



Our public defense system is failing!

The U.S. Constitution says you have the right to an attorney if you are accused of a crime, even if you cannot afford one. Effective defense representation is fundamental to a working justice system. But in Michigan, the system of public defense is failing. It fails the taxpayers who fund it, fails the families who rely on it to keep them safe, and fails to adequately uphold the Constitutional rights of the accused.

Michigan's current public defense system fails taxpayers:

- Our failing public defense system is inefficient and wasteful.
 - Costly errors and inappropriate sentences mean that Michigan taxpayers unnecessarily pay millions of dollars in wrongful conviction settlements and unnecessary corrections costs.
 - Michigan has shifted its Constitutional obligation onto the counties. That means Michigan's 83 counties have 83 different public defense systems with separate budget processes – which lead to 83 different levels of funding.
 - In an effort to save money in the short term, many counties are cutting public defense spending at the risk of jeopardizing public safety and making mistakes that cost more money over the long term.

In Michigan, taxpayer dollars are wasted on an inefficient public defense system that does not deliver the public safety or fairness taxpayers should expect.

Michigan's public defense system fails to protect public safety:

- Wrongful convictions mean that the innocent go to prison while perpetrators of brutal crimes are free. When mistakes are made, public safety is at risk.
- Ken Wyniemko and Eddie Joe Lloyd are just two Michigan residents who were convicted of crimes they did not commit. Even years after they were exonerated, these violent crimes remain unsolved.
- Michigan needs a public defense system that ensures that the right people are sentenced for the appropriate amount of time.

As a result of the failing public defense system in Michigan, we cannot be certain the guilty are going to jail and the innocent are free.

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A JUSTICE SYSTEM THAT WORKS FOR ALL



Our public defense system is failing!

Michigan's failing public defense system fails the accused:

- The U.S. Constitution guarantees the accused the effective assistance of an attorney. But in Michigan, this right is being denied.
- Michigan's public defense system has been repeatedly singled out as one of the worst in the nation.ⁱ
- Michigan has no standards for trial-level public defense services.
 - There is little to no funding for experts or investigators.
 - Individuals often meet their attorneys for just a few minutes before trials.
 - Many attorneys have such unmanageable caseloads that they cannot provide an effective defense.
 - Many attorneys lack training or experience for the cases they handle.

The rights of all Michiganders, regardless of how much money they have, should be upheld. No exceptions.

Michigan's people deserve a justice system that works for all.

ⁱ American Bar Association Standing Committee on Legal Aid and Indigent Defendants, *Gideon's Failing Promise: America's Continuing Quest for Equal Justice: A Report on the American Bar Association's Hearings on the Right to Counsel in Criminal Proceedings* (December 2004). Also see Campaign for Justice, "Decades of Warnings" for fuller list of reports and articles on Michigan's failing system.



Failing the taxpayers

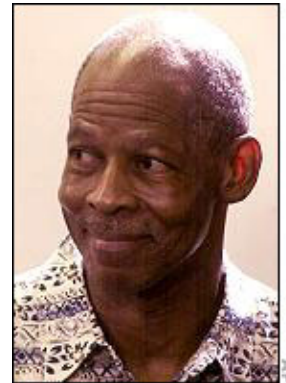


Michigan's failing public defense system fails the taxpayers; it is inefficient and wasteful.

- Costly errors and, often, inappropriate sentences mean that Michigan taxpayers pay millions in wrongful conviction lawsuits and corrections costs.

Convicting the wrong man is a costly proposition – for everyone.

- Eddie Joe Lloyd suffered terrible injustices – a wrongful conviction and 17 long years in prison for a crime he did not commit. After his exoneration in 2002, Lloyd sued the State of Michigan and Wayne County for the failure to provide him with adequate representation.
- The suit was settled for approximately \$4 million, in addition to the hundreds of thousands of dollars spent over 17 years to incarcerate Lloyd. These figures don't even include the amount the state spent prosecuting the case and defending the appeal, and the cost of the habeas and civil lawsuits.



An inefficient system is an expensive system.

- The State has shifted the cost of public defense onto its 83 counties. That means Michigan's 83 counties have 83 different public defense systems with separate budget processes – which lead to 83 different levels of funding.
- In an effort to save money in the short term, many counties are cutting public defense spending at the risk of jeopardizing public safety and making mistakes that cost more money over the long term.

