

News & Views



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Events

State Bar of Michigan Annual Meeting September 16-18, 2009 Hyatt Regency Dearborn-Detroit

The Criminal Law Section will hold a short business meeting at 9 a.m. on Friday, September 18. The meeting will begin with elections to fill five positions opening on the Council. Incoming Chair Opolla Brown will also be installed in her new position. Our annual program will begin shortly after the business meeting.

Please join us from 10 a.m. to 12 p.m. to discuss the issue of specialty courts. Michigan Supreme Court **Chief Justice Marilyn Kelly** will be the featured speaker.

More detailed information on elections and our program will be published in upcoming newsletters. For registration, schedules, and other general information about the Annual Meeting, please visit: www.michbar.org/annualmeeting.cfm.

Symposium: "Balancing Our Priorities" October 8, 2009 Wayne County

The Criminal Law and Prisons & Corrections Sections, together with three other organizations, presented a joint program to address whether we could safely spend less on corrections. The Prisons & Corrections Section will present an extended program on the same topic this fall. The three-quarter day program will include breakfast and lunch, and will focus on prison population reduction strategies, including: progress made thus far, risk assessment and rehabilitation, and the prosecutor's perspective. In addition, the program will address investing in prevention, such as: the reentry initiative, mental health and substance abuse issues, creative jail programs, and barriers to reentry.

The exact location of the program will be announced soon. For additional details and registration forms, visit: <http://michbar.org/prisons/news.cfm> or <http://balancingourpriorities.org/>.

Legislative Update

Effective July 1, 2009, DNA samples must now be collected from individuals following their *arrest* for certain violent felonies. Previously under MCL 750.520m, samples were collected only after *conviction* of some offenses. However, Public Act 380 of 2008 amended that statute to require the collection of samples from persons *arrested* for specific violent felonies.

The collection of a sample is now required upon arrest for the following offenses:

- Felonious assault (MCL 750.82)
- Assault with intent to murder (MCL 750.83)
- Assault with intent to do great bodily harm less than murder (MCL 750.84)
- Assault with intent to maim (MCL 750.86)
- Assault with intent to commit a felony (MCL 750.87)
- Assault with intent to commit robbery (MCL 750.88 & 750.89)
- First and second degree murder (MCL 750.316 & 750.317)
- Manslaughter (MCL 750.321)
- Kidnapping (MCL 750.349)
- Prisoner taking hostage (MCL 750.349a)
- Leading, taking, carrying, or enticing a child under 14 (MCL 750.350)
- Mayhem (MCL 750.397)
- Criminal sexual conduct (MCL 750.520b - 750.520e)
- Assault with intent to commit CSC (MCL 750.520g)
- Robbery or carjacking (MCL 750.529, 750.529a, 750.530)

Michigan Public Defense Update

Editor's Note: The Criminal Law Section has long advocated for reform of our system for appointing counsel to indigent defendants. Laura Sager, Director for the Michigan Campaign for Justice, provided us with the following update:

House Subcommittee on Indigent Defense holds first meeting

June 16th marked the first public hearing of the new State House Subcommittee on Indigent Defense. Speaker of the House Andy Dillon (D-Redford), and Chairman of the House Judiciary Committee Rep. Mark Meadows (D-East Lansing), created the subcommittee early in the spring to closely examine the problems within our public defense system and to develop a legislative solution to those problems. The committee's two members, Reps. Bob Constan (D-Dearborn Heights) and Justin Amash (R-Kentwood) are planning to solicit more information to use in drafting legislation to set up a new statewide system for administering and funding public defense services.

The hearing room was filled for the first meeting as advocates for reform provided input on the draft bill. Gongwer, a daily newsletter covering the Capitol and state government, reported:

Officials from the State Bar of Michigan and Campaign for Justice told the subcommittee a statewide program would be a bold move from the current system of mostly county programs.

However, officials cautioned lawmakers not to put the state public defender under the supervision of the Supreme Court, arguing the system needs independence.

They also urged lawmakers to make the public defense commission more geographically diverse.

But the elephant in the room is how the state would fund such a program, said Laura Sager, Director of the Campaign for Justice.

Mary Lannoye, former state budget director and now a consultant for the campaign, said about \$80 million is currently spent by municipal courts and counties on indigent defense. But, compared to per capita spending by other states, Michigan should be spending \$125 million.

She said the state could keep the local funding intact and find a way to cover the funding gap either through general funds or through court-related funding like criminal and civil fines.

Chair Rep. Bob Constan (D-Dearborn Heights) said the subcommittee is looking into ways to fund a state indigent defense program. The draft legislation currently includes probation order and bail fees.

The Campaign is very encouraged by the efforts of Reps. Constan and Amash, and plans to continue working with the subcommittee as revisions to the draft legislation are made and the proposal begins to move through the legislative process.

