



## DEFENDING THE POOR

...[I]N OUR ADVERSARY SYSTEM OF CRIMINAL JUSTICE, ANY PERSON HALED INTO COURT, WHO IS TOO POOR TO HIRE A LAWYER, CANNOT BE ASSURED A FAIR TRIAL UNLESS COUNSEL IS PROVIDED FOR HIM. THIS SEEMS TO US TO BE AN OBVIOUS TRUTH.

*Justice Hugo Black, U.S. Supreme Court, Gideon v. Wainwright, 1963*

In this state and throughout the nation any individual accused of a crime has the legal right to obtain or be appointed counsel to defend criminal charges, regardless of that person's economic status. The right to an attorney is not only necessary for fairness and justice; it is also dictated by U.S. Supreme Court decisions and guaranteed in both the state and federal constitutions. Article 1, Section 20 of the Michigan Constitution states: "In every criminal prosecution, the accused shall have the right to... the assistance of counsel for his or her defense." The Supreme Court opined in *Miranda v. Arizona* that a criminal suspect must be told prior to questioning that he has the right to an attorney, regardless of ability to afford one, in order to uphold the Fifth Amendment's right to avoid self-incrimination. The nation's high court also unanimously ruled in *Gideon v. Wainwright* that the Sixth Amendment to the U.S. Constitution mandates state courts provide legal counsel for defendants unable to afford their own attorney.

No democracy can be deemed credible or just if only those with adequate means are able to defend themselves in

court. In Michigan and across the country, the right of the accused to be present at trial, to confront an accuser, and to produce witnesses are among the due process guarantees granted by the constitution. The Supreme Court in the *Gideon* decision helped to protect these and many other rights for any person unable to hire an attorney.

Unfortunately, the manner by which Michigan provides indigent defense has been deemed one of the worst in the nation. In an effort to defend the constitution, to protect public safety, and to ensure the innocent are not convicted, several legal associations and statewide organizations, including the Michigan Catholic Conference, have joined the Michigan Campaign for Justice. The purpose of this campaign is to fight for a fair and effective public defense system in Michigan, and to create an adequate state run system that ensures even the poorest of citizens are able to secure legal representation in court. This FOCUS essay will address the problems with Michigan's public defender system, cite Church teaching on the subject of crime and indigent defense, detail those organizations supporting the Campaign for Justice, and provide additional resources.

# STATEWIDE PUBLIC DEFENSE SYSTEM NEEDED IN MICHIGAN

This year marks the forty-sixth anniversary of *Gideon v. Wainwright*, the landmark Supreme Court ruling that ensures every American citizen is granted his or her constitutional right to legal representation, regardless of economic status. Yet Michigan's approach to public defense is in desperate need of reform due to the fact that the state addresses the issue on a county-by-county basis.

Michigan is currently one of only seven states that has shifted its constitutional obligation of providing public defense to the county level, meaning there are eighty-three different public defense systems with eighty-three different levels of funding. Many hardworking public defenders are overwhelmed with caseloads and face an uncertain future as counties are looking for ways to cut back on spending. There is little to no funding for experts or investigators and too many situations arise where the accused meet with their attorney just minutes before trial begins.

According to a 2007 American Psychiatric Foundation study, eight percent of Michigan's 51,000 incarcerated individuals are receiving mental health services. Yet little, if any training is available to public defense attorneys about the impact of mental health, substance abuse or other issues affecting those in the criminal justice system.

Increased workloads, diminishing funds, and an unbalanced system leads to a nightmare scenario where millions in tax dollars are poorly allocated, public safety is jeopardized and the innocent are wrongly convicted. Too often those who lack the financial ability to hire effective legal representation are those who are unjustly incarcerated. This is a societal moral failure that must be addressed.

Our task as a society should be to restore a sense of civility and responsibility to everyday life, and promote crime prevention and genuine rehabilitation. The Michigan legal system must hold offenders accountable and challenge them to change their lives, reach out to victims, restore a sense of community, and resist the violence that has engulfed so much of our culture. Michigan is in desperate need of a statewide system of public defense that not only effectively and efficiently uses taxpayer dollars, but also one that fulfills its constitutional and moral responsibilities.

The county-based system of public defense in our state is broken. The Michigan Campaign for Justice, referencing a

June 2008 National Legal Aid and Defender Association report, has given Michigan a "D" for quality, a "D" for competency, and an "F" for availability. This is unacceptable for taxpayers, unacceptable for the integrity of the state constitution and, most critically, unacceptable for those who are unable to hire a lawyer for their own defense. In the spirit of the *Gideon* decision, efforts to change Michigan's public defense system are now underway.

