

State Bar of Michigan

Committee on
Justice Initiatives

Criminal Issues Workgroup (CIW)

Final Recommendations
and Report

State Bar of Michigan

Committee on Justice Initiatives

Criminal Issues Workgroup (CIW)

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COMMITTEE ON JUSTICE INITIATIVES
Criminal Issues Workgroup (CIW)
March 2006

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**FINAL RECOMMENDATIONS AND REPORT
OF THE
CRIMINAL ISSUES WORKGROUP (CIW)**

**PRESENTED TO THE STATE BAR OF MICHIGAN
COMMITTEE ON JUSTICE INITIATIVES (CJI)**

MARCH, 2006

PART ONE: FINAL RECOMMENDATIONS

CHARGE TO WORK GROUP

The Criminal Issues Work Group was asked to consider whether criminal issues can or should be addressed by the CJI, a committee of a bar with compelled dues, and if so, what aspects of that work should be targeted for the next 3 to 5 years and what structure should be used to address its work.

RECOMMENDATIONS

The Criminal Issues Work Group offers the following recommendations for CJI action.

1. SOME CRIMINAL LAW ISSUES SHOULD BE INTEGRATED INTO THE WORK OF CJI.

Rationale: There are many unmet needs and systemic problems related to criminal issues and to the interconnection of civil and criminal issues. These issues should be addressed by an entity of the State Bar of Michigan that provides leadership and allows for participation of multi-disciplinary stakeholders. Integrating criminal issues within CJI would allow for high visibility of those criminal issues CJI decides to address, and proactive monitoring of ongoing and emerging issues; and allow for various bar roles consistent with Keller and the SBM Strategic Plan.

2. THE FOCUS AREAS OF WORK FOR THE NEXT 3-5 YEARS SHOULD BE REPRESENTATIONAL ISSUES AND CIVIL COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS.

Rationale: Representational Issues (RI) (access to qualified lawyers in an effective, integrated system) and Civil Collateral Consequences of Criminal Convictions (CC) are areas of civil and criminal law intersection. Some project and policy areas of RI and CC are discreet, and some areas can be coordinated with each other and with other CJI Initiatives. Key areas where RI and CC have similar goals are education, training, systems, and data. Staff and monetary resources are needed to support this work. The CJI planning process and SBM budget system are appropriate vehicles to consider resources for this work. (See list of suggested criminal law priority projects at Part Two, Section IV of this report and see Recommendation 4 below.) External resources should be explored when appropriate for projects and partnerships. Pending implementation of these recommendations, the CIW suggests CJI should assist the State Bar in responding to any policy issues needing immediate attention in this area.

3. THIS WORK SHOULD BE CONDUCTED THROUGH A NEW INITIATIVE (SUB-COMMITTEE) WITHIN CJI.

Rationale: Conducting this work through the CJI avoids fragmentation from the current CJI work and facilitates coordination of SBM efforts in this area. A separate initiative will allow for discreet work and for integration opportunities within CJI. A name should be chosen for the new initiative that reflects the scope of its work. The CJI should exercise SBM rules permitting non-lawyers on sub-groups to permit involvement from outside of the Bar and for collaboration with multi-disciplinary groups.

4. ASSUMING ADOPTION OF THE ABOVE RECOMMENDATIONS, THE CJI SHOULD CONSIDER ASKING THE CIW FOR FUTURE INPUT IN THE NEAR TERM ON POSSIBLE PROJECT PROPOSALS AND FOR CANDIDATE NAMES FOR CONSIDERATION AS MEMBERS OF THE NEW INITIATIVE.

Rationale: The recent familiarity by the CIW with the issues in this report and the range of experience and expertise of the CIW members makes this group a logical choice from which to obtain additional input should CJI wish to consider projects in this area during the March-April, 2006 CJI planning process. This includes further refining priority projects from the list at Part Two, Section IV of this report and providing information that may be needed for consideration within the CJI planning process. This may be especially helpful in the near term if implementation of the new Initiative is deferred until the next SBM fiscal year beginning October 1, 2006. For similar reasons, the CIW's range of knowledge, suggestions for names to populate the new Initiative should be sought from the CIW.