Taxpayers are pouring millions into an inefficient justice system that does not deliver the public safety or fairness taxpayers should expect.

Michigan needs a system of public defense that effectively and efficiently uses taxpayer dollars.

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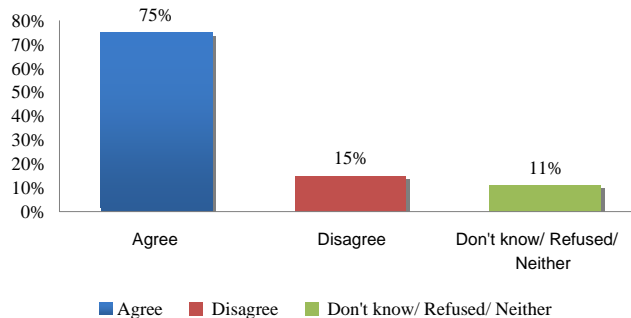
A Constitutional crisis

*“In all criminal prosecutions, the accused shall enjoy the right...
to have the Assistance of Counsel for his defense.”*

- U. S. Constitution, Amendment VI

The U.S. Constitution guarantees the accused the effective assistance of an attorney. Over 40 years ago, in the landmark case *Gideon v. Wainwright*, the United States Supreme Court ruled that “the assistance of counsel is a fundamental right essential to a fair trial.” But in Michigan, this right is being denied.

The amount of money you have should not determine whether you get an adequate defense representation. However, in Michigan, voters overwhelmingly believe that a rich person gets better treatment than a poor person.¹



The Constitutional rights of all Michigan residents must be protected.

The state has the responsibility to promptly provide qualified counsel to anyone accused of a crime who cannot afford an attorney. No exceptions. Michigan’s public defense system has been singled out as one of the worst in the nation for failing to meet national standards.²

Michigan has no standards for trial-level public defense services.

- There is little to no funding for experts or investigators.
- Individuals often meet their attorneys for just a few minutes before trials.
- Many attorneys have such unmanageable caseloads that they cannot provide an effective defense.
- Many lack training or experience for the cases they handle.

To address this Constitutional crisis, Michigan needs to restore the right of all people accused of crimes to receive effective defense representation.

¹ Marketing Resource Group, September 12-19, 2007, 600 respondents.

² American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants. *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice: A Report on the American Bar Association’s Hearing on the Right to Counsel in Criminal Proceedings* (December 2004).

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Our communities at risk

“Our state’s broken public defense system puts all of our residents at risk. When the defense is unable to function, a fair trial is impossible. Innocent people... go to jail and real perpetrators remain free on the streets.”

- Saul A. Green, former United States Attorney, Eastern District of Michigan

A broken public defense system fails to keep our communities safe.

- Wrongful convictions mean that the innocent go to prison while perpetrators of brutal crimes are free. When mistakes are made, we are all at risk.

Ken Wyniemko and Eddie Joe Lloyd went to jail for crimes they did not commit. Years after Wyniemko and Lloyd were exonerated, the brutal crimes remain unsolved.



Innocent!

Ken Wyniemko faced a rape conviction and a lengthy prison sentence. He was certain his attorney would challenge the evidence in court. But that didn’t happen. His public defense attorney did not answer numerous phone calls, and then quit. The new attorney had only two weekend days to prepare. Biological evidence that would have proven his innocence was never analyzed. After more than eight years in prison, DNA testing proved him innocent.



Innocent!

Eddie Joe Lloyd was convicted of rape and murder after falsely confessing to the crimes. His first appointed lawyer quit on the day of his trial. His second lawyer failed to argue key issues. There was no challenge to the police interrogation procedures, nor any analysis of the blood, hair or fingernail scrapings from the crime scene. No psychiatric expert was asked to evaluate the reliability of his confession, even though he was institutionalized for mental illness at the time of his interrogation. Little cross-examination took place during trial, and no defense witnesses were called. In 2002, 17 years later, DNA evidence proved his innocence.

- Michigan needs a public defense system that ensures that the right people are sentenced for the appropriate amount of time.

