his or her clients. Instead, "most attorneys wait in line to bring their clients, one-by-one, into the unisex rest room across from judge's chambers." Others settle for whispering in the corridor.

- In Ottawa County, there isn't even much effort to pretend that an "adversarial contest" exists between prosecutors and defense attorneys. Instead, "indigent defense services has devolved to the point where defense attorneys call the prosecuting attorney and ask him to have law enforcement conduct further investigations rather than conducting independent investigations themselves."

The Ottawa system is such a farce that the day on which arraignments are held is known locally as "McJustice Day."

- Michigan has utterly failed to follow American Bar Association principles requiring that public defense attorneys have proper experience and training to match the case.

Much of the problem, the study found, is related to the fact that Michigan is one of only six states where all the public defender costs are borne by the individual counties. The study looked intensively at 10 counties, from the most urban to the most rural.

"All were inadequate, but some were far worse than others," said Mr. Carroll. He felt strongly that Michigan needed to move to an entirely state-funded public defender system.

That would certainly cost more money than the state is spending now - at least in the short run. But not only could a few "wrongful imprisonment" lawsuits be very expensive; the fundamental principle of government is supposed to be the impartial administration of justice.

"Without a functioning adversarial justice system, everyday human error is more likely to go undiscovered and result in the tragedy of innocent people being tried, convicted, and imprisoned," the report's executive summary read.

The report's findings were generally endorsed by those in the legal trenches. "The contempt for the legal system shown by the [Chippewa County] commissioners is remarkable," one experienced Upper Peninsula defense attorney said. "Several years ago they spent monies to air condition the dog pound. They refuse to air condition the circuit court room. Trials in the summer are like working in a sweat lodge. ...[additionally,] the acoustics and lighting are bad and make trial work difficult.

Anna Marie Anzalone, a public defender in Lenawee County, said she agreed with the report. "I love my job and have no intention of quitting [but] the state provides so many resources to the prosecutor's office," while the county, "already overburdened, is responsible for compensating the public defenders."

Last year she handled 311 felony cases. As in many counties, she doesn't get an hourly rate. "We are paid as a contract employee, a monthly fee. No extras at all. I would just love to have a secretary."

The Legal Aid and Defender Association launched its evaluation after it was requested by State Sen. Alan Cropsey (R., DeWitt) two years ago. Now that the results are in, what happens? Possibly nothing. Michigan Supreme Court Justice Clifford Taylor told the Detroit News that it "may not be possible" to enact many of the recommendations, because there is no money. And a spokesman for Gov. Jennifer Granholm called the findings "sobering" but said she needed time to study them.

Time is not what a lot of the defendants who can't afford proper counsel have on their side.

A final note: As part of the project, the association attempted to determine how many people in Michigan used public-defender services. Unfortunately, they couldn't do that. In many counties, "nobody cared enough" to keep adequate records, Mr. Carroll said.

Jack Lessenberry, a member of the journalism faculty at Wayne State University in Detroit and The Blade's ombudsman, writes on issues and people in Michigan.

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Op-Ed: Public defender services stink

June 22, 2008 12:00 am

ANN ARBOR -- Everyone who has ever seen a TV courtroom drama knows that if you are charged with a crime and are too poor to afford a lawyer, the state will appoint one for you.

Yet if you think that means everyone gets "equal justice under law," you are sadly mistaken -- especially if you live in Michigan. A just-released, extensive new study of public defender programs in the state has revealed shocking failures in the system.

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â€œMichigan has utterly failed to follow American Bar Association principles requiring that public defense attorneys have properly experience and training to match the case.

Much of the problem, the study found, is related to the fact that Michigan is one of only six states where all the public defender costs are borne by the individual counties. The association's study looked intensively at 10 counties, from the most urban to the most rural. (Grand Traverse County was one of these; it was neither the best or most terrible.) "All were inadequate, but some were far worse than others," Carroll said. He feels strongly that Michigan needs to move to an entirely state-funded public defender system.

That would certainly cost more money than the state is spending now -- at least in the short run.