PART TWO: CIW REPORT

I INTRODUCTION

In June 2005 the SBM Board of Commissioners approved the Standing Committee on Justice Initiatives Planning Work Group Report and Recommendations which included a recommendation that during FY 2005-06 there would be a dialogue/planning effort to consider what aspects of criminal issues can and should be addressed by the Committee on Justice Initiatives, a committee of a bar with compelled dues. The workgroup would recommend to the Committee on Justice Initiatives the scope and content of what such work would be, including broad goals and suggested projects, and how it relates to other bar entities and external stakeholders. The specific topic areas recommended for consideration included the civil consequences of criminal convictions, defender and other issues related to the work of Justice Initiatives.

The Criminal Issues Work Group (CIW) was appointed in December 2005 and has worked over the past three months to complete its charge. This report contains the findings and recommendations of the Criminal Issues Work Group for consideration and action by the Committee on Justice Initiatives in March, 2006. The CJI will in turn submit its recommendations for action by the Board of Commissioners in June, 2006.

II METHODOLOGY

A 20 member work group was appointed by State Bar of Michigan President, Thomas W. Cranmer in December 2005, and began its work in January 2006. The Criminal Issues Work Group included members of the Justice Initiatives Committee and a range of bar and other leaders with experience related to the issues identified. Linda K. Rexer was appointed Chair of the Criminal Issues Work Group, and Hon. Cynthia D. Stephens, CJI Co-Chair, was appointed CJI liaison for the Criminal Issues Work Group. Director of Justice Initiatives Jerome Reide served as staff liaison, and Anne M. Vrooman, Justice Management Consultant was retained as a consultant to the work group to facilitate the work group process. A full roster of the Criminal Issues Work Group and each member's affiliation is contained in Appendix A.

In December and January 2006, the consultant met with bar leaders, the SBM executive director, and other key stakeholders to seek their input into what the planning process should include, what should be produced, specific topic areas that the work group should consider, and what roles and activities the bar is most uniquely positioned to assume. A summary of those responses is contained in Appendix B. Articles and reports on key topic areas were provided to members of the work group in advance of the first meeting to provide a foundation of knowledge in the key topic areas. These articles and reports are among those listed in Appendix C. The summary of stakeholder responses and key topic information were used to frame the discussion for the first meeting of the Criminal Issues Work Group held on January 17, 2006 at which the work group discussed how it

would approach the planning process and what areas it would focus on. The work group also heard presentations from Janet K. Welch, SBM Legal Counsel on parameters of work within the bar consistent with “Keller”, under Michigan Supreme Court Administrative Order 2004-0 1 State Bar of Michigan Activities, James Neuhard on the ABA Principles of a Public Defense System, and Hon. Cynthia D. Stephens on the work of the Justice Initiatives Committee and the each of the current initiatives. Anne Vrooman provided information about the hallmarks, criteria and process adopted by the Committee on Justice Initiatives in 2005 that would govern any projects and activities recommended by the Criminal Issues Work Group. Using a consensus process the Criminal Issues Workgroup concluded that it would proceed with a working assumption that criminal issues should be part of the work of Justice Initiatives and that the CIW would use a framework of three categories for review: 1) Collateral Consequences of Criminal Convictions; 2) Representational Services; and, 3) Policy and Procedure. The January 17th meeting summary is contained in Appendix D. (See Appendix H for a list of all CIW materials, including those used for the January 17th CIW meeting).

