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State should assume duty for defense

A Lansing State Journal editorial

The people of this state aren't particularly interested in justice, judging by a new report on how the state provides legal defense for the poor.

It's time for a fundamental shift in how indigent defense is funded. The state must reassume a duty it allowed to lapse to counties; and legislators must prepare to spend more money to ensure more justice.

A study by the National Legal Aid & Defender Association rated Michigan 44th nationally in indigent defense, on a per capita basis. This shouldn't surprise, though, since Michigan has long left legal defense funding to over-stretched counties.

Michigan's counties are combining to spend about \$74 million a year on public defense, says David Carroll, NLADA director. Just to reach the national per-capita spending average, Michigan would need another \$46 million, the NLADA report says.

Michigan's county-funded system may be venerable, but it's one of only seven nationwide. Nor is it logical. The courts are a state institution; funding for legal defense is a state responsibility.

Worst of all, it's not fair. By phone last week, Carroll noted that Michigan doesn't even have consistent rules on who is entitled to a court-appointed attorney. It varies by county, with some strict and some loose.

The Michigan Supreme Court, Carroll says, could change that by rule. It should.

But only the Legislature can tackle the questions of funding and organization.

The state's being sued already for "unconstitutional" systems in three counties - a lawsuit that argues the U.S. Supreme Court has made it clear that indigent defense is a state duty, not a county one.

Rather than battling in court and risking the details of a judge-ordered fix, legislators should build their own solution.

That will mean money. But in a \$2 billion Corrections Department, there must be \$50 million in savings somewhere.

Ingham County was not studied by NLADA. And Ronald Bretz, a Cooley law professor who specializes in criminal law, says: "Ingham County, unlike the counties named in the lawsuit, makes an attempt to maintain quality in defense representation."

Still, Ingham has recent experience with an egregious failure of justice: Claude McCollum was convicted of killing a local woman - even though he didn't do it.

Ingham County Prosecutor Stuart Dunnings III won that conviction, which he later admitted was wrong. As a prosecutor, with experience of how the system can fail, Dunnings could be a

notable advocate at the Capitol for indigent defense reform.

Bretz says Ingham County is "not bad" by Michigan standards. So, if a man can be convicted here of a killing he didn't commit, then it's clear the entire state needs reform.
