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ACLU: Michigan's public defender system among worst

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/ The Detroit News

Detroit — Michigan's system of appointing lawyers to represent criminal defendants who can't afford to hire their own is among the worst in the nation, according to a report issued today by the American Civil Liberties Union.

Using numerous prior studies by others that condemned the state's dependence on a patchwork of dissimilar systems run separately by 83 counties, the report blasts a lack of oversight, funding, training and failure to meet national standards.

Michigan is falling short in the basic constitutional requirement of providing lawyers to the indigent accused, claims the ACLU's "Faces of Failing Public Defense Systems: Portraits of Michigan's Constitutional Crisis."

It also profiles 13 people the ACLU claims the system failed. Many of them spent decades behind bars before their convictions were overturned. Others continue to fight for their freedom. Several were to speak today at a news conference in Detroit, where the report was released.

Edward George Carter of Detroit spent 35 years behind bars for rape and robbery before his conviction was overturned in 2010 because his public defender, practicing law just 18 months before her appointment to represent Carter, failed to present forensic evidence that eventually cleared him, said the report.

Upper Peninsula native Frederick Freeman remains in prison 24 years after being sentenced to life without parole for first-degree murder despite a 2010 federal court decision that overturned his conviction and ordered a new trial because his court-appointed, crack cocaine- and alcohol-addicted lawyer failed to present witnesses who could have placed Freeman 450 miles away from the shooting in a Port Huron parking lot. A man who testified at the trial that Freeman admitted guilt in the case later recanted.

Harold Wells was walking down a Detroit street in 1990 when he was arrested for car theft. Two passengers arrested in the stolen car told authorities that they'd never seen Wells before. But his trial in the former Detroit Recorder's Court lasted just 20 minutes and his court-appointed lawyer never bothered to call the passengers as witnesses. Wells served 18 months in prison before a state-appointed appellate lawyer got his conviction overturned. He sued the city and got a \$20,000 settlement.

"This is an attempt to humanize the story," said Rana Elmir, spokeswoman for the ACLU of Michigan. "It's not one individual. It's a broken system that is failing countless individuals."

The ACLU estimates \$13 million was spent on the convictions, confinement and the long process of exonerating the 13 men profiled in the report.

The ACLU's findings rely heavily on a 2008 study by the National Legal Aid & Defender Association, which found public defense lawyers in Oakland County were allowed to define for themselves what constituted quality legal representation. In Detroit, some public defense lawyers took up to 2,800 misdemeanor cases each year, six times the recommended national standard. Many counties had systems for assigning cases to private attorneys that appeared to be rife with courthouse politics and open to abuse.

Michigan is one of just seven states which require its counties to fund and manage their own public defender systems. The counties are spending a combined \$72 million a year, but the figure is more than \$50 million short of what national standards demand, according to the study. Michigan's spending ranks 44th in the nation.

"A lot of research has been conducted to show Michigan is in the race for the bottom," Elmir said. "We need to stop that trajectory. People's lives are at stake."

State officials, including former Michigan Supreme Court Chief Justice Clifford Taylor, agreed after the 2008 report that the findings were alarming, but the state's long-declining financial condition makes dealing with the problem difficult, if not impossible.

Marcia McBrien, spokeswoman for the State Supreme Court, said a lack of funding makes hiring more attorneys to serve as court-appointed representation difficult.

"It is a concern," she said this morning. "The problem is always funding."

Officials with the Michigan Attorney General's Office weren't available for comment.

The ACLU launched a class-action lawsuit against the state in 2007 on behalf of people convicted with what the lawsuit claims was faulty defense from unconstitutionally operated public defender systems in Genesee, Berrien and Muskegon counties. The lawsuit claims appointed lawyers didn't do such basics as meet with their clients or review documents like police reports.

The state's efforts to have the case dismissed reached all the way to the U.S. Supreme Court.

"We finally expect to be able to begin to discuss the merits of the case soon," Elmir said. "The wheels of justice grind slowly, but there are other efforts ongoing, including expected introduction of legislation in Lansing to mandate changes statewide."

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