

# Michigan



## Primary Indigent Defense Delivery System: Assigned Counsel/Contract\* Population in 2002: 10,050,446\*\*

\*Source: "Gideon's Broken Promise: America's Continuing Quest for Equal Justice," by the ABA Standing Committee on Legal Aid and Indigent Defendants, at page 5 (December 2004), available at <http://www.indigentdefense.org/brokenpromise/fullreport.pdf>.

\*\*Source: "State and County Expenditures for Indigent Defense Services in Fiscal Year 2002," by The Spangenberg Group (on behalf of the ABA Standing Committee on Legal Aid and Indigent Defendants), at 4 and Table (September 2003), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/indigentdefexpend2003.pdf>.

During the 40<sup>th</sup> anniversary year of the U.S. Supreme Court's decision in *Gideon v. Wainwright*, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (ABA SCLAID) in 2003 held a series of public hearings to examine the implementation of the right to counsel in state court proceedings for poor persons accused of crimes. In January 2005, ABA SCLAID published its final report based on the testimony provided at the hearings, entitled "Gideon's Broken Promise: America's Continuing Quest for Equal Justice." This information sheet contains a short summary of the "Problems in Indigent Defense" in Michigan that were reported by one of the hearing witnesses, as well as "Recent Reform Efforts" that have occurring in state. For the complete information regarding each of the statements listed below (including references to hearing transcripts, reports, and other supporting materials), please see "Gideon's Broken Promise: America's Continuing Quest for Equal Justice," available at <http://www.indigentdefense.org/brokenpromise>.

## Problems in Indigent Defense

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The following problems were reported by the hearing witness:

- Budget-stretched counties in Michigan are unable to provide adequate funding for indigent defense. For example, the witness reported that appropriations for indigent defense services in that state's largest county were only half the amount available in similarly populated counties outside of Michigan.
- Inadequate compensation for indigent defense attorneys in Michigan makes the recruitment and retention of experienced attorneys extraordinarily difficult
- According to the witness, "[f]or assigned counsel in Michigan, the rule is you don't have an expert. You don't have an investigator. If you want to get one, you get \$150 in Wayne County to hire an investigator to do all the investigation you need. If you want an expert, you will get \$250 to have the expert meet with your client, prepare testimony, and testify. The dollar limits are wholly unreasonable. We really don't have technology support either. Many lawyers who are providing much of the work don't even have a secretary, let alone a law library."
- State funds are provided to train prosecutors in Michigan, whereas defense lawyers do not receive comparable financial support from the state.

- Contrary to the guidance contained in national standards, indigent defense systems in Michigan are not independent from undue judicial or political influence. A witness from Michigan explained that “the elected judges still pass out the assignments for indigent defense cases to help their political fundraising as much as anything else.” Moreover, pay for assigned counsel and public defender offices is part of the trial court’s budget in each county, and in some counties, the judges have discretion to set the fees for assigned counsel. Attorneys who apply for higher than normal fees due to the amount of time spent on a case seldom receive the additional payments, and those that do may be removed from the court-appointed list if they continue to apply because “they are costing the county too much money.”
- Although national standards recommend the use of public defender programs wherever the population and caseload are sufficient to support such organizations, assigned counsel provide most of the indigent defense services in Michigan. In Oakland and McComb counties, both of which are heavily populated, there is no public defender office at all.
- Local elected officials are downright indifferent to indigent defense reform at best and opposed at worst. As a witness from Michigan related, “I once addressed the Michigan Association of Counties meeting, and a county commissioner raised his hand in the back and said: ‘Is there any way we could get defendants from the jail to the prison without going to court? Because you would save a lot of money.’ And that kind of sums up the attitude, especially in the rural counties.”
- Notwithstanding guidance contained in national standards, contracts for indigent defense services in Michigan are sometimes awarded primarily on the basis of cost, without regard to qualifications or any other considerations.
- A lack of statewide oversight and structure (in contradiction to the recommendations of national standards) results in a hodgepodge of local indigent defense systems that are unsupervised and vary greatly in their effectiveness.
- Counsel frequently is not provided to indigent defendants in violation of federal constitutional rights, state law, or national standards

## **Recent Reform Efforts**

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- In Michigan, a broad-based citizens’ coalition known as the Michigan Public Defense Task Force developed a model plan for that state’s indigent defense services and is working to implement the plan through public education and advocacy programs. An *ABA Gideon Initiative* grant were awarded to support the Michigan Public Defense Task Force.
- The State Bar of Michigan in 2002 adopted eleven principles for the delivery of indigent defense in that state, modeled on the *ABA Ten Principles of a Public Defense Delivery System*. And in 2003, the State Bar of Michigan’s Executive Committee adopted a resolution in support of the state legislature establishing a commission to study indigent defense and recommend improvements.

- With *pro bono* assistance from the law firm of Kirkland & Ellis LLP, in 2002, the Criminal Defense Attorneys of Michigan and the Wayne County Criminal Defense Bar Association filed an unsuccessful lawsuit in the Michigan Supreme Court seeking an increase in assigned counsel fees in Wayne County.