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Gideon Alert: Michigan Bar task force recommends how to deliver justice in the face of diminishing returns

BY DAVID CARROLL on TUESDAY, FEBRUARY 1, 2011 at 6:16 PM

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"By almost every measure, indigent criminal defense as a whole in Michigan falls far short of accepted standards, undermining the quality of justice, jeopardizing public safety, and creating large and avoidable costs. Michigan's public defense system has fallen far short of acceptable standards for decades and is worsening ... The cost of properly fixing the system is great; the cost of not fixing it is greater." This is the conclusion reached about indigent defense services in the State Bar of Michigan's "Judicial Crossroads Task Force" report *Delivering Justice in the Face of Diminishing Returns*, released January 26, 2011. The report summarizes the conclusions of a Bar-convened task force composed of **twenty-nine leaders** of the Bar, business, civic and political communities, including 14 judges.



Recognizing that most of the human costs of the longstanding indigent defense deficiencies are "immeasurable," the task force places the quantifiable costs to taxpayers of the "haphazard" right to counsel system at "upwards of several million dollars annually." Such costs include appellate costs and corrections expenditures for inmates who were wrongly convicted or sentenced, and wrongful conviction settlements, among others. Demanding that "the system's failings be addressed urgently, even in the face of Michigan's current and ongoing budget crisis," the task force recommends "shifting the responsibility for public defense funding from local government to the state" and creating "the necessary mechanisms to implement, measure, enforce, and fund statewide standards for indigent defense that will meet national norms and thereby reduce

costly errors."

Though it will take a "sizeable investment" to bring Michigan into basic compliance with the Sixth Amendment, the task force concludes that the needed funds will be offset by "reducing administrative costs, pre-trial detention, defending lawsuits for wrongful convictions, and other potential litigation based upon constitutional defects of our current system."

The task force report is just the latest example of the State Bar of Michigan's commitment to the right to counsel. In May 1977, after a review of the entire trial and appellate procedure for legal representation of indigent defendants in criminal proceedings, the State Bar's Defense Services Committee issued a set of ten recommendations, including setting reasonable attorney compensation rates and dedicating greater resources for expert witnesses.

In 1992, the Michigan Bar Journal devoted an edition of its magazine to addressing the woes of its state's indigent defense system. The publication focused on inadequate compensation for appointed counsel as the chief systemic flaw responsible for compromising the quality of representation provided to the indigent accused. The problem, the authors argued, was only compounded when one considered the state's failure to provide support services (investigators, expert witnesses, etc.) and training for defense attorneys; or the intrinsic lack of independence and freedom from judicial control; or the lack of supervision and qualification standards for appointed counsel; or the lack of a general and statewide institutional presence. In his forward, then Michigan Supreme Court Chief Justice Michael Cavanagh remarked, "[i]t is unfortunate that as we mark the 200th Anniversary of the Bill of Rights and extol its important guarantees, we at the same time witness the failure to secure those guarantees, adequately or at all, to significant segments of society."

In 2003, the Bar's Executive Committee adopted a resolution encouraging the legislature to establish a commission with the responsibility of investigating indigent defense services in Michigan and making recommendations for improvement. In 2005, the State Bar of Michigan adopted the ABA's *Ten Principles of a Public Defense Delivery System*. A year later, the Bar of Michigan was instrumental in getting a concurrent resolution of both chambers of the Michigan legislature passed to have NLADA study indigent defense services under the guidance of the State Bar, which ultimately resulted in the 2008 release of *A Race to the Bottom*.

After reviewing the task force report, a *Detroit Free Press* editorial on January 31, 2011, called Michigan a "McJustice state" that dispenses "discount justice with low-bid contracts or inadequate fixed fees for exams, pleas, motions, and other legal tasks, regardless of how long court-appointed attorneys work" and where attorneys settle for wages "comparable to fast-food workers" while taking "more cases than they can competently handle." Chiding the "long line

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In The Supreme Court of the United States
"The right of one charged with
crime to counsel may not be
deemed fundamental and
essential to fair trials in some
countries, but it is in ours."
Gideon v. Wainwright (1963)

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of governors and legislators in Michigan” who have “looked the other way,” the editorial concludes: “Now that those who know the criminal justice system’s shortcomings most intimately have shown them how, it’s time for Michigan legislators and governor to act.”

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