

# Column: Michigan guilty of providing poor indigent defense

By Peter Luke

April 18, 2010, 5:48AM

Suppose Gov. Jennifer Granholm is nominated to the U.S. Supreme Court, she's either on the long or short list depending on what you read, one confirmation hearing question might be relevant.

“It's been two years since a report commissioned by the Legislature described Michigan's patchwork system of providing defense counsel to those who can't afford it as a mess, one that violates one of the most valuable rights in the U.S. Constitution — the Sixth Amendment right to a lawyer when accused of a crime. What have you done about it?”



The answer is not too much.

Not that the problem originated during her tenure; Michigan's county-based method of indigent defense has been swept under the rug for decades. Granholm is merely the latest governor who hasn't expressed any interest in cleaning it up.

As governor, she's the defendant in a proposed class-action suit that seeks a court-mandated overhaul. Granholm and the state, seeking to block the suit, lost at the Ingham County trial court level, at the Michigan Court of Appeals and last week took a third stab at it when a skeptical Michigan Supreme Court was asked to dismiss it.

Writing a brief in support of the suit were three retired Michigan judges — William Giovan and John O'Hair from Wayne County, and Daniel Burrell of Livingston County.

Michigan spends less per capita on indigent defense than only six other states. Michigan is one of only seven states that imposes the responsibility for trial-level indigent defense entirely on counties, those of which with the most criminal cases are the least able to pay for it.

“Michigan's system for public defense is near the very bottom of all the states,” they write.

“We know from experience that: lawyers overburdened with unmanageable caseloads often meet their clients just a few minutes before court hearings; there is no ongoing communication with clients or even any confidential meeting place in the courthouses; and, there is little or no funding for experts or investigators necessary to build an effective defense,” they say.

And they continue: “Training resources may exist in some counties, but are totally absent in others. There are no written eligibility standards, no merit-based attorney hiring and retention programs, no standards to evaluate

programs, no system of attorney supervision and monitoring, no workload standards and ... no independence from the judiciary.”

That in a nutshell describes the litany of criticisms described in a 2008 report by the National Legal Aid and Defender Association that the Legislature asked for in 2006.

The suit, if allowed to proceed, in the end will ask Michigan’s high court to do what Granholm has not: apply pressure on the Legislature to craft a replacement and pay for it.

There is a bill, sponsored by Reps. Bob Constan, D-Dearborn Heights, and Justin Amash, R-Cascade Township, that would scrap the current system and replace it with a uniform state-run program managed by a new state public defender and an appointed commission. The House Judiciary Committee will begin work on it this month. The governor’s office doesn’t have a position on it.

Attorneys would be assigned based on experience and training, caseloads would be limited (the national average is 400 per year; in Detroit it can be 2,800), compensation would be comparable to assistant prosecutors, poverty guidelines for defendant eligibility would be set and courts could compel defendants to pay a portion of their representation.

Michigan counties spend a combined \$74 million now on indigent defense. Bringing the state up to the national average would cost another \$46 million. As there is no apparent mechanism to recover for the state the money currently being spent by counties, the Legislature seemingly would have to fund the entire cost.

If a new state system carried a price tag of the average spent nationally, that’s \$121 million. It could be more.

One argument being made to put a politician on the U.S. Supreme Court is that such an individual would bring real-world problem solving skills to the bench.

Ensuring that someone charged with a crime has competent counsel is not just a problem to be solved. It’s a constitutional protection that an honors graduate of Harvard Law School and candidate for the nation’s highest court might think should be guaranteed.

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