But not only could a few "wrongful imprisonment" lawsuits be very expensive, the fundamental principle of government is supposed to be the impartial administration of justice.

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Photos



Jack Lessenberry

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IN OUR OPINION

Indefensibly shortchanged justice

June 23, 2008

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Scandalously low pay for court-appointed attorneys and a lack of state standards and oversight have made Michigan a McJustice state -- with expedience stressed over upholding a fundamental constitutional right.

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The criminal justice system works when truth emerges from the adversarial efforts of a competent prosecutor and vigorous defense. It fails miserably when an outgunned and underpaid public defender is effectively encouraged to cut corners.

A just released report requested by the Legislature in 2006, examining public defense in 10 sample counties, should force an overdue fix.

"A Race to the Bottom," the title of the study conducted by the National Legal Aid & Defender Association and released last week by the State Bar of Michigan, found that defense attorneys routinely lack the time, training, investigators, experts and resources to prepare cases adequately. Others are appointed to cases for which they are not qualified. Many criminal defendants never speak to an attorney.

In a jab at sacrificing due process to speed, Ottawa County workers and attorneys refer to the time of district court arraignments as "McJustice Day," the report said.

Find a statewide solution

Fixing the problem will cost money, but very little compared to the \$2 billion a year that Michigan spends on prisons. Getting it right at trial time is especially important today, when appeals courts and the Michigan Supreme Court practically rubber-stamp criminal convictions.

The system cannot be fixed by the hodgepodge of poorly funded county programs for indigent defense.

Michigan must establish state standards and oversight of its public defense system -- and ensure uniform and adequate funding to counties.

As it stands, counties provide discount justice with either low-bid contracts or fixed compensation for exams, pleas, motions and other legal tasks, regardless of how many hours court-appointed lawyers spend on them. That practically forces attorneys to take more cases than they can handle or settle for pay comparable to fast-food workers.

Michigan ranks near the bottom -- 44th -- among states in per-capita spending on public defense. It is one of only seven states that provide no state money for public defenders at the trial level. Altogether, Michigan counties spend about \$74 million a year on indigent defense. They would have to spend \$50 million more to rise to the national average.

A matter of rights, not just money

From a purely fiscal standpoint, this is a mess almost begging for a class-action lawsuit that could cost the state plenty. But more basically, budget problems cannot be an excuse for curtailing constitutional rights. Louisiana is in no better shape than Michigan, yet legislators in that Katrina-ravaged state last year passed comprehensive reforms on indigent defense that include quadrupled funding.


"When people understand that one of our cherished constitutional rights is in danger, they find a way to come together and fix it," said David Carroll of the National Legal Aid & Defender Association.

His report compared the deficiencies of Michigan's system with the notorious Scottsboro Boys case in Alabama in the 1930s, the first right-to-counsel case in America. It involved nine black youths who were falsely convicted of rape and all but one sentenced to death. Eventually, after an international outcry, all were freed.

High profile exonerations of people such as Eddie Joe Lloyd, wrongly imprisoned for 17 years for rape and murder, expose cracks in Michigan's criminal justice system. But the National Legal Aid & Defender Association report shows flaws that are also wide and systemic. Ensuring that counties meet constitutional standards for indigent defense is primarily a state responsibility -- one that Michigan Legislatures and governors have, for decades, shamefully shirked.

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Radio Clips – Week of June 17, 2008

Michigan Radio – Report on public defender system out this week, June 16, 2008

http://www.publicbroadcasting.net/michigan/news.newsmain?action=article&ARTICLE_ID=1298914§ionID=1

NewsTalk 760 WJR – David Carroll talks with Paul W. Smith, June 17, 2008

<http://wjrpodcasts.com/podcasts/paulwsmith/carroll-061708.mp3>

WKAR (Lansing) – New report details Michigan’s public defense system, June 17, 2008

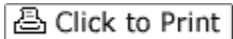
<http://wkar.org/morningedition/story.php?storyid=1325>

