

Facts on Michigan's Failing Public Defense System

The Constitution requires that states provide effective legal counsel to defendants who cannot afford an attorney. After a year-long extensive study of 10 representative counties across Michigan, the National Legal Aid and Defender Association, in partnership with the Michigan State Bar Association, has found that the state of Michigan is failing its citizens by forcing counties to fund the public defender system and neglecting to oversee public defense work in those counties.¹

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)

¹ The report was conducted at the request of the Michigan Legislature under a concurrent resolution (SCR 39 of 2006). The counties were selected by an advisory panel. For a complete methodology of the 10 counties chosen, please see the Executive Summary (Page i) at http://www.nlada.org/Defender/defender_evaluation/michigan_evaluation.

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 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.