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State not ensuring right of accused to effective counsel

FLINT JOURNAL COLUMN

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THE FLINT JOURNAL FIRST EDITION

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CONTRIBUTING WRITER

Sunday was the anniversary of the 1963 Supreme Court decision in *Gideon v. Wainwright*, in which the court held that "the assistance of counsel is a fundamental right essential to a fair trial." Justice Hugo Black wrote that the need for counsel in criminal cases is an "obvious truth" and that we cannot assure a fair trial unless effective counsel is provided.

More than four decades later, in Michigan, many defendants who cannot afford private counsel are denied the rights upheld in this landmark case. The state of Michigan provides zero oversight, standards, resources or funding for trial level public defense services, leaving this burden exclusively to the counties.

The result is an unfair, broken justice system in which many counties lack written client eligibility standards, attorney performance standards or supervision, workload standards, training, and independence from the judiciary or prosecutorial functions.

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I have seen the Michigan justice system operate from both perspectives - as prosecutor and defense counsel. It is clear to me that we need statewide reform of the public defense system.

In Genesee County, the budget for the prosecuting attorney's office is three times that for public defense services. The county has a fee schedule which does not account for the amount of time court-appointed attorneys actually spend on assigned cases. This encourages plea bargains over preparing competent defenses for clients. Overwhelming caseloads leave attorneys unable to meet with their clients, file necessary pre-trial motions, or prepare adequately for court appearances.

The current system does not ensure the right to effective assistance of counsel as the *Gideon* decision requires, and its deficiency has serious implications for everyone in the county. When the defense is inadequate, the entire criminal justice process does not work. Errors are made. Innocent people go to jail, while guilty people go free.

The broken system is also inefficient. Recently, in Michigan and in Flint, in particular, there has been lots of talk about incarceration rates and the incredible expense of our overcrowded prisons. One important role of public defense attorneys is to explore and advocate appropriate sentences, including alternatives to incarceration and programs that reduce recidivism. When public defenders lack the time and resources to play this role effectively, other parts of the justice system suffer.

There have been many warnings about the state's failure to meet constitutional standards over the past 30 years, yet the state has failed to act. As a result, Michigan has become one of the worst states in the nation, falling far short of standards adopted by the State Bar of Michigan: the Eleven Principles of a Public Defense Delivery System.

The state must fulfill its responsibility to put in place a system that ensures the right to

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effective counsel. The system must involve statewide oversight, funding and standards, and fulfill the Eleven Principles of a Public Defense Delivery System. Compliance with these principles would move us toward fundamental fairness in the justice system. Only with statewide reform will we hear the sound of Gideon's trumpet in Michigan.

Arthur A. Busch was the Genesee County prosecutor from 1993 to 2005 and currently practices criminal defense.

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