A strong public defense system is needed in order to convict the guilty, protect the innocent, and keep our communities safe.

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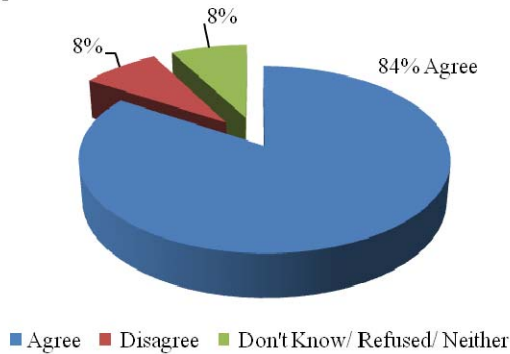
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Michigan supports a justice system that works

Michigan citizens expect a fair and effective criminal justice system.

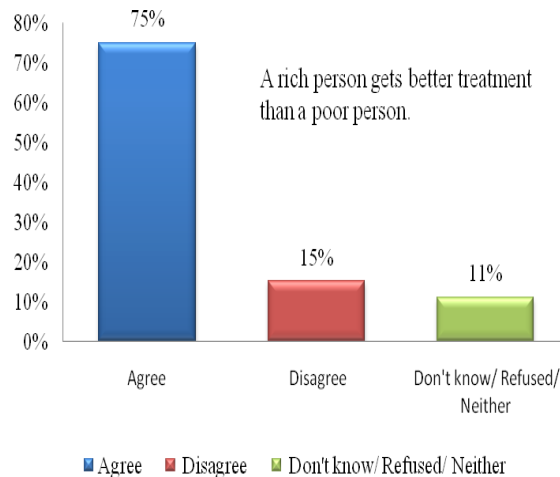
The state should provide people with competent legal representation



84 percent of Michigan citizens agree that the State should provide people with competent legal representation.

But they are losing faith in the system.

Three quarters of Michigan citizens agree that a rich person gets better treatment in Michigan's criminal justice system than a poor person.



Only 14 percent of Michigan citizens have a great deal of confidence that the Michigan criminal justice system is ensuring that the guilty are convicted and the innocent are set free.

Marketing Resource Group, September 12-19, 2007, 600 respondents.

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The role of public defense attorneys in meeting client needs

When there is a defender office, one function of the office will be to explore and advocate for programs that improve the system and reduce recidivism.

– The Eleven Principles of a Public Defense Delivery System

A public defense attorney is the first point of contact with an individual in the criminal justice system.

- In Michigan, the prevalence of mental illness is 51%, yet only 7% of Michigan's 51,000 incarcerated individuals are receiving mental health services.ⁱ
- More than half of all individuals incarcerated in Michigan prisons indicate that they have substance abuse problems.ⁱⁱ

Trained public defense attorneys can help their clients access cost-effective services that will help reduce recidivism and improve public safety.

The revolving door of incarceration wastes taxpayer dollars!

- 75% of individuals with mental illness have been previously incarceratedⁱⁱⁱ - a practice that often exacerbates mental health conditions and *increases* the likelihood of re-offending.
- Studies in Michigan reveal a cost savings of nearly \$1 million in Kalamazoo and Barry counties in just 24 months by implementing drug courts.^{iv}

Michigan's broken public defense system prevents public defense attorneys from effectively defending their clients—which includes ensuring they have access to treatment and services.

- Excessive caseloads overwhelm defense attorneys to the point where they have little time to investigate the circumstances and life situations of their clients;
- Public defense attorneys lack resources to work with service or treatment providers, use experts or identify appropriate referral recommendations to judges;
- There is little, if any, training available to public defense attorneys about the impact of mental health, substance abuse or other issues affecting those in the criminal justice system.

Michigan's people deserve a justice system that works for all.

ⁱ Milne, D. "Michigan bill would establish mental health courts." American Psychiatric Foundation (2007). Michigan Department of Corrections.

ⁱⁱ Michigan Prisoner Re-entry Initiative brochure.

ⁱⁱⁱ Reistein, Mark. "Mental health courts needed." Detroit News Opinion, March 19, 2008.

^{iv} Finigan, Carey (2006). "Michigan Adult Drug Treatment Court Outcome and Cost Evaluation" Website: http://www.npcresearch.com/projects_0039.php. Accessed May 12, 2008.

