

Groups claim public defender system fails defendants

By Wayne Peal
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Lives, families, and state budgets are broken because Michigan's public defender system is failing, according to a report issued last Wednesday by the state branch of the American Civil Liberties Union.

"We're asking for a system that works," said Robin Dahlberg, senior staff attorney with the Michigan ACLU's Racial Justice Program.

The ACLU and Michigan Campaign for Justice on May 18 released the report "Faces of Failing Public Defense Systems," a 67-page document both groups hope will be a springboard for reform.

Unprepared, or worse incompetent, public defenders not only rob defendants of their constitutional rights, supporters said, but they actually cost state taxpayers money.

"We're sending people to prison when no crime was committed," said F. Martin Tieber, a Lansing-based attorney and former staff member of the State Appellate Defender Office.

Rather than focus solely on statistics, the ACLU report focuses on 13 individuals whose incarceration, it claims, was the direct result was directly tied to flaws in the state system. Several subjects were present last Wednesday at the ACLU's Woodward Avenue offices to speak of their experiences.

"It was like a roadblock--like nobody cared," said Frederick Mardlin, a St. Clair County man whose conviction in a 2006 arson case is currently before the Michigan Court of Appeals.

In the report, the ACLU claims, Mardlin's conviction--and subsequent three years in prison--was the result of the court's failure to underwrite his initial attorney's request for expert testimony on the fire that destroyed Mardlin's home.

False savings

"The state of Michigan spent \$100,000 (the estimated cost of Mardlin's imprisonment) to save St. Clair County \$1,000 or \$2,000," ACLU officials claimed.

While ACLU members acknowledged the issue was complex, they said much of it stems from the lack of a strong central public defender system.

Instead, the system is run on a county-by-county basis leaving justice at the mercy of each county's ability to pay, Dahlberg said, not to mention the number and quality of attorneys in each given county.

With diligence, ACLU officials noted, convictions can be overturned. But it takes time. "There were times when I thought I'd never get out," said Edward George Carter of Detroit, who spent 35 years in prison for a 1974 sexual assault before his conviction was overturned last year.

Carter's conviction, the report states, was due to his attorney's lack of experience and limited contact with her client.

"They (prosecutors) are always looking for a feather in their cap," said Carter who added he was in the process of suing Wayne County over his conviction and subsequent imprisonment.

The relatively new practice of DNA evidence has helped free several wrongly-convicted prisoners, said David Moran, a co-founder of the University of Michigan Law School's Michigan Innocence Project.

The project has led to five exonerations, Moran said, since its 2009 founding. What often cannot be overcome, he added, was the "wretched lawyering" many indigent suspects receive.

In addition to the cost of a wrongful conviction, including wasted state money to house innocent people and subsequently, costly, settlements in wrongful imprisonment cases, Moran said there's another cost to the public.

"The real criminals are still out there, still committing crimes," he said.

Dahlberg pointed to Minnesota as a state whose more-centrally administered system could serve as a role model.

ABA principles

ACLU spokeswoman Stephanie Chang said the real goal was to have Michigan more clearly adhere to the American Bar Association's principles for adequate public defense.

"It's things like having attorneys being appointed quickly and meeting with their clients as soon as possible," she said.

Changing Michigan's county-based system to a state-based system will likely cost more than the currently county-based system, which they estimated at \$80 million per year. That figure, they noted, ranked Michigan as 44th in the nation for public defense spending in a survey by the National Legal Civil Defense Association.

How much more it would cost, they said, is undetermined.

Officials with Oakland County's public defender program say they strive to make sure everyone is treated fairly.

"You can't just come in off the street and say, 'I want to represent clients,'" said Lisa Langton, deputy court administrator. "We do have standards that you must meet both in terms of experience and with regard to ongoing legal training and we do have an excellent set of attorneys that we use."

None of the 13 cases cited in the ACLU report came from Oakland County communities. But Langton agreed that financing was a major issue.

"The big issue for us--and probably for other counties--is that we can't pay attorneys what we'd like. The money just isn't there."

Despite its status as Michigan's wealthiest county, Oakland has had to cut money from its public defender program each year for the past eight years, Langton said. The ACLU will present bound copies of its report to members of the state Legislature but are far from certain of the response.

"There are some legislators who are interested," the ACLU's Chang said.

New governor Rick Snyder's interest in the issue remains undetermined, ACLU members said.

ACLU attorney Dahlberg acknowledged Michigan's still-lingering recession makes it tough for elected officials to rally around any proposed changes to the current public defenders program.

"We had some interest from the former governor - as long as it didn't cost anything," Dahlberg said.

Legislative interest

While little is expected in the current legislative session, the issue has attracted interest among some key legislators.

"The budget is pretty much a done deal," said state Rep. Kurt Heise (R-Plymouth), vice chairman of the House Judiciary Committee. "But that gives us the summer and fall to

explore major issues like this and it's something Chairman Walsh (Rep. John Walsh, a Livonia Republican) and I plan on doing."

A House task force, expected to be led by state Rep. Tom McMillin (R-Rochester Hills), could begin as soon as this summer to gather information on the state of legal representation for indigent Michigan residents.

"It wouldn't be just about the money," Heise said. "We'd look at how attorneys are assigned and what role the judiciary plays."

Heise is already involved with a review of the state's legal system, designed to determine what savings could be generated by eliminating or consolidating some judgeships. ACLU members agree the issue goes beyond mere dollars and cents.

"This is a constitutional issue," Dahlberg said. "We are all complicit."

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