The Criminal Issues Work Group met for the second time on February 3, 2006. Working from the consensus developed at the first meeting, presentations were made to the work group on issues within each of the five identified topics: 1) collateral consequences of criminal convictions, 2) prisoner re-entry, 3) prisoner civil legal needs, 4) juvenile issues, and 5) representational issues including indigent defense. To facilitate the discussion of topic areas relative to the charge of the work group, presenters were asked to structure their presentations to include a) an overview of the topic; b) data collection/research that is available or should be available to help those working on the issue or educating others about the issue; c) key players and stakeholders to the issue; d) major activities already being done to address the issue; and e) what most needs to be done to address the issue and any suggestions for what an appropriate role for the bar would be, particularly within Justice Initiatives either as a bar project or in collaboration with others. In addition, the consultant made a presentation on what other bars and other states are doing to address these issues. The presentation material is included with the February 3 meeting materials which are included with all CIW resource materials listed at Appendix H. The February 3 meeting summary is contained in Appendix E. The work group discussed the presentations with a focus on what the bar could or should do to address the issues. Consensus was reached by the work group that two sub-work groups would be formed to develop recommendations which respond to the central questions within the charge of the work group. The work group decided that sub-work groups should be formed in the framework categories of Collateral Consequences and Representational Issues. The work group agreed that policy and procedure touched all areas and should be addressed under these two sub-work groups rather than through a third sub-work group.

The Collateral Consequences sub-work group and Representational Issues sub-work group each met through two telephone conferences to develop draft responses to the following:

If the Criminal Issues Work Group recommends incorporating criminal issues into the work of Justice Initiatives, what aspect of (collateral consequences/representational issues) should be included? Describe the broad goals of addressing this area within

Justice Initiatives and the State Bar of Michigan, and how it may relate to the other Initiatives (Equal Access, Pro Bono, Justice Policy Initiative, and Resource Development), other bar entities and external stakeholders. Identify potential partners/collaborators within the Bar and external to the Bar and what their role might be. Describe possible projects that would meet the goals and objectives.

The sub work-group assignments, and members for each sub-work group are contained in Appendix F. (See Appendix H for materials used by the sub-workgroups).

A chair provided leadership for each sub-work group; Terri Stangl led the Collateral Consequences sub-work group, and Valerie Newman chaired the sub-work group on Representational Issues. Linda Rexer, Criminal Issues Work Group Chair, and Anne Vrooman, consultant, participated in each telephone conference to assist the sub-work groups. Each sub-work group's draft responses were circulated among sub-work group members, revised and then shared with all members in advance of the March 2 meeting of the full Criminal Issues Work Group. The final draft report of each of the two sub-work groups addressed what the group thought were the most important issues in its area, possible goals for those issues and suggested priority projects. In addition, the reports offered key elements and ideas to assist the full CIW discussion on structure. The two sub-work group final reports are at Appendix G.

The Criminal Issues Work Group met on March 2, 2006 to develop consensus final recommendations to the Justice Initiatives Committee as charged. Using the work product of each of the sub-work groups as a basis for discussion, recommendations for submission to the CJI were adopted as consensus by the Criminal Issues Work Group. In finalizing its recommendations, the CIW discussion also noted the assumptions and consensus principles underlying the recommendations. To assist the CIW in its discussion of the appropriate institutional structure, Janet Welch, State Bar of Michigan General Counsel provided information on structural entities of the SBM and John Berry, Executive Director, provided information on the SBM planning and budget process and how it relates to the various structural entities.

III CONSENSUS PRINCIPLES AND CIW DISCUSSION HIGHLIGHTS

The Criminal Issues Work Group recommendations answer the charge to consider whether criminal issues can or should be addressed by the Committee on Justice Initiatives, a committee of a bar with compelled dues, and if so, what aspects of that work should be targeted for the next 3-5 years and what structure should be used to address its work.

CONSENSUS PRINCIPLES UNDERLYING CIW RECOMMENDATIONS

The following statements reflect the assumptions and key consensus principles that provide the foundation for the recommendations of the Criminal Issues Work Group:

- A. There are many unmet legal needs and systemic problems in the criminal arena which need attention and have severe consequences for individuals and for the justice system.
- B. Civil and criminal issues are inextricably intertwined, which is misunderstood.
- C. Problems should be addressed in a more holistic way, through coordination and integration of services and training among multi-disciplinary stakeholders (prosecutors, defense attorneys, courts, bar, civil attorneys, social workers, schools, offenders, community agencies, others).
- D. The needs in this area will remain great and the population who cannot afford to pay for legal assistance will continue to grow.
- E. Resources are likely to be flat or constricted.
- F. The State Bar of Michigan as a justice system leader, should work on these issues through an entity of the State Bar that provides leadership and allows for multi-disciplinary participation.
- G. The State Bar entity structure chosen should have these key elements:
 - 1. The structure should allow for high visibility of the issues.
 - 2. The structure should allow for integration across the Bar with all relevant committees and sections, including integration of efforts on the key issues of civil collateral consequences of criminal convictions and representational issues.
 - 3. The structure should allow for multi-disciplinary participation with multiple stakeholders with State Bar of Michigan leadership and support.
 - 4. The structure must have staff and resources to conduct its work.

