

# Editorial: Michigan needs to do better job defending the poor in court

By The Grand Rapids Press Editorial Board

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AP File Photo

Justice shouldn't depend on your ZIP code or bank account. Yet in Michigan, poor people too often receive a substandard defense — how substandard depends on which county they're in.

The results are costly not just for those who are charged with wrongdoing, but for the public. Taxpayers have to cover appeals that result from this inadequate system, and bear costs for incarcerating people who remain in prison longer than they should because lawyers who represent them are overwhelmed, under-qualified or both.

What's needed is a statewide system for defending the poor that is uniform and effective. At stake is a basic constitutional right to representation and a fair trial. This is especially important when about 80 percent of state defendants can't afford their own attorney. A case currently before the Michigan Supreme Court may force the issue. But it shouldn't take a court order for the Legislature to demand basic justice.

Legislation that would take the state further toward adequate legal defense for the poor **has been introduced in the House**. It is sponsored by Rep. Bob Constan, D-Dearborn Heights. Rep. Justin Amash, R-Cascade Township, is a co-sponsor. Mr. Amash is a member of the key House Judiciary Committee.

Almost half of the state Appellate Defender Office's filings in 2008 were for ineffective assistance of counsel. That is up from just 14 percent in 1981. The office estimates that the state would save \$132 million annually in prison costs if it eliminated excessive penalties because judges improperly applied sentencing guidelines — sentences that presumably would be shorter and fairer if defendants had more effective counsel.

Michigan spends less on indigent defense than all but six states. This is one of only seven states where trial-level indigent defense is left entirely to counties. Counties set their own pay rates for attorneys and decide individually how much of their state funds to spend on public defenders. Kent County limits attorneys to no more than 40 indigent cases. In Detroit, five part-time public defenders handle 2,400 to 2,800 cases each.

“The level of justice a poor person receives is dependent entirely on which side of a county line one’s crime is alleged to have been committed,” stated a 2008 report from the National Legal Aid & Defender Association that was harshly critical of Michigan’s system.

The legislation from Mr. Constan and Mr. Amash would do away with these geographic inequities. The bill would create a state Public Defense Commission that would oversee separate trial and appellate defense offices. The office would be staffed by a mixture of salaried attorneys and private practice pinch-hitters. Case loads would be limited. Pay, which varies widely under the current system, would be equivalent to prosecutors.

Statewide standards would be created for determining who is eligible for a state-subsidized defense, and require some defendants to pay a portion of their own legal costs.

Counties currently spend a total of about \$74 million on indigent defense. The proposed system would cost \$46 million more. How much it would save in appeals and shorter sentences is uncertain. However, it is likely that providing better attorneys to poor defendants would generate some savings.

The cost for this bill is a concern as the Legislature struggles to get spending under control. However, providing an effective defense for the poor is a U.S. Supreme Court mandate, and may soon be pushed on lawmakers by the state Supreme Court. Lawmakers should approve this legislation or something like it to prove that “justice for all” isn’t just a slogan.

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