

December 24, 2009

Editorial: Michigan needs to take steps to assure fairness in assignment of lawyers for the poor

THE DETROIT NEWS

Sometime next year, lawmakers will decide whether to create a new state-run system of legal representation for people who are accused of crimes but can't afford to hire lawyers on their own. This is the proposed solution to a major problem with the justice that is dispensed to the poor: It's uneven and often inadequate and unfair.

The state may not be able to afford all of what's laid out in this proposal right now, but must make whatever improvements it can. It may, in fact, be forced into doing so. Michigan's Supreme Court has agreed to consider an American Civil Liberties Union class-action lawsuit claiming that shoddy legal representation is depriving many defendants of their constitutional right to a fair trial.

Counties currently have to shoulder the entire financial burden of providing public defense for the poor. Judges often appoint local attorneys for the poor. In the past, there have been scandals because some judges have assigned lawyers for personal reasons or who have been the most generous contributors to their campaigns, regardless of their skill.

The most recent tally for total annual county expenditures for criminal defense in Michigan is \$74.4 million -- 44th among the 50 states and 38 percent below the national average on a per-capita basis. Spending in the current system would have to be increased \$45.7 million to reach the national average, according to the nonpartisan House Fiscal Agency.

The problem is that the state faces a projected \$1.8 billion revenue shortfall for the next budget year.

The legislation, sponsored by Rep. Bob Constan, D-Dearborn Heights, would put public defense throughout Michigan under the direction of a new state-funded office, director and commission, which in turn would set up regional offices to appoint publicly paid attorneys for indigent defendants. Defense attorneys would be assigned cases commensurate with their experience and training. Murder cases -- with the potential for life sentences -- would go to attorneys with the most skill and experience. Lesser crimes involving relatively small penalties could be assigned to less experienced lawyers.

House Fiscal Agency analysts say the proposed reforms could save Michigan enough money to cover the added cost by reducing the number of wrongful convictions and accompanying lawsuits; assure proper sentencing; and avoid excessive sentences. Public defenders, they argue, could address legal problems at the start of prosecution rather than fixing them after conviction.

Unfortunately, the financially strapped state would have to front the added millions of dollars needed for this setup while hoping those savings materialize later.

There are less expensive interim steps. One is state criteria for deciding which defendants qualify for publicly paid defense, replacing the unfair variation that exists among the 83 counties. Another is statewide standards for determining which lawyers are allowed to handle which kinds of cases. And the state could draw up judges' canons of conduct ensuring that all criminal defendants are made aware of their rights and afforded those rights.

We shouldn't use scarce funds as an excuse to do nothing. Poverty shouldn't force anyone to forfeit the right to equal treatment under the law.