Jack Lessenberry interview with David Carroll, June 17, 2008

<http://jackshow.blogs.com/jack/2008/06/interview-david.html>

Michigan Public Radio – Rick Pluta, June 18, 2008

<http://wkar.org/morningedition/story.php?storyid=1326>

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Report: Poor Not Getting Quality Legal Aid

Posted: 8:18 PM Jun 17, 2008

Last Updated: 8:18 PM Jun 17, 2008

Reporter: Jason Colthorp

Email Address: jason.colthorp@wilx.com

A report out Tuesday calls Michigan's efforts to provide legal counsel to defendants one of the worst in the nation. And it's not a new problem.

[A](#) | [A](#) | [A](#)

The report from the State Bar of Michigan and National Legal Aid and Defender Association Partnership basically says -- poor people in Michigan are not getting quality legal representation which is guaranteed by the constitution.

There are many reasons, including funding.

Michigan is one of only seven states that does not provide any money from the state for public defense. The entire burden falls on the 83 counties separately.

What that leads to, according to this report, is quick representation instead of quality representation.

In counties with a high crime rate it gets much worse. In Detroit for example, five part-time public defenders spend an average of 32 minutes per case, handling 2,400 to 2,800 cases each, while the national standard for a full-time public defender is only 400 cases per year.

Public defenders also have to ask the judge for money to run fingerprints, DNA tests and get expert witnesses. In some areas, like Jackson County, public defenders get paid a flat fee to try cases whether it's one case or 100.

"There's just a natural conflict of interest," says David Carroll of the National Legal Aid & Defender Association. "(When a lawyer's) ability to put food on (their) family's table is impacted on the decision to go to trial or not."

Moreover, that compensation pales in comparison to what private lawyers get paid.

"Overall the pay scale is out of sync with the private sector," says former prosecutor Don Martin.

The report concludes it translates into a public safety issue. In recent years, several wrongful convictions have come to light, exposing the state's failure to provide for a functioning justice system that keeps communities safe. When an innocent person is convicted the real criminal remains on the streets.

One example might be the Claude McCollum case. He was wrongly convicted in 2006 for the murder of LCC professor Carolyn Kronenberg. He was represented by a public defender although no court ever cited "inadequate defense" as a cause of the conviction in that case.

With many counties and the state constantly in a budget crunch, the question is where is that money going to come from to fix this overall problem? We'll have to wait and see for that answer.

In the past, many proposals have been introduced and shot down to fix the funding problem according to Martin.

There is also a class-action lawsuit still pending in Ingham County filed by defendants upset with their public defense. A judge threw out the Attorney General's petition to dismiss the case, but that decision is now pending appeal.



Michigan's Justice System

Posted: June 17, 2008 05:04 PM

Preeti Arla

It's a right guaranteed by the constitution legal counsel for people who can not afford it.

David Carroll, Legal aid and Defender Assoc.: "A judicial system that guarantees equal justice before the law"

But while they get lawyers, experts say they're not getting another constitutional right... the right to a fair trial. They blame it on a failing public defense system.

David Carroll:"the depth and breath is so great."

The National Legal Aid and Defender Association Examined 10-Michigan counties for a year. They found huge problems. Among them, court-appointed attorneys are overworked, underpaid and don't receive the resources they need. It's putting us all at risk.

David Carroll:"When the wrong person is incarcerated, the innocent goes to jail, the real perpetrator is out on the streets."

Jackson county was part of the study where Judge Chad Schmucker thought the system worked. He found out he was wrong.

David Carroll: "surprised by the data, how much other states spend, wasn't aware of the caseload numbers."

The state is working on legislation to fix the problems one of the biggest issues,coming up with the cash to pay for a good defense. Schmucker can't do much about that but says there are other ways he can help.

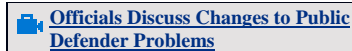
Judge Chad Schmucker, Jackson County: "We can control caseload, some requirement for continuing education."

He hopes these small steps will make sure everyone in Michigan gets the rights guaranteed in the constitution.



