

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CHRISTOPHER LEE DUNCAN, BILLY
JOE BURR, Jr., STEVEN CONNOR,
ANTONIO TAYLOR, JOSE DAVILA,
JENNIFER O'SULLIVAN, CHRISTOPHER
MANIES, and BRIAN SECREST, on behalf
of themselves and all others similarly situated,

Plaintiffs,

Case No.

vs.

Hon.

STATE OF MICHIGAN and JENNIFER M.
GRANHOLM, Governor of the State of
Michigan, sued in her official capacity,

Defendants. /

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Kary L. Moss (P49759)
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COMPLAINT

There is no other pending or resolved
civil action arising out of the same
transaction or occurrence as alleged in
this Complaint.

Introduction

1. This is a civil rights class action brought pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, §§ 17 and 20 of the Michigan Constitution, on behalf of all indigent adults who have been charged or will be charged with felonies in the District and Circuit Courts of Berrien, Genesee, and Muskegon Counties¹ and who rely or will rely on the State to provide them with counsel for their defense. Plaintiffs seek declaratory and injunctive relief against Defendants the State of Michigan and Jennifer M. Granholm, Governor of the State of Michigan, to prevent violations of Plaintiffs' legal rights and to remedy Defendants' continuing failure to ensure that Plaintiffs receive constitutionally adequate legal representation.

2. The Sixth Amendment to the United States Constitution guarantees that in all criminal prosecutions the accused shall have "the Assistance of Counsel for his defense." In the landmark case of *Gideon v Wainwright*, 372 US 335 (1963), the Supreme Court established that the Sixth and Fourteenth Amendments require states to provide counsel for all those who have been charged with criminal wrongdoing by the state and are unable to afford private counsel. The Michigan Constitution similarly guarantees each criminal defendant the right to "have the assistance of counsel for his or her defense." Const 1963, art 1, § 20.

3. The right to assistance of counsel is the right to *effective* assistance of *competent* counsel. As the United States Supreme Court has repeatedly made clear, "inadequate assistance does not satisfy the Sixth Amendment right to counsel made applicable to the States through the

¹ Berrien County encompasses the Second Circuit and Fifth District Courts, Genesee County encompasses the Seventh Circuit and Sixty-Seventh and Sixty-Eight District Courts, and Muskegon County encompasses the Fourteenth Circuit and Sixtieth District Courts. The three Counties and the Courts that operate within them are collectively referred to in this Complaint as the "Counties".

Fourteenth Amendment.” *Cuyler v Sullivan*, 446 US 335, 344 (1980); see also *McMann v Richardson*, 397 US 759 (1970). Constitutionally adequate counsel is counsel that is capable of putting the prosecution’s case to the crucible of meaningful adversarial testing. *United States v Cronin*, 466 US 648, 656 (1984). Where, as is the case in Michigan, defense counsel for indigent persons do not have the tools to engage actively and meaningfully in the adversarial process, courts cannot ensure that their decisions, judgments, and punishments are rendered fairly and accurately.

4. This constitutional obligation to provide indigent defendants with adequate counsel rests with the State. *Gideon v Wainwright*, 372 US 335 (1963). Michigan has abdicated its obligation under the United States and Michigan Constitutions by continuing a centuries-old practice of delegating to each of Michigan’s 83 counties the responsibility for funding and administering trial-level indigent defense services within their borders, with little or no funding or fiscal or administrative oversight from the State.

5. Defendants do nothing to ensure that any county has the funding or the policies, programs, guidelines, and other essential resources in place to enable the attorneys it hires to provide constitutionally adequate legal representation. Without any oversight from Defendants, most county indigent defense services are seriously under-funded, poorly administered, and do not ensure that indigent defense providers have the tools necessary to do their jobs.

6. The indigent defense services in Berrien, Muskegon and Genesee Counties have the following deficiencies, among others:

- a. No written client eligibility standards;
- b. No merit-based attorney hiring and retention programs;
- c. No written attorney performance standards or meaningful systems of attorney supervision and monitoring;

- d. No guidelines on how to identify conflicts of interest;
- e. No attorney workload standards;
- f. No adequate attorney training; and
- g. No independence from the judiciary or the prosecutorial function.

7. As a result of these deficiencies, many indigent defense providers in Berrien, Muskegon and Genesee Counties have too many cases; have insufficient support staff; have either no or insufficient resources to hire outside investigators and experts; and lack the skills and experience to handle the cases assigned to them.

8. The absence of manageable caseloads, necessary support, appropriate training, supervision and monitoring, and written standards and guidelines creates severe obstacles to the ability of indigent defense counsel to put the prosecution's case to the crucible of meaningful adversarial testing. As a result of these systemic deficiencies, indigent defense counsel do not meet with clients prior to critical stages in their criminal proceedings; investigate adequately the charges against their clients or hire investigators who can assist with case preparation and testify at trial; file necessary pre-trial motions; prepare properly for court appearances; provide meaningful representation at sentencings; or employ and consult with experts when necessary. In addition, the systemic deficiencies provide no method for ensuring that attorneys are representing clients free from conflicts of interest.

9. The inability of indigent defense counsel to put the case against their clients to the crucible of meaningful adversarial testing causes members of the Plaintiff Class to suffer numerous harms, including but not limited to:

- a. Wrongful denial of representation;
- b. Wrongful conviction of crimes;
- c. Unnecessary or prolonged pre-trial detention;

- d. Guilty pleas to inappropriate charges and denial of the right to trial when meritorious defenses are available; and
- e. Harsher sentences than the facts of the case warrant and few alternatives to incarceration.

10. Defendants' failure to take any steps to ensure that the indigent defense services in the Counties are adequately funded and administered, and that as a result, indigent defense providers have the resources and tools necessary to do their jobs, is an abdication of Defendants' constitutional obligations, and the result is the denial of constitutionally adequate defense to indigent criminal defendants.

11. This Complaint focuses on how the Defendants' failures to provide funding and fiscal and administrative oversight have created a broken indigent defense system in Berrien, Genesee, and Muskegon Counties; but the failings in those counties, and the types of harms suffered by these Plaintiffs, are by no means limited or unique to the three Counties. Defendants' failure to provide funding or oversight to any of the State's counties have caused similar problems throughout the State.

12. Pursuant to 42 USC 1983; the Sixth and Fourteenth Amendments to the United States Constitution; Article 1, §§ 17 and 20 of the Michigan Constitution; and MCR 2.605 and 3.310, Plaintiffs seek declaratory and injunctive relief to remedy the present and future constitutional deficiencies in indigent defense services provided to adults charged with felonies at the trial court level in Berrien, Genesee, and Muskegon Counties.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action for declaratory and injunctive relief pursuant to MCL 600.605, MCR 2.605, and MCR 3.310.

