



Local News

Bill proposes state control of indigent legal defense

By SCOTT AIKEN - H-P Staff Writer

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ST. JOSEPH - Michigan is failing to meet its constitutional obligation to provide competent legal defense for poor people charged with crimes, the director of a reform group said Thursday.

But a Berrien County attorney believes the proposed solution would be just another bloated bureaucracy.

The Campaign for Justice, a coalition of about 70 groups, is working in support of legislation that would create a state indigent defense system with specific standards and adequate funding, Laura Sager told Berrien County commissioners.

"The campaign is in this for the long haul," Sager said. "We've mobilized tremendous political support."

A bill pending in the Michigan House Judiciary Committee would create, under the judicial branch of government, an appointed nine-member Public Defense Commission to plan and oversee an office of public defense. Regional offices would oversee the method of providing lawyers at public expense.

Services would be provided through contracts with lawyers, by assigned counsel and staff attorneys.

Under the bill, the system would meet and enforce minimum principles for indigent defense set by the American Bar Association and State Bar of Michigan.

Sager said there is "significant momentum" for action, and a work group is determining what is needed to bring the bill out of committee this summer.

The Campaign for Justice is a 2,200-member nonpartisan group supported by a range of organizations working in criminal justice, civil rights, public policy and other areas.

Michigan is one of only seven states that places the burden for indigent defense on counties, Sager told commissioners.

Funding and commitment vary greatly from county to county, she said, resulting in a hodgepodge system that does not deliver services consistently.

Courts in each county determine how lawyers will be hired for indigent defense and how they are paid. Berrien

is one of about 40 counties that contracts with lawyers or groups of lawyers for the service.

One common problem, Sager said, is that courts aiming to cut costs enter into contracts that pay lawyers a flat fee to handle any number of cases that are filed, resulting in an overload and inadequate defense work.

"This is clearly a tremendously underfunded system," Sager said.

Since the 1970s a number of studies have pointed out serious problems with Michigan's method of providing for indigent defense.

A 2008 study commissioned by state lawmakers, "A Race to the Bottom," found that Michigan's annual spending of \$74.4 million for indigent defense, or \$7.35 per capita, is 38 percent below the national average and less than that spent by 43 of the 50 states.

The study, conducted by the National Legal Aid & Defender Association, found that Michigan's indigent defense system did poorly or failed in competency, consistency, training, quality, funding/structural integrity and other areas.

The study assigned an "F" grade for system independence. Judges have complete discretion in awarding contracts or appointing defense attorneys, the study said, and that sometimes compromises the system.

R. McKinley Elliott, corporate counsel for Berrien County, challenged the Campaign for Justice contention that only a state-controlled system of public defense will do.

"The thrust seems to be you can't have a good lawyer" unless provided by a state bureaucracy, he told county commissioners.

Elliott contends that the Public Defense Commission and its 11 regional offices proposed in the legislation would eat up a lot of money that would otherwise be used for defending poor people in criminal cases.

After the meeting, Elliott said the indigent defense lawyers working in the county, especially those handling felony cases, are competent people with many years of experience.

The proposed legislation and the push to get it enacted "injects political philosophy into the process," Elliott said.

"As far as I'm concerned it's highly suspect in origin and the direction that this is taking. It seems to be focused less on efficiently providing services to those who need them than on creating a new government entity."

While the public defense reform bill is pending in the Legislature, the American Civil Liberties Union is attempting to bring change through a lawsuit.

The 2007 class action civil rights lawsuit filed against the state in Ingham County alleges that indigent defendants did not receive constitutionally adequate counsel from their court-appointed lawyers.

The suit was filed on behalf of poor defendants in Berrien, Genesee and Muskegon counties. The counties are not named as defendants.

Eight plaintiffs in the case claim that their lawyers negotiated plea agreements without their knowledge, did not discuss the cases with them and failed to provide a competent defense.

The suit alleges that those shortcomings resulted in wrongful convictions, that people pleaded guilty to

inappropriate charges and that their lawyers did not pursue workable defenses.

saiken@TheH-P.com