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## **Competent public defense for all**

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**By Diane Bukowski**

Michigan Citizen

DETROIT — The movement in Michigan to provide quality legal representation for all is gaining momentum.

House Bill (H.B.) 5676 would create an equitably funded, state-wide public defense system.

Stories of the horrors of poor representation came to light at a Michigan House Judiciary Committee hearing held Dec. 14 at Wayne State University in support of H.B. 5676. The hearing was part of a day-long event, which included a meeting of the U.S. House Judiciary Committee on the neglect of indigent defense nationally.

Eddie Joe Lloyd died in 2004 of medical complications contracted during 17 years in prison. Wrongfully convicted of a 1984 murder-rape, he had enjoyed only two years of freedom after the Innocence Project won his exoneration in 2002 based on DNA results.

His sister Ruth Harley testified at the hearing.

"My brother was coerced into giving a false confession while he was hospitalized," said Harley. "He was heavily medicated when he was interviewed by Detroit police. Being indigent, we couldn't afford our own attorney and he got no defense. The issue of the coerced confession was never raised at his trial. On the day he was sentenced to life without parole, the judge said that if Michigan had the death penalty, he would hang him."

After her brother stopped taking mind-altering drugs, said Harley, he was able to write his own appeal and worked with Innocence Project attorney Barry Scheck, who testified at the U.S House hearing, to win his short-lived freedom.

"There are many others in prison in Michigan today because they couldn't afford a competent advocate," she concluded.

One of those is Mary Heinan, who also testified. She spent 26 years in prison.

"My attorney, who was court-appointed, did not advise or defend me properly," she said. "Domestic violence situations were not understood at the time. But here we are 34 years later, and we face the same situation as when I was in the county jail."

H.B. 5676 was introduced Dec. 10 by State Reps. Bob Constan, D-Dearborn, and Justin Amash (R-Grand Rapids).

It would be known at the Public Defense Act and establish an independent Public Defense Commission which would promulgate a budget, and a State Office of Public Defense and Appellate Defense Bureau with regional subdivisions. It would also prohibit excessive caseloads for defense attorneys (which currently average 750 across Michigan), require that those attorneys be trained and experienced, and provide

salary equity with prosecutors, among other measures.

A revolutionary class action lawsuit, *Duncan v. Granholm and the State of Michigan*, broke the ground for H.B. 5676. It was filed in 2007 by the Michigan Coalition for Justice, whose members included the American Civil Liberties Union (ACLU), the New York-based Brennan Center for Justice, and the National Association of Criminal Defense Lawyers.

It cited the Sixth and Fourteenth Amendments to the U.S. Constitution, which guarantee non-discriminatory criminal legal representation for all, and the landmark 1963 *Gideon v. Wainwright* U.S. Supreme decision. That ruling held that every person charged with a felony has the right to an attorney even if they are indigent. Subsequent cases refined the ruling to include misdemeanor cases and require "competent" representation.

The lawsuit was brought on behalf of the people of Berrien, Genesee and Muskegon counties, where public defense funding was glaringly inadequate, because it was based on county decisions. In Berrien County, which has one of the highest incarceration rates in the state, the prosecution receives four times more state funding than public and court-appointed defense attorneys.

"For more than 30 years, state and local experts have reported on the deficiencies of Michigan's public defense system, yet the state has done nothing to improve the situation," an ACLU release said at the time. "Recently, an American Bar Association report ... repeatedly cited Michigan for failing to meet the ABA Ten Principles, which are considered the fundamental criteria a system must meet to provide effective public defense."

A recent report by the National Legal Aid and Defender Association also denounced Michigan's public defense system, citing the fact that it is 44th in the per capita amount of public defense funding among the states, at a rate of \$7.35.

Granholm unsuccessfully appealed an Ingham County Court decision in favor of the suit, which is now pending a state Supreme Court hearing.

Numerous legal and professional experts also testified at the Dec. 14 hearing.

Among them was Margaret Sind Raben, President of the Criminal Defense Attorneys of Michigan.

"The lack of resources for adequate defense services leads to routine violations of a defense attorney's responsibilities to the client and routine violations of a defendant's right to a defense," she said. "State and county prosecutors have investigators, scientific and forensic testing, and expert witnesses. The attorneys who represent the indigent rarely have any of this assistance and rarely find experts willing to work for the "indigent defense" price. The result: wrongful convictions and excessive convictions. This is third-world justice."

She cited the resulting costs to the state, including longer sentences than the law requires at a cost of \$32,000 a year per prisoner, the lack of defense consideration of more cost-efficient options such as drug treatment, mental health care, and rehabilitative support for appropriate defendants ... a working public defense system supported by adequate state funding and meeting national standards will reduce the impact, and the cost, to the Corrections system."

Wayne County Prosecutor Kym Worthy also testified, purportedly on behalf of the legislation, but she and an assistant prosecutor spent over half an hour complaining about cuts in spending for prosecution and expressing the fear that the bill would result in more such cuts.

For more information, contact The Michigan Campaign for Justice at 403 Seymour, Suite 201, Lansing, MI 48933, (517) 372-3050, [info@michigancampaignforjustice.org](mailto:info@michigancampaignforjustice.org),

An online petition to legislators is available.

[www.micoalitionforjustice.org](http://www.micoalitionforjustice.org).