HIGHLIGHTS OF CIW RECOMMENDATIONS DISCUSSIONS

1. SOME CRIMINAL LAW ISSUES SHOULD BE INTEGRATED INTO THE WORK OF CJI

The CIW considered the consensus principles noted above in discussing the idea that the State Bar is positioned to provide leadership in the criminal issues arena, including the interconnection of civil and criminal issues. Key considerations included the benefits of an ongoing presence within CJI where the responsibility resides for proactive monitoring of ongoing and emerging needs in this area. Incorporating criminal issues into the work of CJI presents an opportunity to begin to address the intersection of civil and criminal issues and to promote better understanding of their interrelatedness. Addressing criminal issues within CJI would allow for high visibility of the issues addressed, and allow for various bar roles consistent with “Keller” and the State Bar of Michigan Strategic Plan.

2. THE FOCUS AREAS OF WORK FOR THE NEXT 3-5 YEARS SHOULD BE REPRESENTATIONAL ISSUES AND CIVIL COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS.

The issues of civil collateral consequences of criminal convictions and representational issues are each an umbrella for a large number of important interrelated issues.

A. Representational Issues

Legal representation for indigent criminal defendants at the trial level in Michigan continues under a fragmented system of local government with disparate practices and resources despite efforts for the past several decades to advance statewide improvements. With no statewide standards for the criminal indigent defense system, the current standard for representation is the result of policies and practices of local government, typically driven by cost rather than quality of representation. With no standards in place for fees, caseload, attorney performance, training, resources (such as investigation, experts), and ethics, the quality of representation afforded to indigent defendants is a serious question. And it remains a question in large degree because of the lack of any consistent data available from each county to examine the system across the state.

As a key component in the criminal justice system, the criminal defense attorney is also a key component to addressing the issues of civil collateral consequences of criminal convictions. Criminal defense attorneys knowledgeable about the civil consequences of specific criminal results can provide better results for their clients through their case handling strategies and through linking defendants to other community resources.

Standards related to the quality of representation and knowledge about the impact of collateral consequences also apply to additional stakeholders throughout the system such as prosecutors, courts, and others.

The Criminal Issues Work Group identified the following issues related to representation and indigent defense as the most important issues to address:

1. The need for a statewide system for providing effective indigent defense at the trial level and continuity of representation at post conviction proceedings, including adequate funding for such a system.
2. The need for standards for criminal defense including system standards, performance standards for attorneys, ethics, determination of a reasonable fee, resource standards and training.
3. The need for mandatory training (initial and continuing) for criminal defense attorneys, and tools and training courses available pending mandatory training requirement.
4. Lack of available data for all aspects of indigent defense including cost of current problems, rationale for needed changes, and lessons that can be learned from pilot studies and other states.

B. Civil Collateral Consequences of Criminal Convictions

Civil collateral consequences of criminal convictions is an area of growing concern as the volume of criminal convictions has increased and legislation and policies imposing collateral civil penalties has proliferated. Both the criminal justice system and the communities we live in are faced with managing the growing population that at some time has been convicted of a crime. Successful re-entry into society post conviction is key to reducing the risk of recidivism, yet individuals often find that the civil and social consequences stemming from certain convictions are significant barriers to success. These penalties include sanctions on housing, employment, education, parental rights, property forfeiture, immigration, and public benefits, which have come to hinder the life chances for a large number of individuals, their families, and the communities they live in.

