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Witness for the defense

Judge Bruce, others call for public defender's office for Berrien County

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Posted: Friday, July 17, 2015 6:00 am

By JOHN MATUSZAK - HP Staff Writer | [0 comments](#)

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ST. JOSEPH - Judge Gary Bruce and other officials are recommending that Berrien County establish a public defender's office to provide better legal representation for indigent clients.

"It's important for everyone, regardless of income, race, age or gender, to have quality legal representation," Bruce, presiding judge in the criminal division, told county commissioners Thursday. "This is what our constitution promises and what separates us from other countries."

Berrien and other counties in Michigan aren't doing a good job of keeping that promise, Bruce charged.

He cited a 2012 study that showed Michigan ranked 44th among states in per capita spending for indigent defense, 38 percent below the national average.

"This statistic came as a surprise to me, and it's one that I'm not proud of as a lifelong Michigan resident," Bruce said. "We can and should do better."

In 2015, Berrien County budgeted \$1.2 million for indigent defense, less than half of the \$2.6 million budgeted for the prosecutor's office, Bruce said.

Prosecutor Michael Sepic estimated that 80 to 85 percent of the defendants in cases handled by his office can't afford their own attorneys.

Berrien County contracts with five firms that provide 22 attorneys available to defend people who cannot afford an attorney.

With all of these attorneys in different locations, there is no oversight or management of caseloads and other standards, Bruce said.

Often, they are conferring with their clients in crowded court house hallways or other places with other people around, he said.

Jonathan Sacks, executive director of the Michigan Indigent Defense Commission, agreed that Michigan's counties offer an "uncoordinated, patchwork quilt" of public defense systems that provide no data to show if legal defense is adequate or whether tax dollars are being spent effectively.

Improving legal defense for poor residents can reduce wrongful convictions, Sacks said. It also can cut back on the number of plea bargains, putting more people on probation and fewer in jail, saving money, he said.

Bruce said that the justice system has "come to the realization that a guilty plea followed by incarceration doesn't address today's needs and simply creates a revolving door for the disenfranchised."

There are different ways to provide legal defense, with the contract model being the least favored, and the public defender model being the "gold standard," said Sacks, a former public defender in Philadelphia.

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Ongoing debate

Improving legal defense for the indigent is not a new discussion, and the most recent recommended reforms came about, in part, due to a civil rights suit filed in 2007 by the American Civil Liberties Union.

The suit, filed in Ingham County, alleged that indigent defendants in criminal cases in Berrien, Genesee and Muskegon counties did not receive constitutionally adequate counsel from their court-appointed lawyers.

A 2008 report, "A Race to the Bottom," showed Michigan spent \$7.35 per capita on defending the indigent, compared to the national average of \$11.86

Another study at the time showed that six defense attorneys contracted by Berrien County handled almost 750 cases each in 2004, and one handled more than 1,000. The study by the National Advisory Commission on Criminal Justice Standards and Goals said a full-time indigent defense lawyer in one year can capably handle no more than 150 felony cases, 400 misdemeanors or 200 juvenile delinquency cases.

In response to these criticisms, Berrien County made changes in the attorney contracts approved in 2010. These included requiring an attorney to follow through on cases from start to finish; to provide private meetings with clients; and setting a maximum of 30 felony cases a year.

The state of Michigan also responded by creating the Indigent Defense Commission, responsible for setting minimum standards, collecting data on indigent defense, working with counties to meet those standards, and awarding grants to encourage compliance.

Muskegon County was the first to start a public defender's office, launching it in 2014.

Judge Bruce, Chief Judge Thomas Nelson and court administrator Brian Ray spent a day in Muskegon County earlier this year to see the program in operation.

Muskegon handles about the same number of cases as Berrien County, Bruce said, but their budget for the public defender's office is only \$175,000 more than what Berrien is spending on indigent defense.

Sacks said the proposal on the table in Lansing is for the state to pay for the additional costs of a public defender's office, based on what a county spent during the previous three years for indigent defense.

Sacks and Bruce each said that Berrien County can get ahead of the curve of reforms mandated by Michigan by acting soon on this proposal.

The county's current contracts with defense attorneys expire at the end of the year.

Skepticism & support

During the discussion, County Commissioner Mac Elliott noted that about one-third of the cost for the prosecutor's office and its 37 staff members, including 19 attorneys, is for fringe benefits.

Adding the costs of benefits to the budget for indigent defense would bring the two expenditures more in line with each other for comparison's sake, he said.

During the debate in 2010 about a state-operated public defender's system, Elliott, then Berrien County's corporate counsel, argued that such as system would add to the bureaucracy and actually take money away from indigent defense.

At Thursday's meeting, Elliott again cautioned that this proposal could significantly increase overhead for the county.

After the meeting, Commissioner Marletta Seats said she was "100 percent" behind the proposal.

She said she also has visited Muskegon County and saw that the system is working and that clients have no complaints.

Board of Commissioners Chairman Jon Hinkelman said he will wait for direction from the board before proceeding with discussions on the proposal.

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