Appeals Court decision points to need for legislative action

The efforts of the two legislators, along with Chairman Meadows, could not be coming at a more appropriate time in light of the Michigan Court of Appeals ruling in *Duncan*.

The lawsuit argues that our county-run, county-funded public defense system fails to ensure the constitutionally mandated right to “effective assistance of counsel” for people who cannot afford an attorney.

The court agreed with the defendants suing to force the state to provide more money and oversight to public defender systems and ordered that the lawsuit proceed to trial.

This court victory is a tribute to the people who worked on this issue for many years and, just as the *Lansing State Journal* editorialized the day after the ruling, it calls on state policy makers to step up and develop a statewide system that works for all residents.

The Journal noted:

The Michigan Court of Appeals just issued a warning to state lawmakers about their responsibility for advancing justice.

An appellate panel rejected claims by the state that it could not be sued over its system of county-based funding for indigent defendants. The court panel also made clear that it thought those challenging the systems run in Berrien, Genesee and Muskegon counties had a good case.

Michigan's court system is a creation of the state; yet, for budgetary convenience, lawmakers have left it to counties to provide lawyers for poor defendants. A national analysis recently found Michigan in the bottom ten of states for such spending.

It would be better if lawmakers would take reform on of their own accord, rather than being forced to do what's right under an eventual court order.

Congressional Subcommittee looks once again at national public defense crisis

Following up on its March hearing focused exclusively on problems within our public defense system, the U.S. House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security used a hearing to look at public defense issues in other states.

The panel heard from experts from North Carolina, Florida, Minnesota, Arkansas and Virginia. Their testimony can be found at mijustice.org, under the "resources" tab.

Having this discussion underway in Congress only helps to build momentum for reform here in Michigan, and the Campaign once again thanks Congressman John Conyers (D-Detroit) for his leadership on this issue.

Two national reports add to the case for reform

In addition to the examination of public defense underway in both Lansing and Washington, D.C., two national reports recently were published adding to the case for reform.

This spring, The Constitution Project's Right to Counsel Committee released a report entitled "Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel" and the National Association of Criminal Defense Lawyers released a report entitled "Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts."

Both reports bolster the case for tackling the issue of public defense reform across the country, and both reports are also available at the campaign's website, mijustice.org. Just click on "resources" and then "publications."

Campaign welcomes Brame and McCree to Board

The Campaign for Justice recently welcomed two prominent legal leaders to the board of directors. Professor Tracey Brame and Judge Wade McCree III have both accepted invitations to join the leadership team.

Professor Brame is the assistant dean of the Thomas M. Cooley Law School. Before joining the faculty at Cooley, she served as a staff attorney for Public Defender Services for the District of Columbia, a research and writing specialist with the Federal Defender Office, and an assistant defender with the State Appellate Defender Office in Detroit.

Judge McCree sits on the Wayne County 3rd Circuit Court. Before being appointed by Governor Granholm to the 3rd Circuit Court in 2004, Judge McCree, of Detroit, served as judge in the 36th District Court.

McCree follows in the footsteps of his late father, the Honorable Wade McCree, Jr. McCree, Jr. was the first African American appointed to the 3rd Circuit Court and the first African-American appointed to the U.S. District Court for the Eastern District of Michigan before becoming Solicitor General of the United States in 1977.

The Campaign is thrilled to have them both!

Partners in Crisis joins the Campaign coalition

The Campaign welcomes Partners in Crisis, a consortium of organizations and jurists dedicated to enhancing access to quality, clinically appropriate treatment and support services and settings for children and adults experiencing emotional disorders and mental illnesses. The Campaign is pleased to have Partners in Crisis as a member of the coalition.

New staff join Campaign's organizing team

Last, but certainly not least, the campaign's growing efforts have also meant a growing team of people working with Stephanie Chang, Kat Birrell and Laura Sager to organize supporters throughout Michigan. Kaye McDuffie and Siobhan O'Rourke have joined the Campaign for Justice staff.

Kaye is a consultant serving as Senior Field Organizer. She will coordinate and assist with coalition building and management, volunteer management, and case profile management. Kaye also works as a health educator and trainer and has a long history of advocacy for youth and women, including families in juvenile and adult criminal justice systems.

Siobhan is the Northern Michigan summer intern and helps with outreach efforts in the Upper Peninsula. Siobhan currently attends Northern Michigan University and will graduate with a degree in Political Science and a minor in Criminal Justice.

The Campaign and its many friends and supporters have been busy. Check back here next month for continued updates and an opportunity to find out the latest on efforts to reform our public defense system.

Save the date: Mid-August defense bar forum

The Campaign for Justice will be partnering with organizations such as the Criminal Defense Attorneys of Michigan to host a mid-August forum on public defense reform, specifically geared toward public defense attorneys! This forum will include speakers from other states and will provide an opportunity for dialogue about important concerns and questions. More information will be available soon. If you have any questions, contact the Campaign at (517) 372-3050, or email info@mijustice.org.