The Criminal Issues Work Group identified the following issues related to civil collateral consequences as most important to address:

1. Lack of information at all stages of process about civil collateral consequences caused by criminal convictions and incarceration¹
2. Lack of standards and procedural requirements at all stages (court rules, ethics, automatic triggers for information)
3. Lack of assistance for defendants at each stage (multi-disciplinary)
4. Resource Development (tools, material, people, funding)
5. Lack of understanding by policy makers, criminal justice system, and the public about the social and financial consequences of civil collateral consequences
6. Lack of procedures that would permit more individualized determination of the nature and extent of collateral civil consequences following a criminal conviction (restrictions on activities, inability to work at certain jobs, ineligibility for certain programs or benefits, extent of restitution)

3. CRIMINAL ISSUES WORK SHOULD BE CONDUCTED THROUGH A NEW INITIATIVE (SUB-COMMITTEE) WITHIN CJI.

The Criminal Issues Work Group considered the merits of several institutional structure options within the State Bar of Michigan before reaching consensus that the issues identified and the goals and projects to address those issues would be best addressed by a new Initiative under the Committee on Justice Initiatives. The work group identified the following key elements as necessary criteria for the appropriate structure and used the criteria to weigh the structural options:

1. The structure should allow for high visibility of the issues.

¹“All stages” includes pre-prosecution (when school zero tolerance policies and special education rules are important, and also when consideration of alternatives to prosecution or conviction could be considered as is sometimes done in “drug courts”), prior to entry of plea (when defendants need to know about the consequences to themselves and their families of various convictions), prior to entry of sentence (since type and length of incarceration may affect consequences), at time of sentencing (when defendant should try to address civil legal problems prior to incarceration), during incarceration, at time of release, and in the community (when expungement or rehabilitation may become a possibility).

2. The structure should allow for integration across the Bar with all relevant committees and sections, including integration of efforts on the key issues of civil collateral consequences of criminal convictions and representational issues.
3. The structure should allow for multi-disciplinary participation with multiple stakeholders with State Bar of Michigan leadership and support.
4. The structure must have staff and resources to conduct its work.

The work group heard a presentation from the State Bar of Michigan's General Counsel on the by-laws pertaining to the establishment and jurisdiction of the Bar's standing and special committees, sections, and ad hoc sub-entities for a better understanding of the internal roles and scope of work of various entities. A key interest was to recommend a structure that permits the participation of volunteers from various stakeholders and professions to participate in the efforts to address the issues, which an initiative would allow through sub-groups. Under the rules of the SBM non-lawyers can be appointed to participate in committee sub-entities.

The work group also had input from the Executive Director of the State Bar regarding the State Bar of Michigan's annual planning and budget process, its relationship to the Board of Directors, and divisional staff resources which support the work and project priorities of the standing committees. A key interest of the work group was to choose a structure that provides an opportunity to secure the staff and monetary resources necessary to conduct the proposed project work. The workgroup noted that some projects may not be resource intensive, that in others the bar's role may be to convene others who will assist or take on the effort and that the opportunity for outside resources may sometime exist. While the work group understands that its proposed project priorities will be considered along side the projects proposed by other Initiatives and will compete for very limited resources, there is also agreement within the work group that one of the components of its proposed work would be to identify and seek resource opportunities through various sources such as partnerships, collaboration, and perhaps grant funding.

Consideration of all of the information in light of the identified criteria led the work group to conclude that an Initiative under the Standing Committee on Justice Initiatives is the most appropriate structural option to address the issues as it can provide leadership, integration, multi-disciplinary participation, and a strong foundation for criminal issues.

4. ASSUMING ADOPTION OF THE ABOVE RECOMMENDATIONS, THE CJI SHOULD CONSIDER ASKING THE CIW FOR FUTURE INPUT IN THE NEAR TERM ON POSSIBLE PROJECT PROPOSALS AND CANDIDATE NAMES FOR CONSIDERATION AS MEMBERS OF THE NEW INITIATIVE.

The recent familiarity by the CIW with the issues in this report and the range of experience and expertise of the CIW members makes this group a logical choice from which to obtain additional input should CJI wish to consider projects in this area during the March-April, 2006 CJI planning process. This includes further refining priority

projects from the list at Part Two, Section IV of this report and providing information that may be needed for consideration within the CJI planning process. This may be especially helpful in the near term if implementation of the new Initiative is deferred until the next SBM fiscal year beginning October 1, 2006. For similar reasons, the CIW's range of knowledge, suggestions for names to populate the new Initiative should be sought from the CIW.

