

Article published Jul 29, 2010

Michigan's poor deserve better representation

Now that the Michigan Supreme Court has thrown out a lawsuit that could have forced the overhaul of the state's indigent defense system, the job of protecting those who cannot afford their own lawyers falls to the state's executive and legislative branches.

There's no doubt Michigan's current patchwork of underfunded programs fails poor criminal defendants who have a constitutional right to adequate counsel.

The high court has refused to intervene, mainly for technical and procedural issues with the American Civil Liberties Union case. The governor is consumed with budgeting for the last months of her administration. Therefore, the legislature must step up on this issue.

Continuing the status quo not only violates due process for the poor, it adds millions of dollars to prison and appeals court costs.

Berrien County, along with Genesee and Muskegon counties, were the focus of the class action lawsuit filed in 2007 by the ACLU which alleged the counties' public defenders favored plea bargains over a vigorous defense. Each of Michigan's 83 counties sets its own budget for indigent defense and runs its own program. The Michigan Legislature in 2006 authorized the National Legal Aid & Defender Association to examine how the process worked. The yearlong study concluded that the caseload per public defender across the state was about two to five times what the National Advisory Commission on Criminal Justice Standards and Goals said a full-time indigent defense lawyer can capably handle. Further, a public defender typically gets far less funding for a case than is allocated to prosecute it.

Last year, the Michigan House of Representatives introduced a bill to create a statewide system to fund and supervise the work of lawyers representing the poor. Public defender appointments would be based on experience and skill, with caseloads limited and brought in line with the prosecution. Regional offices would manage a mix of private lawyers and salaried public defense lawyers, with counties chipping in to cover costs.

The bill now sits in committee.

We can't say if it is this best answer. The ACLU believes the measure would go a long way to providing fair representation for the poor.

The current process should not stand. Michigan's Legislature must ensure that those who are accused of a crime get fair protection under the law, even when they cannot afford to provide it themselves.