Officials Discuss Changes to Public Defender Problems

Posted: June 20, 2008 08:19 AM



Everyone has the right to a fair trial, but can you get one without a quality defense? After a year-long study, the National Legal Aid and Defender Association claims Michigan's public defender system is one of the nations' worst. They say that creates a number of problems. America's judicial system promises justice for all, but in Michigan, it's only justice for some. Defense experts say Michigan is one of just seven states that forces counties to pay for public defenders, many of whom can't afford to provide effective legal counsel to those who need it. That leaves the attorneys and their clients hanging in the balance.

David Carroll, National Legal Aid and Defender Assoc.: "We just think it's how the system has evolved. It's not working, we need to fix it."

So legal experts and policymakers from across the country came to Lansing to offer solutions for mending Michigan's fragmented system.

Mark Stephens, Tennessee Public Defender: "I think a statewide, unified public defender system like the one we've got in Tennessee is probably better than what's currently going on in Michigan."

Kara Gray, Montana Chief Justice: "It's more efficient, it's more fair and on and on and on. It's less costly usually to local governments."

Researcher David Carroll says he understands any change in the system will cost the state a substantial amount of money.

David Carroll: "Probably to the tune of fifty million dollars."

But critics of the current system say you can't put a price tag on the right to a fair trial and changes will make sure justice is served for Michigan's neediest defendants.

[The Michigan Lawyer - A Blog from Michigan Lawyers Weekly](#)

Tuesday, June 17, 2008

[NLADA report paints ugly picture of state's public defender system](#)

A year-long study of the public defender systems in 10 Michigan counties concludes that not one of them is providing constitutionally adequate services.

The title of a report prepared by the National Legal Aid & Defender Association (NLADA), [A Race to the Bottom: Speed & Savings Over Due Process: A Constitutional Crisis](#), says it all. Executive summary [here](#).

Attorney-client conferences taking place in unisex public restrooms. Arraignments moving so fast that the locals in one county refer to the sessions as "McJustice Day." Prosecutors offering plea deals for time already served *before the accused even sees an attorney*. Appointed counsel asking the cops to investigate clients' cases rather than doing the gumshoeing on their own. Lawyers groveling before judges to keep a steady stream of appointments coming their way. Flat fee contracts that set up conflicts of interest between zealous representation and the bottom line.

Welcome to the nightmare world of Michigan's public defender system, according to the NLADA report.

The report doesn't reveal anything that Michigan's criminal justice community doesn't already know: defendants who are broke get short shrift by an overwhelmed system that is short on cash and supervision.

It's the rest of the state that needs to get on board. And there are good reasons to do that. From an NLADA fact sheet:

"Every Resident Impacted - The ripple effect of this broken criminal justice system is far-reaching and extends to every Michigan resident. By failing to meet its responsibility for funding and overseeing a vital part of the justice system, the state is wasting taxpayer money and endangering public safety.

"Fiscally Irresponsible - Taxpayers shell out millions of dollars to foot the bill for delays, mistakes and lawsuits that result from the broken public defense system. One such lawsuit forced the state and Wayne County to pay out more than \$4 million to a man who had been wrongfully convicted.

"Public Safety at Risk - In recent years, several wrongful convictions have come to light, exposing the state's failure to provide for a functioning justice system that keeps communities safe. The impact extends far beyond the defendant: when an innocent person is imprisoned, the real criminal remains on the streets."

There's reason to believe that we'll see some steps in the right direction. The Legislature *asked* for this report, presumably knowing full well what the conclusions and recommendations would be. And the NLADA's number one recommendation is to begin legislative hearings "to address current funding and oversight failures in order to begin to create a fair and efficient system that protects the welfare of all Michigan residents."

There are no easy, quick fixes.

But trying to sweep the public defender mess under the carpet will only leave a large, easy-to-see, completely unconstitutional lump.

Posted by Ed Wesoloski at [2:46 PM](#) _

<http://michiganlawyerblog.blogspot.com/2008/06/nlada-report-paints-ugly-picture-of.html>