

## Guest view: State needs to raise itself from bottom of justice system

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**GateHouse News Service**

Posted Aug 11, 2008 @ 03:03 PM

As Hillsdale's elected representative to the State Bar, I circulated the report "Evaluation of Trial-Level Indigent Defense Systems in Michigan" to Hillsdale attorneys the day it was published: [www.michbar.org/publicpolicy/pdfs/indigentdefense\\_report.pdf](http://www.michbar.org/publicpolicy/pdfs/indigentdefense_report.pdf)

Citizens should read the report — this issue is complicated, but it is important. Americans are fair-minded. Our Constitution protects the right to counsel, and the Supreme Court interprets the 6th Amendment to mean that those charged with crime who cannot afford to pay for counsel must be provided counsel at government expense, just as the government funds all those powers arrayed against the accused: police, deputies, troopers, agents, dogs, labs, experts, prosecutors, victim advocates, plus vast technical, library, legal research, and surveillance tools.

Presently there is no parity between prosecution and defense—this playing field is not level!

I studied the report, attended a conference in Lansing, and discussed it with colleagues here. It covers 10 counties, and it accurately paints an utterly dismal picture. The defender system in Michigan is probably the worst in the nation. In fact, in one county, arraignment day is called "McJustice Day."

Is the public defender system in Hillsdale also broken?

Right to Counsel. With a flat-fee contract public defender system in Hillsdale, there is no reason for a defendant to be denied counsel. When an attorney is assigned to the case, judges know it will move more smoothly through the system and that the outcome is more likely to be fair. Sometimes, an accused will choose to represent himself, (we call these folks "inmates"), but the courts lawfully discourage it because they know that the defendant faces a difficult, complicated battle. Hillsdale gets a top grade on "Right to Counsel."

Docket. The SCAO (Supreme Court Administrative Office) grades courts and judges as to how fast they keep cases moving through their courts, their "docket." Of course, they provide no funding whatsoever to make this happen. (Local taxpayers fund the county courts!) With ~10 felonies and half-a-dozen misdemeanors for the duty public defender, pre-trial day is hectic. (I bring lunch!) But, where counsel and prosecutor cannot arrive at an agreement acceptable to the accused, matters can be adjourned (postponed). Attorneys and prosecutors are expected to get the job done. It's not easy. Hillsdale pushes docket-it has to-but, in my opinion, Hillsdale rates far better than the 10 counties in the report.

Time to Prepare. Unlike counties in the report, Hillsdale public defenders are given police reports well in advance. Even where a report is missed, a replacement is had in minutes. Counsel meets with the accused to go over the report. Defendants provide their version, point out concerns, and counsel argues critical issues with the prosecutor. There is adequate time to prepare for court, and where needed, defense attorneys or prosecutors ask for more time or for more information. Hillsdale receives a top grade.

Meeting with Clients. ABA standards require a private place at court to meet with clients. As in most counties, Hillsdale has no suitable place to meet with the accused, except at the jail. Cases are discussed on the sidewalk or in a lobby crowded with defendants, families, and curious (and adverse!) co-defendants, plus other citizens going about their business. We need more space—let me know when that big State of Michigan check arrives, and I'll help lay out the building.

Investigative Resources. The report says that just being able to call for re-investigation by the police is constitutionally inadequate support for the defense counsel. The police bring charges to the prosecutor, and while fair-minded, are members of the prosecution team. Statewide, there is inadequate trial support for defense counsel. Asking the police to investigate for the defense is like throwing a pass to the opposing team and asking them to score your touchdown for you.

Funding. The State of Michigan passes laws; lots of laws; tough laws. Then, it funds a vast array of prosecution-side resources to enforce these laws. We spend more money on prisons than we spend on education. The U.S. Constitution requires free counsel for the indigent. The State of Michigan leaves it to the counties to pay. Not one penny comes from the state for trial court defense funding! The report details how counties, funded by property taxes, cannot afford to fund indigent defense. Michigan is sixth from the bottom in indigent defense funding per capita. As Mr. Carroll said in his letter to the Daily, Hillsdale funds indigent defense below the level of the worst state, Mississippi. But, can we solve this problem locally? No!

We must involve the courts, legislature, governor, county commissions, bar association, and interest groups. The political process works; it's what we believe in. Changes are necessary, but the primary issue will be "Who pays?"

I am proud to be part of the team of three Hillsdale contract defenders. I have never seen a lack of commitment to a just outcome. Energetic, zealous,

advocacy is the law of the land, and we deliver. I will add: I have never seen a lack of commitment to justice by the prosecution or the courts. And, where defense and prosecution cannot agree, we bring the case to the thoughtful jurors of Hillsdale County.

My suggestion: let the State of Michigan close just 2 percent of its vast prison system and release defendants imprisoned for victimless crimes, those with no history of violence or theft. That money is enough to raise Michigan from the bottom of the justice scale to the national midpoint. Indigent accused would see a defense funded on par with the forces arrayed to convict them.

Only then, will Michigan accord with the Constitution of the United States.

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