IV PRIORITY PROJECTS AND WORK GOALS

The Criminal Issues Work Group suggests the following priority projects and work goals to be considered through the CJI planning process and SBM budget system to address civil collateral consequences of criminal convictions and representational issues. The CIW also suggests that CJI remain willing to address policy and other issues in this area that need attention pending selection of actual projects or implementation of these recommendations.

A. GOALS

1. To educate relevant justice system stakeholders (criminal defense attorneys, prosecutors, judges, community agencies, schools, defendants), policy makers, media, and the public about civil collateral consequences of criminal convictions and to share the data and research that is available on the impact of these consequences..
2. To address issues through multi-disciplinary collaboration for a holistic approach to solutions and services; increase capacities of communities providing services; and promote greater integration between related components of the system.
3. To promote a statewide indigent criminal defense system to provide competent and fair representation of indigent defendants.
4. To develop and promote standards for criminal indigent defense systems and for ensuring that the collateral consequences of criminal convictions are understood and disclosed to relevant justice system stakeholders.
5. To develop and conduct research and data collection on indigent defense system in Michigan and from other states to identify and evaluate current practices, best practices and model systems.
6. To develop and promote training and education for attorneys working within the criminal justice system to ensure appropriate training for handling specific case types.

7. To develop and propose systemic methods and tools to provide information and guidance related to collateral consequences that can be used by stakeholders at all stages of criminal justice and post-release process.
8. To identify areas for policy consideration.

B. PRIORITY PROJECTS

1. Create a multi-disciplinary workgroup/task force of the Criminal Issues Initiative that works over a period of two years to identify issues, best practices, and opportunities for partnerships and collaboration on issues and resources; conduct research; and develop standards and make recommendations based on these findings. The workgroup/task force would include working groups which target both juvenile and adult issues related to civil consequences of criminal convictions. Strategies that the workgroup/taskforce might use to address its work include convening a conference with a call for presenters to educate stakeholders, public, and media about the issue areas and encourage research analysis of issues on the fiscal and social impact of civil collateral consequences. This effort would seek to coordinate with existing state projects to address these issues such as local re-entry initiatives.
2. Develop and disseminate training and educational materials and self-help assistance tools customized for key audiences such as prosecutors, criminal defense attorneys, judges, schools, defendants, MDOC, jail personnel, prisoners, community agencies, and others related to the civil consequences of criminal convictions.
3. Develop and conduct research/data collection on the criminal indigent defense system in Michigan to gather and maintain statewide data on key elements. This effort should be coordinated with NLADA/SBM data collection project for data requested by the Michigan Legislature.
4. Develop and promote training and education for criminal defense attorneys. Some training would be identified and advanced through standards to be developed, however, some training should be designed and conducted even if mandatory CLE or standards are not in place.
5. Develop and promote standards for criminal defense which incorporate the Eleven Principles of Public Defense; promote holistic (multi-disciplinary) services; performance standards; caseload standards; ethical issues; and reasonable fee standard.
6. Promote statewide system for effective defense at trial level and continuity of representation at post conviction proceedings.

V NEXT STEPS

The CIW understood that the approval of the recommendations answering their charge was the threshold step needed before members of any new initiative could be appointed and before projects in this area could be considered along with other CJJ efforts within the CJJ planning system. The report also notes, however, the hope that pending implementation of these steps, CJJ would consider addressing any policy issues that need immediate attention in this area through the normal SBM systems for doing so. Beyond consideration of the questions within its charge, the CIW specifically asked that all information from its discussions, presentations, and research be captured in the appendices of this report so that it is available as a resource to a newly created Criminal Initiative and may serve as a strong foundation for its beginning efforts.