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THE COLOR OF INJUSTICE: Our failing public defense system

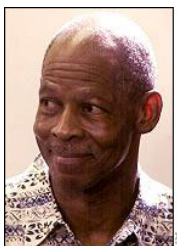
The U.S. Constitution says you have the right to an attorney if you are accused of a crime, even if you cannot afford one. Effective defense representation is fundamental to a working justice system. But in Michigan, this right is being denied. Every day, our most vulnerable citizens are put on a fast-moving assembly line to jail and prison.

Low-income people of color are disproportionately among those who most need to access public defense.

	African American	Latino/ Hispanic	White
Percentage of Michigan population ¹	14.3%	3.9%	81.2%
Percent below poverty level ²	29.9%	23.2%	10.3%
Michigan prison and jail incarceration rate (per 100,000 population) ³	2,262	397	412

Public defense reform is an urgent issue for people of color.

- A U.S. Department of Justice survey showed that, nationally, 77 percent of African Americans and 73 percent of Latinos in state prisons were represented by public defense attorneys.⁴
- One in nine black men between the ages of 20 and 34 is behind bars.⁵
- Latinos/Hispanics have a one in six chance of being confined in prison during their lifetimes.⁶
- Incarceration breaks families. In 1999, nine times as many African American children than white children had a parent in prison.⁷



Eddie Joe Lloyd was convicted of rape and murder after falsely confessing to the crimes. His first appointed lawyer quit on the day of his trial. His second lawyer failed to argue key issues. There was no challenge to the police interrogation procedures, nor any analysis of the blood, hair or fingernail scrapings from the crime scene. No psychiatric expert was asked to evaluate the reliability of his confession, even though he was institutionalized for mental illness at the time of his interrogation. Little cross-examination took place during trial, and no defense witnesses were called. In 2002, 17 years later, DNA evidence proved his innocence.

The Campaign is fighting for a justice system that works for all. Join us and stand up for justice!

¹ U.S. Census Bureau, 2006 American Community Survey.

² U.S. Census Bureau, Census, "Poverty Status in the Past 12 Months," 2006 American Community Survey.

³ Based on data from the Bureau of Justice Statistics, Prison and Jail Inmates at Midyear 2005. From the Sentencing Project, *Uneven Justice: State Rates of Incarceration By Race and Ethnicity* (July 2007).

⁴ Gohara, M.S., Hardy, J.S., Hewitt, D.T., "The disparate impact of an under-funded patchwork indigent defense system on Mississippi's African Americans: The civil rights case for establishing a statewide, fully funded public defender system." *Howard Law Journal*, 49 (1) (Fall 2005).

⁵ Pew Center on the States, "One in 100: Behind Bars in America 2008."

⁶ Walker, N., Senger, J.M., Villarruel, F., Arboleda, A., National Council of La Raza, *Lost Opportunities: The Reality of Latinos in the U.S. Criminal Justice System*. (October 2004).

⁷ Gohara, M.S., Hardy, J.S., Hewitt, D.T., "The disparate impact of an under-funded patchwork indigent defense system on Mississippi's African Americans: The civil rights case for establishing a statewide, fully funded public defender system." *Howard Law Journal*, 49 (1) (Fall 2005).

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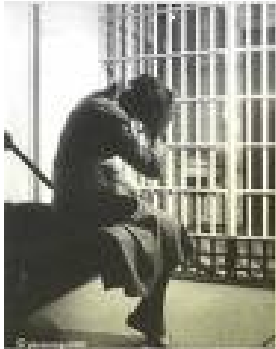
The gender gap in public defense

“Gender matters in the forces that propel women into criminal behavior. For this reason, gender must be taken into account in crafting effective responses to their problems.”ⁱ

- Charon Schwartz

Women, Poverty and Criminal Justice

Women and girls are the most rapidly growing population in the criminal justice system.ⁱⁱ



- Women are more likely to live in poverty and more likely to need the service of a public defense attorney if faced with a criminal charge.
- 24.8 percent of households headed by single women were poor, while 13.5 percent of households headed by single men and 5.5 percent of married couple households live in poverty.
- Black and Hispanic female-headed households had poverty rates just under 40 percent.ⁱⁱⁱ

Families Torn Apart

More than two-thirds of women in prison have children under the age of eighteen, and among them, 75 percent are the sole custodial parent, versus ten percent for men.^{iv} When breadwinners are in prison, children are often thrown into the state’s foster care system.

