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ADVOCATES PUSHING APPOINTED COUNSEL CHANGES

Michigan's system of appointing attorneys to indigent defendants is failing both those defendants and taxpayers, a group of speakers said at an event hosted by the Michigan State University Institute for Public Policy and Social Research.

The law professors and professionals said the state's system, which is run at the county level, does not ensure competent defense for all.

"We're failing and failing badly on all of the key indicators of a healthy system," said Laura Sager, director of Campaign for Justice, a group working to reform the system.

On a report card the group published on the state's public defender system, based on principles developed by the American Bar Association and the State Bar of Michigan and a June 2008 legislative report, the state scored best, a C, on consistency. The report noted that in some communities caseloads require appointed counsel to trade cases at various steps, while some others have a single attorney handling arraignments and others handle the trial.

On the other 10 principles, the report gave the state Ds and Fs.

The key to improving the system, the four speakers said, is to create a standard, statewide system that receives at least as much resources as the prosecution for a given region.

"Public defenders provide crucial services to people at crucial times in their lives," said Adele Bernhard, a professor at Pace Law School. "We don't want public defenders who don't investigate. We want public defenders who have time because they have controlled caseloads."

Regina Daniels Thomas, chief counsel for the Legal Aid and Defender Association Juvenile Law Group, said particularly for juveniles, appointed defenders are not provided enough time to meet with their clients before having to present at least a plea to the court. And she said in many locales they also are not provided a private, confidential space to conduct those discussions.

Ms. Thomas and others related cases where clients should have been remanded for mental health services or other counseling, or simply found not guilty if the case had been sufficiently reviewed, but were not because the issues were discovered too late in the process. They said more time for the defense counsel to work could have solved some of these issues.

"We're generating millions of dollars in unnecessary lawsuits, court costs and sentencing errors," Ms. Sager said. "We're failing to equip our attorneys so they can identify problems early and find more effective solutions."

"The real big problem is when we have a paper guarantee which is supposed to be part of our Bill of Rights, that is announced by our Supreme Court, people who have experienced that that is a right only on paper lose respect for criminal justice system," said Joan Howarth, dean of the MSU College of Law.

Ms. Bernhard recommended at a minimum the state create a centralized administration to provide oversight of the public defenders, even if the rest of the system remains at the county level. The administration could develop standards for the attorneys and for the appointment system.

In counties with central public defender offices, she said the attorneys are often overloaded. In more rural areas, public defending is often done by contract, which she said encourages the attorneys to conduct the cases as cheaply as possible.

Ms. Bernhard said appointment of counsel also needs to be taken away from judges.

"You really don't want the judges assigning lawyers to the cases," she said. "When you do that the lawyers don't feel independent; they feel if they upset the judge they won't get assigned the next time."

But a court administrator in the audience also argued that statewide standards need to be set for determining who can have counsel appointed. She said in many cases people are claiming indigency when they or their family are able to pay. But she and some of the panelists said courts are also using the threat of having to repay some of the legal costs to get people to waive the right to counsel and move the case along.

While the panelists admitted some of the changes would cost money, they argued it did not need to be substantial and could mean savings if more cases are handled appropriately.

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