PART THREE: APPENDICES

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KEY: CIW = Criminal Issues WorkGroup
CJI = Committee on Justice Initiatives
EAI = Equal Access Initiative

JPI = Justice Policy Initiative
PBI = Pro Bono Initiative
RDI = Resource Development Initiative

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KEY: CIW = Criminal Issues WorkGroup
CJI = Committee on Justice Initiatives
EAI = Equal Access Initiative

JPI = Justice Policy Initiative
PBI = Pro Bono Initiative
RDI = Resource Development Initiative

Criminal Issues Planning Project Stakeholders Interview Summary

1. What do you think is most important to be included in this planning effort and/or what results should be produced?

- Determining what the Bar can do and particularly Justice Initiatives because of Keller constraints
- As a part of Justice Initiatives, what the impact would be of creating an additional initiative as there can be no expectation of additional resources to fund or staff it. It must be included in the prioritization process with the other initiatives projects and activities.
- Identify outside entities for partners and resources
- Discussion of what the criminal initiative might do relative to what sections of the SBM are doing or should be doing
- Be certain that the projects proposed are achievable
- Focus should not just be on legal service providers – broader scope
- Clarity about what the initiative would be proposing and what it would be asking the Bar to do – within the mission of the SBM and the jurisdiction of Justice Initiatives.

2. What areas/specific topics do you think are most important and most appropriate for the Bar to address?

- Indigent defense – assigned counsel
 - support for the proposed plan of the Public Defense Task Force for a state level system
 - helping to do the thinking about strategies to advance the proposed plan, particularly how to fund it
 - study and highlight success of holistic approach to public defense (locally, Washtenaw County)
- Collateral consequences of criminal convictions
 - identify civil consequences and impact on specific populations
 - immigration, housing, employment, student loans, voting, jury service, license restrictions, college applications, military
 - develop coherent and strong talking points on issues of collateral consequences and why it matters
 - conduct analysis of ethics of not informing someone of civil consequences

- advance concept of civil and criminal attorneys working together -
educate attorneys, judges, legislature and public

- Expungement

- work to develop statewide process within courts
 - educate various populations about statute and process

- Pro Bono

- getting pro bono assistance to work on civil issues with criminal legal service providers

- Juvenile issues related to criminal convictions

- zero tolerance policies
 - sex offenders registry

- Criminal reform issues aimed at improving the system so that innocent people do not get caught in a system that is difficult to get out of - video taping interrogations

- identification issues and procedures

- Prisoner/prison reform issues

- prisoner re-entry issues
 - work to get position of ombudsman reinstated (eliminated because of budget – now no one with authority to look across the prison system)
 - prisoner litigation – severely limited by statute and formula for filing fees – with no ombudsman no way other than litigation to resolve issues – the most frequent is for medical care and abuse of discretion
 - work to get appeal process for prisoners denied parole when the decision of the parole board is outside of the formula and guidelines (analogous to sentencing guidelines)
 - assist in getting child support stopped while in prison

3. What role and activities are the Bar most uniquely positioned to assume in this area?

- Education

- for attorneys, judges, legislature, public, target populations, Bar as a whole - develop educational campaign by putting a face on the problem and issues

- Education aimed at reform (more specifically)

- Facilitate conversation to raise awareness of issues

- Identify and bring together all of the key players with the focus on how to best educate and reach different populations

- Develop materials for education and for use by service providers
- Data gathering and research
- Watchdog role – as officers of the Court able to see things that are not working and suggest how to fix it
- Facilitate collaboration with local bar associations to mobilize them to work locally with county commissioners and other local entities.

4. In addition to CIW members, who should we seek input from?

- Other Bar entities
- Prosecuting Attorneys Association
- David Carroll - NLADA

**Listing of Articles and Reports
Provided for the
Criminal Issues Workgroup (CIW)
(See Appendix H for full list of all CIW work materials.)**

