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Michigan must right the legal system for poor

Michigan's House Judiciary Committee has drafted a bipartisan proposal to overhaul the state's 153-year-old indigent defense system.

Whether or not it's the right fix, there is no doubt the system is broken and must be repaired.

A class-action lawsuit set to go before the Michigan Supreme Court this month has forced the issue. The suit was filed in 2007 by the American Civil Liberties Union on behalf of poor defendants in Berrien and two other counties.

Civil rights, public safety and the public purse would have been better served had legislators taken up reform long ago. Complaints about inequity in the system and ineffective counsel have been piling up for 30 years.

The focus on Berrien, in part, was triggered by concerns brought to a governor's task force which convened in 2003 following two nights of riots in Benton Harbor -- concerns that have never fully been addressed. Overall, the ACLU's case includes eight plaintiffs who claim they were granted little time to confer with their lawyers and denied an aggressive defense. The suit alleges that, as a result, some were wrongfully convicted, served excessive jail time before trial and railroaded into pleading guilty to charges when it wasn't appropriate.

The legislature's failure for so long to ensure the constitutional rights of indigent suspects is especially disappointing given the state's early commitment to the cause. Michigan's indigent defense system was created in 1857; the right to free public defense was not ensured nationally by the U.S. Supreme Court until 1963.

A large part of Michigan's current trouble stems from the fact that the state is one of only seven in the nation that pass the entire burden for funding trial-level public defense to counties as an unfunded mandate. Each of Michigan's 83 counties sets its own public defender budget and runs its own program.

Annual indigent defense spending in Michigan now adds up to \$74.4 million, or \$7.35 per defendant, 38 percent below the national average and less than all but six states, the National Legal Aid & Defender Association said in "A Race to the Bottom," a report commissioned by lawmakers. The caseload per public defender across the state on average is estimated to be from two to five times as high as what the National Advisory Commission on Criminal Justice Standards and Goals says a full-time indigent defense lawyer can capably handle.

Added to the inequity, funding for prosecution far outstrips public defense. In Berrien County, which records one of the highest incarceration rates in the state, the prosecutor's budget is three times that for public defenders. HB 5675 would create a statewide system to fund and supervise the work of lawyers who represent the poor. Under the proposal, public defender appointments would be based on experience and skill, with caseloads limited and brought in line with the prosecution. Regional offices would be set up to manage a

mix of private lawyers and salaried public defense lawyers. And because Michigan continues to bleed red ink, the state would need to capture money from its counties to cover costs.

R. McKinley Elliott, Berrien County corporate counsel, has criticized the state's proposed takeover. He points to Berrien's tightened oversight of public defenders, including new caseload limits regarding suspects at critical stages of trial. He raises legitimate concern that expanded bureaucracy could drain even more resources from aid to indigents.

But the system now in place, which according to the State Public Defender Office, costs the strapped state hundreds of millions in extra prison and appeals court expenses, must not stand. It's up to the Michigan Legislature to ensure whatever takes its place not only is efficient but restores respect for those who deserve protection even though they cannot afford to pay for their own legal representation.