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State, Not County Runs Public Defender Under Plan

A House Judiciary subcommittee on Tuesday will look at how state government can afford picking up the cost of the entire state public defender system.

Michigan currently has a mostly county-run system, unlike most other states, said Indigent Defense Subcommittee Chair Bob **CONSTAN** (D-Dearborn Heights). Under potential legislation Constan will bring before the panel on Tuesday, the state would take over the system from counties and there would be dedicated public defenders, instead of judges appointing attorneys. It would be financed by a surcharge on bail bondsmen and increased fees paid by criminals.

Constan said the "real issue" here is not that the system needs reform, but how to pay for it, given the state's "dire" budget situation. He did not put a price tag on his legislation. But Constan said he wants the system to be self-funding and argued that reforms could cost less than the current system.

Laura **SAGER**, director of the Michigan Campaign for Justice (MCJ), which is pushing for the reform, said indigent defense is inefficient, inconsistent and underfunded in Michigan. The group gives Michigan an "F" in its report card. The group provided a model draft of legislation to Constan.

"What side of a county line you're on shouldn't determine access of services or quality of services," she said.

In Michigan, counties exclusively fund trial-level services, according to the National Association of Defense Lawyers. At the appellate level, there are two arms, the Michigan Appellate Assigned Counsel System (MAACS) and State Appellate Defender Office (SADO). MAACS is given state funding for administrative costs, but counties pay the lawyers. SADO, which represents 25 percent of defendants with their appeals, is overseen and funded by the state.

The MCJ backs 11 principles of a Public Defense Delivery System that were adopted by the Michigan Public Defense Taskforce in 2002 and by the State Bar of Michigan's Representative Assembly in 2002. They include an independent public defender system, having the same attorney represent a defendant through the end of a case and a controlled workload for defendant's counsel to ensure quality representation.

Judiciary Chair Mark **MEADOWS** (D-East Lansing) appointed Constan, an attorney of 22 years, to head up the subcommittee a few months ago. So far, there have been several workgroup meetings. Those participating include the MCJ, State Bar of Michigan, State Court Administrators and judges.

Sen. Liz **BRATER** (D-Ann Arbor) has long championed indigent defense as a member of the Senate Appropriations Judiciary Subcommittee. She failed to get money for SADO reinstated into the Fiscal Year 2010 budget, but did win a \$100 placeholder in case Michigan gets federal money (See "[Senate Whacks, Passes 4 Budgets](#)," 6/11/09). SADO was reduced by \$82,500 in [SB 0249](#) and MAAC was sliced by \$14,800.

She said "on first blush," she agrees with the concept in Constan's legislation, but she isn't sure what chance it has in the Senate.

"Every citizen has a right to counsel under the U.S. Constitution," she said. "Some counties do a better job than others and every county is underfunded."

Work on indigent defense was a major issue in last week's 2-1 Court of Appeals' decision in *Duncan v. State*, which allowed a suit filed by the Michigan American Civil Liberties Union (MACLU) to go forward. The state sought immunity. The plaintiffs claimed the indigent defense systems in Berrien, Genesee and Muskegon counties don't provide adequate assistance to defendants.

The case could potentially have a similar impact as Constan's bills, with the courts forcing the Legislature to spend more money on the public defender system. In his dissent, Judge William **WHITBECK** said the impact on state expenditures had to be considered.

In February 2007, the ACLU filed a class action against the state and the governor on behalf of all indigent criminal defendants in Berrien, Muskegon and Genesee counties. The lawsuit was filed in Ingham County Circuit Court and called on the court to declare the current public defense systems of the three counties unconstitutional and compel the state to provide representation consistent with national standards and constitutional norms. In May 2007, Ingham County Circuit Court Judge Laura **BAIRD** rejected the state's calls to dismiss the lawsuit, but the state appealed.

The Appeals panel did not rule on the merits of the case, just that the suit could go forward.

"When that system is broken, fair trials are impossible, innocent people go to jail, and the guilty remain free to commit other crimes. In a state where we spend more on prisons than on education, it is imperative that this broken system be fixed and that all those accused of a crime receive the same quality of justice no matter how rich or poor," said MACLU Director Kary **MOSS**.