

# Michigan Indigent Defense Commission

February 10, 2015 - House Criminal Justice Committee

## THE EXTENT AND IMPACT OF THE FAILURE OF MICHIGAN'S INDIGENT DEFENSE SYSTEM AT TRIAL.

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National Legal Aid and Defender Association, 2008 - *A Race to the Bottom Speed and Savings over Due Process: A Constitutional Crisis.*

In a study requested by Senate Concurrent Resolution 39 of 2006, the National Legal Aid and Defender Association (NLADA) found that Michigan failed to provide competent representation to poor people in its criminal courts. In the year-long study of ten representative counties, NLADA concluded that none are constitutionally adequate and Michigan ranked 44<sup>th</sup> out of all 50 states in per capita indigent defense spending.

### **IMPACT:**

**Convictions and imprisonment of the actually innocent.**

The Michigan Law School National Registry of Exonerations shows there have been 55 exonerations of actually innocent people in Michigan. Nineteen involve inadequate assistance of counsel at trial. Many more shed light on work that should have been done at trial. In at least a dozen, expert witnesses were able to demonstrate innocence after the conviction, and for twenty-nine different people, proper investigations showed their innocence.<sup>1</sup>

- o *In total, there have been over 250 years wrongful imprisonment, and at least \$5.6 million in lawsuit settlements.*
- o *Just last week, the city of Detroit agreed to pay \$2.5 million to Walter Swift, who spent 26 years in prison for a rape he did not commit.<sup>ii</sup>*

### **IMPACT:**

**Human and financial cost of sentencing errors.**

The State Appellate Defender Office measures average annual savings to the Department of Corrections of \$6.5 million from error corrections in sentencing guidelines calculations made by SADO attorneys. These errors, which could have been prevented by capable trial counsel translated directly into 185 years extra incarceration for the poorest criminal offenders.

IN OCTOBER 2011, GOVERNOR SNYDER CREATED THE INDIGENT DEFENSE ADVISORY COMMISSION TO INVESTIGATE PROBLEMS AND RECOMMEND REFORMS.

**THE COMMISSION FOUND:**

- *Michigan's counties offer an "uncoordinated, 83-county patchwork quilt" of public defense systems.*
- *There is no data or transparency to show if taxpayer dollars are spent efficiently or effectively.*
- *There are no statewide standards to define or ensure constitutionally adequate defense counsel.*

## **THE RESPONSE: THE MICHIGAN INDIGENT DEFENSE COMMISSION**

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THE MICHIGAN INDIGENT DEFENSE COMMISSION WAS CREATED BY PA 93 OF 2013, SIGNED INTO LAW BY GOVERNOR SNYDER IN JULY OF 2013. THE COMMISSION IS AN INDEPENDENT AGENCY, HOUSED WITHIN THE JUDICIAL BRANCH OF STATE GOVERNMENT AND COMPRISED OF 15 MEMBERS APPOINTED BY THE GOVERNOR WITH RECOMMENDATION OF THE LEGISLATURE, SUPREME COURT, THE STATE BAR, AND REPRESENTING INTERESTS FROM THE CRIMINAL JUSTICE SYSTEM.

THE COMMISSION HAS A MANDATE TO:

- Collect and compile data for the review of indigent defense services in Michigan;
- Create minimum standards, submitted to the Michigan Supreme Court, to ensure all systems providing indigent defense meet constitutional obligations for effective assistance of counsel;
- Work with counties to implement plans to meet the standards and measure the performance of counties in providing public defense services;
- Award grants to county systems to bring their system in compliance with the new minimum standards;
- Standards should make sure delivery of services is independent of the judiciary, workload is controlled to permit effective representation, and an attorney has the training and experience that matches the complexity of the allegations against their client.

#### WHAT THE COMMISSION HAS DONE:

- On June 19, 2014 Governor Snyder announced 15 appointments to the Indigent Defense Commission.
- On December, 22, 2014, the Commission announced the appointment of Jonathan Sacks, the Deputy Director of the State Appellate Defender Office, and a former major trials attorney for the Defender Association of Philadelphia as the agency's founding Executive Director.
- Mr. Sacks started in this role on February 3, 2015. He has hired a State Office Administrator, a Director of Training, Outreach, and Support, and a Data Collection Coordinator and Analyst.

#### WHAT WE CAN EXPECT AND THE IMPACT ON FUTURE BUDGET CYCLES:

- Gather data from counties and establish minimum standards for caseloads, training, independence, and delivery of services.
- An ambitious agenda to implement these standards through grants and other incentives.
- In 2013, the Texas Indigent Defense Commission voted to disburse \$37 million in formula grant funding to Texas counties for 2014.

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<sup>1</sup> <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>

<sup>ii</sup> <http://www.freep.com/story/news/local/michigan/detroit/2015/02/03/walter-swift-detroit-cleared-rape-settles-city/22811971/>