Public defense reform: an urgent issue for women

Women and girls cannot receive an adequate defense if their public defense attorney is not knowledgeable in the emerging research and case law related to women’s issues like victimization, mental health, domestic violence, and self-defense theories.

- Women and girls in the criminal justice system have disproportionately suffered from physical and sexual abuse, domestic violence, chemical dependency, and mental illness.
- Mandatory domestic violence arrests policies sweep large numbers of women into the criminal justice system.

The Campaign for Justice is fighting for a justice system that works for all. Join us and stand up for justice!

ⁱ Schwartz, C., “Rehabilitation vs. Incarceration: Non-Violent Women Drug Offenders,” *PrisonerLife.com* (November 2001).

ⁱⁱ “Research on Women and Girls in the Criminal Justice System: Plenary on the Papers of the 1999 Conference on Criminal Justice Research and Evaluation. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ⁱⁱⁱ “Poverty in the United States; Frequently Asked Questions.” National Poverty Center, University of Michigan, Gerald R. Ford School of Public Policy.

^{iv} No Where to Hide: Retaliation against women in Michigan state prisons. Human Rights Watch. Website: http://www.hrw.org/reports98/women/Mich.htm#P56_6564. Accessed March 25, 2008.

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About us

The Campaign for Justice is a broad-based group of organizations and individuals from across the political spectrum fighting for a fair and effective public defense system in Michigan. We believe that legislative reform is needed to improve cost effectiveness, protect the public's safety and restore the Constitutional right to an effective defense representation.

The Coalition:

- ACLU of Michigan
- American Civil Liberties Union (ACLU)
- American-Arab Anti-Discrimination Committee of Michigan
- Brennan Center for Justice at New York University School of Law
- Criminal Defense Attorneys of Michigan
- Innocence Project – Cooley Law School
- INNOCENT!
- Michigan Catholic Conference
- Michigan Council on Crime and Delinquency (MCCD)
- Michigan Public Defense Task Force
- NAACP – Detroit Branch
- NAACP - Michigan State Conference
- National Association of Criminal Defense Lawyers (NACDL)
- National Association of Social Workers – Michigan (NASW-Michigan)

Board of Directors:

The Campaign for Justice Board of Directors is comprised of representatives from the following organizations: the American Civil Liberties Union (ACLU); the American Civil Liberties Union of Michigan (Michigan ACLU); the National Association of Criminal Defense Lawyers (NACDL); the law firm of Cravath, Swaine & Moore LLP; the Brennan Center for Justice at New York University School of Law; and the Michigan Public Defense Task Force.

Staff:

- Laura Sager, *Director*
- Stephanie Chang, *Deputy Director*
- Michelle Weemhoff, *Public Defense Task Force Coordinator*

The Campaign for Justice is currently funded by a generous grant from the Atlantic Philanthropies.

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TAKE ACTION!



The Campaign for Justice is a broad-based group of organizations and individuals from across the political spectrum fighting for a fair and effective public defense system in Michigan. We believe that legislative reform is needed to improve cost effectiveness, protect the public's safety and restore the Constitutional right to an effective defense representation.

Together, we will:

- Build a network of organizations and individuals that share the vision of a justice system that works for all;
- Educate policymakers and the public about the need for reform; and
- Win passage of legislation that fixes Michigan's public defense system.

In order to achieve reform, we need your help! Here are some ways you can get involved:

- Learn more about Michigan's failing public defense system by calling, writing or emailing us!
- Sign up for updates on the Campaign for Justice website: www.michigancampaignforjustice.org.
- Attend the Public Defense Taskforce Conference on Thursday, June 19, 2008! For more information, contact Michelle Weemhoff at (517) 372-3050.
- Share your stories and perspectives about the system in your area, by emailing or calling us.
- Invite Campaign staff or volunteers to speak at your next professional, civic, community, religious, or civil rights organization meeting!
- Sign up with the Campaign to submit letters to the editor of your local newspaper.

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