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Adequately funding indigent defense will save Michigan money in the long run

Guaranteeing citizens' constitutional rights is a basic function of state government

In America, the right to adequate counsel is a bedrock of the Constitution. But in Michigan, that right is a joke for those who can't afford their own lawyers.

That deficiency is made plain by the scandalously low pay mandated for court-appointed attorneys, and in the appalling lack of state standards governing who represents the poor in court. Michigan ranks near the bottom nationally -- 44th -- in per capita spending on indigent defense. Together, the state's counties spend only about \$80 million defending those who have no money to defend themselves.

Morally, it's indefensible. And economically, it's stupid.

Consider how underfunding indigent defense might be affecting some other numbers here in the Great Lakes State. Michigan spends \$2 billion annually on corrections, the fastest-growing component of an out-of-control budget. The state ranks 11th nationally in per capita incarceration, and first among seven other states in the region.

How much less would Michigan spend on prisons if it more faithfully provided adequate defense for the poor? If you diverted even a fraction of the money being swallowed by corrections to bolster the state's indigent defense efforts, how much would that contribute to the reduction of the state's structural budget imbalance?

Those are questions that no one in Lansing can afford to avoid anymore.

Because fixing the state's indigent defense system is not just the right thing to do. It could also be one of the key ways to restrain public spending on corrections.

"In theory, truth emerges when two equal adversaries -- with equal resources -- battle it out in the courtroom," said F. Martin Tieber, an East Lansing appellate attorney and former deputy director of the State Appellate Defender Office. "That's the basis of our justice system. With Michigan's abysmal public defense system, however, it often doesn't work that way. Innocent people are convicted, and other people are convicted of more serious offenses than they should be, leading to longer sentences. It creates a lot of unnecessary spending on prisons."

Laura Sager, director of the Campaign for Justice, a nonprofit, nonpartisan coalition seeking legislative reform, said better public defense will mean more defendants referred to appropriate community-based alternatives to prison and jail.

"Fixing Michigan's failing public defense system will be part of the solution to reducing Michigan's high incarceration rate," she said. "Public defenders with adequate training and resources, and reasonable caseloads, can identify problems like mental illness, substance abuse and learning disabilities at the front end of the legal process, and then work with the court to find more effective and less costly solutions."

A long succession of governors and legislators in Michigan has shirked the responsibility to ensure that counties meet constitutional standards for indigent defense. So what we have now is a hodgepodge of poorly funded county programs that just don't cut it.

Counties dispense discount justice with either low-bid contracts or minuscule fixed fees for exams, pleas, motions and other legal tasks, regardless of how many hours court-appointed attorneys spend on them. Attorneys either settle for hourly wages comparable to fast-food workers' or take on more cases than they can competently handle.

The crisis needs a legislative fix that includes an adequately funded statewide public defender system with uniform standards and oversight, as called for last month by the Michigan Campaign for Justice.

It ought to be a bipartisan effort, not just because of the state's constitutional obligations, but also because of the potential financial benefits.

A robust and efficient indigent defense system will save money by reducing wrongful-conviction lawsuits, making sure poor defendants don't get unjustifiably long sentences, and keeping innocent people out of prison. Each person wrongfully incarcerated costs Michigan taxpayers \$35,000 a year. Moreover, when innocent people are convicted, the guilty remain at large. Getting it right at trial is especially important in Michigan's current judicial climate, in which appellate courts practically rubber-stamp criminal convictions.

High-profile exonerations of people such as Eddie Joe Lloyd, wrongly imprisoned for 17 years for rape and murder, have exposed cracks in Michigan's criminal justice system, quantifying the cost of ineffective defense. How much would the state have saved if Lloyd had never been imprisoned in the first place?

Historically, Louisiana has been somewhat less sensitive than Michigan to civil liberties and constitutional rights. But on this count, that poor, Southern state is far more progressive. Two years ago, Louisiana legislators quadrupled funding for indigent defense. It's not that Louisiana has money to spare, but that state lawmakers there made the connection between their constitutional obligation and the potential for long-term savings.

If Louisiana can do it, why can't Michigan? Answering that question ought to be a priority for the governor and the Legislature in Lansing.

On the net: www.michigancampaignforjustice.org