Positive steps have taken place in the state legislature as the House Judiciary Committee this year established a subcommittee on indigent defense. This new body is expected to discuss adequate representation for the poor and, ideally, to draft legislation that creates a bipartisan solution to a public defense system that has been characterized by the committee chair as "at best deficient, at worst unconstitutional." Michigan Catholic Conference will work with its Campaign for Justice partners to support legislation that is critically needed to defend the poor in this state.

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## CHURCH TEACHING

“We believe a Catholic vision of crime and criminal justice can offer some alternatives. It recognizes that root causes and personal choices can both be factors in crime by understanding the need for responsibility on the part of the offender and an opportunity for their rehabilitation. A Catholic approach leads us to encourage models of restorative justice that seek to address crime in terms of the harm done to victims and communities, not simply as a violation of law.”

*USCCB: Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice. November 2000.*

“It is generally accepted today that the common good is best safeguarded when personal rights and duties are guaranteed. The chief concern of civil authorities must therefore be to ensure that these rights are recognized, respected, coordinated, defended and promoted, and that each individual is enabled to perform his duties more easily. For to safeguard the inviolable rights of the human person, and to facilitate the performance of his duties, is the principal duty of every public authority.”

*Pope John XXIII, Peace on Earth, 1963.*

“According to God’s plan, all must play their part in helping to build a better society. Obviously, this includes making a great effort in the area of crime prevention. In spite of everything criminal actions are committed. For all to play their part in building the common good they must work, in the measure of their competence, to ensure that prisoners have the means to redeem themselves, both as individuals and in their relations with society. Such a process is based on growth in the sense of responsibility. None of this should be considered utopian. Those who are in a position to do so must strive to incorporate these aims in the legal system.”

*Pope John Paul II, Message for the Jubilee in Prisons, June 2000.*

“Regulations contrary to the dignity and fundamental rights of the human person should be definitively abolished from national legislation, as should laws which deny prisoners’ religious freedom. There will also have to be a review of prison regulations where they give insufficient attention to those who have serious or terminal illnesses. Likewise, institutions offering legal protection to the poor must be further developed.”

*Pope John Paul II, Jubilee in Prisons, 2000.*

## WHO IS THE CAMPAIGN FOR JUSTICE COALITION?

- » ACLU of Michigan
- » Association for Children’s Mental Health
- » Citizens for Traditional Values
- » Council of Islamic Organizations of Michigan
- » Criminal Defense Attorneys of Michigan
- » Criminal Defense Lawyers of Washtenaw County
- » Grand Rapids Bar Association
- » Innocence Project-Cooley Law School
- » Kalamazoo County Bar Association
- » Macomb County Bar Association
- » Michigan Judges Association
- » Michigan Juvenile Detention Association
- » Metropolitan Organizing Strategy Enabling Strength (MOSES)
- » Michigan Catholic Conference
- » Michigan Council on Crime and Delinquency
- » Michigan County Social Services Association
- » Michigan Jewish Conference
- » Michigan Prospect
- » Michigan Public Defense Task Force
- » National Association of Criminal Defense Lawyers
- » Shiawassee County Bar Association
- » State Bar of Michigan (Campaign Partner)

## ADDITIONAL RESOURCES

### **Evaluation of Trial Level Indigent Defense in Michigan** *www.michbar.org/publicpolicy/indigentdefense.cfm*

The National Legal Aid & Defender Association (NLADA) finds that the state of Michigan fails to provide competent representation to those who cannot afford counsel in its criminal courts. The state of Michigan's denial of its constitutional obligations has produced myriad public defense systems that vary greatly in defining who qualifies for services and the competency of the services rendered.

### **Michigan Campaign for Justice**

*www.mijustice.org*

A broad-based group of organizations and individuals from across the political spectrum fighting for a fair and effective public defense system in Michigan. It believes that legislative reform is needed to improve cost effectiveness, protect the public's safety and ensure one's Constitutional right to counsel.

### **Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice**

*www.usccb.org/sdwp/criminal.shtml*

A Statement of the Catholic Bishops of the United States, November 2000.

### **Restore Justice**

*www.restorejustice.com*

An outreach of the California Catholic Conference offering healing and support to everyone affected by the criminal justice system throughout the U.S. The purpose of RestoreJustice.com is to offer a place of compassion and assistance, resources and services and educational information for anyone who is affected by crime—victims of crime, offenders and their families, corrections staff, chaplains, criminal justice system employees and management, and advocates for restorative justice.

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## FOCUS

Volume 37, Number 2

May 2009

FOCUS is published by the Michigan Catholic Conference  
510 South Capital Avenue, Lansing, Michigan 48933  
[www.micatholicconference.org](http://www.micatholicconference.org)

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