

Michigan Council on Crime and Delinquency – Press Release

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Inadequate funding, high caseloads and lack of organization and oversight present serious problems for the defense of Michigan's poorest criminal defendants.

On February 11, 2005, forty years after the landmark case of Gideon v. Wainwright established the constitutional right to counsel in state criminal proceedings, the American Bar Association Standing Committee on Legal Aid and Indigent Defense released a report finding that America's poorest defendants still lack the protection of properly trained and prepared defense counsel. Lack of funding is cited as the primary reason for the failure to provide adequate defense, which increases the risk of wrongful conviction of innocent defendants.

The report, entitled "Gideon's Broken Promise: America's Continuing Quest for Equal Justice," follows a year-long series of public hearings on the state of indigent defense throughout the nation. Along with witnesses familiar with the delivery of indigent defense services in 21 other states, witnesses from Michigan presented the ABA committee with information about the problems in indigent defense in our state.

Consistent with the national findings, funding for indigent defense services is a central concern in Michigan. For example, the ABA report noted that appropriations for indigent defense services in Wayne County were only half the amount available in similarly populated counties in other states. The lack of available funds to adequately compensate court-assigned defense attorneys makes recruitment and retention of well-trained, experienced attorneys very difficult. Furthermore, access to investigators and expert witnesses, necessary elements of a rigorous defense, is severely restricted and even nonexistent in many cases.

Compounding the problem of insufficient funding is the issue of high caseloads. Despite national standards recommending the use of public defender programs wherever the population and caseload are sufficient to support such organizations, assigned counsel provide most of the indigent defense services in Michigan. In fact, in two of Michigan's more heavily populated counties, Macomb and Oakland, there is no public defender office at all.

Also contrary to the national recommendations and standards, Michigan lacks statewide oversight and structure, which results in unsupervised local indigent defense systems that vary greatly in their effectiveness. In the worst cases,

which occur frequently, counsel is not provided to indigent defendants in violation of federal constitutional rights, state law, or national standards.

As awareness of wrongful convictions throughout the state of Michigan and the nation increases, with one study putting the number potentially as high as 10,000 annually nationwide, it is essential that effective defense lawyers are available to the poorest and therefore most vulnerable defendants. In light of these ongoing concerns, Michigan has seen several recent reform efforts. The Michigan Public Defense Task Force, a broad-based citizens' coalition, developed a model plan for the state's indigent defense services. As a result of that effort, the State Bar of Michigan in 2002 adopted eleven principles for the delivery of indigent defense in the state. In 2003, the State Bar of Michigan's Executive Committee adopted a resolution encouraging the legislature to establish a commission with the responsibility of investigating indigent defense services in Michigan and making recommendations for improvement.

State Senator Alan Cropsey, R-DeWitt, chair of the Senate Judiciary Committee, has taken note of the problems identified by the Task Force and the ABA saying, "It is important that the rights of every defendant are fully exercised and protected during criminal justice proceedings. Defense counsel is the key to this, and counsel needs to be adequately compensated."

The risk of wrongful convictions is another concern, according to Dennis Archer, former Michigan Supreme Court Justice, Mayor of the City of Detroit and past president of the American Bar Association and National Bar Association. He observed in a recent interview, "In Michigan, state funds are provided to train prosecutors, but defense lawyers who provide indigent defense services do not receive equal training. Many times indigent defendants run the risk of not having properly trained counsel. What this means is – innocent, poor people are at constant risk of being wrongfully convicted."

Elizabeth Arnovits, executive director of the Michigan Council on Crime and Delinquency and an organizing member of the Michigan Public Defense Task Force comments, "Fundamental fairness requires that Michigan take immediate steps to ensure equal justice for all of its citizens."

A copy of the ABA report is available on-line at www.abanet.org. A comprehensive collection of information on the issue of public defense appears at www.sado.org, and is maintained by the Criminal Defense Resource Center of Michigan's State Appellate Defender Office.