

WRITTEN TESTIMONY OF MARGARET SIND RABEN
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MICHIGAN HOUSE JUDICIARY COMMITTEE HEARING ON HB 5676
SPONSORS: Bob Constan, Justin Amash
December 14, 2009

Thank you for the opportunity to provide testimony on an issue so vital to Michigan. The crisis in public defense services is one that must be addressed and I am very encouraged by the important steps you have taken in introducing HB 5676.

My name is Margaret Sind Raben and I am the president of the Criminal Defense Attorneys of Michigan (CDAM). CDAM was formed in 1976. We are trial lawyers and appellate advocates in Michigan and federal courts. Our mission is to promote quality defense services in all areas where there is a right to counsel, to educate the public in the need for quality and integrity in these defense services; and to guard against the erosion of the constitutional rights guaranteed by the State of Michigan and the United States. CDAM is a coalition member of the Campaign for Justice and supports the reform of Michigan's public defense system to create a system which will meet the Eleven Principles of a Public Defense Delivery System and is supported by adequate state funding.

A FAILING PUBLIC DEFENSE SYSTEM

Michigan's current public defense system does not work. It is unfair and inefficient. A working justice system requires an adequately funded and resourced defense attorney. A working justice system IS a working defense system. In Michigan, the mishmash of public defenders, contract counsel, and assigned counsel from the private sector are under-resourced in providing competent and effective representation to individuals who cannot afford to hire attorneys for their trial-level proceedings. In Michigan, the working poor have always made up a disproportionate percentage of indigent criminal defendants. Although the state has the constitutional mandate to provide counsel, the counties fund the cost of attorneys for these indigent defendants. The counties have rarely provided more than minimal funding for these defender services. In these staggering times, the counties are slashing funds for defender services. The result is a second-class system of defense for many of Michigan's citizens and a less reliable, and ultimately more expensive, system for Michigan as a whole.

The lack of resources for adequate defense services leads to routine violations of a defense attorney's responsibilities to the client and routine violations of a defendant's right to a defense. A trial-level criminal matter is adversarial. Defense attorneys are expected to investigate and challenge the state's case. State and county prosecutors have investigators, scientific and forensic testing, and expert witnesses. The attorneys who represent the indigent rarely have any of this assistance and rarely find experts willing to work for the "indigent defense" price. The result: wrongful convictions and excessive convictions. This is patently unfair. It is third world justice.

COST EFFICIENCIES AND THE ROLE OF THE DEFENSE AT SENTENCING

Michigan's Corrections costs are staggering. Government budgets are tightening. A public justice system must consider these imperatives in imposing appropriate sentences. An under funded defense system often result in greater punishment than the law requires and then the expenses of appeals and remands for correction. A public defense system with effective defense representation results in the appropriate consideration of cost efficient sentencing options such as drug treatment, mental health care, and rehabilitative support for appropriate defendants, and reserves expensive prison beds for those who truly threaten the public safety.

However, it requires time and adequate resources for a defense attorney to investigate a client's background to effectively present a balancing view and to research and suggest sentencing alternatives. Under-resourced assigned counsel many times are not equipped to provide these assessments and lack the services to get them. The micro result is that an individual is not given the appropriate "second chance" or community correction and support. The macro result is that Michigan pays excessive corrections costs and the long-term social costs of incarcerating more people than appropriate. A working public defense system supported by adequate state funding and meeting national standards will reduce the impact, and the cost, to the Corrections system.

CONCLUSION

In November 2008, CDAM approved a resolution in support of public defense reform in Michigan. The resolution says, "the State of Michigan has abdicated this responsibility [to provide competent and effective counsel] by placing the burden of providing counsel and funding defense services for indigent persons on its counties and providing virtually no state funding or fiscal or administrative oversight . . . [this] results in an uneven quality of justice statewide."

CDAM applauds HB 5676 and the efforts of Representatives Constan and Amash as a positive first step in addressing this issue. We look forward to the coming discussions and hope today is the beginning of that dialogue.

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