1. *“From Day One”* by Cait Clarke and James Neuhard
2. *“11 Principles of a Public Defense Delivery System”* Michigan Public Defense Task Force
3. *“Gideon’s Broken Promise”* A report on the ABA’s Hearings on the Right to Counsel in Criminal Proceedings
4. *Draft Indigent Defense Bill*
5. *“Barriers to ReEntry”* by Miriam J. Aukerman
6. *ABA Juvenile Justice Committee on Collateral Consequences - Part I and Part II*
7. *Michigan Prisoner ReEntry Initiative*
8. *MPRI Organizational Structure for Implementation*
9. *Prisoner ReEntry in Michigan Report – Executive Summary*
10. *Race and Poverty Vol 14 - #4*
11. *Education on Lockdown – Schoolhouse to Jailhouse Track Exec Summary*
12. *National Law Center – Homelessness & Poverty*
13. Cranmer 02-06 MBJ Article on *Michigan Indigent Defense*
14. *2005 ABA Information on Statewide Indigent Defense Systems*
15. *ABA Talking Points – Indigent Defense Systems*

**Criminal Issues Planning Workgroup
Meeting Summary and Consensus Outcomes
January 17, 2006**

CIW Consensus Outcomes from Meeting

- 1. CIW agreed its working assumption is that criminal issues should be a part of the work of Justice Initiatives.**
- 2. CIW agreed to use the following three categories as a framework to organize the issues it will review:**
 - a. Collateral Consequences of Criminal Convictions**
 - b. Representational Services**
 - c. Policy and Procedure**

Meeting Summary

I Introductions

Linda Rexer called the meeting to order at 1:00 p.m. She asked each participant to introduce themselves with a sentence about their current work, particularly as it relates to the Criminal Issues Workgroup (CIW), and to note something personal or professional that others in the group may not know about them.

II Overview of Agenda and Goals of Meeting

Linda Rexer said presentations on relevant background information would comprise the first part of meeting followed by a presentation by Anne Vrooman, committee consultant, on stakeholder interview results and then the group would begin discussion. She said that the group would use a consensus process for decision-making, and would likely visit the key questions of the charge several times over the course of the project. She briefly reviewed the draft agendas for this and the remaining two CIW meetings.

III Mission and Charge of the Criminal Issues Workgroup

Linda Rexer described that this workgroup and its charge grew out of the Planning Workgroup for Justice Initiatives as a recommendation by that workgroup that in FY 05-06 there would be a dialogue/planning initiative to consider what aspects of criminal issues can/should be addressed by the Committee on Justice Initiatives, a committee of a bar with compelled dues. The workgroup would recommend to CJI the scope and content of what such work would be, including broad goals and suggested projects, and how it relates to other entities and external stakeholders. She advised that CJI has set a March 21 meeting to consider the recommendations of the CIW.

IV Background and Key Considerations

A. State Bar Mission and Strategic Plan

John Berry was unable to attend the meeting as he was having surgery. Linda Rexer asked that Judge Stephens and Janet Welch include any relevant information on this topic in their respective presentations.

B. Keller – Mandatory Bar Issue

Janet Welch explained that the Keller case sets forth the parameters for the use of mandatory dues of the SBM. She distributed copies of Michigan Supreme Court Administrative Order 2004-1 which further defines the activities of the bar. She pointed to the specific activities that are permitted under the Order, noting that those particularly relevant to the CIW include: – (B) the improvement of the functioning of the courts; and (C) the availability of legal services. She explained that additional criteria that govern what SBM can do are contained in the strategic plan of the SBM, noting that projects must be: 1) within the plan; 2) achievable; and 3) minimize divisiveness. She said that there may be activities which are Keller permissible but which do not meet one or more of the strategic plan's criteria. Janet also explained the process by which the Bar takes a position on proposed legislation, including the differing levels of support (e.g. support in principle, actively support) and the differences between what can be done by sections and committees of the Bar. SBM has generally interpreted providing information or education to members as permissible, even if advocacy on the underlying policy issues is not. She noted that the CJI's planning process includes an analysis of whether a project is Keller permissible or conflicts with the SBM strategic plan criteria.

C. Justice Initiatives Committee Mission and Jurisdictional Statement

Judge Stephens gave an overview of the Committee on Justice Initiatives (CIJ) and noted that the CIW needs to recommend what the focus in this area should be for the next 2-3 years. We should look at what the bar can do, what the bar might get others to do, what the CJI Initiatives already do, what should we not do and weigh both our ability and capacity to achieve plans. She said we have seen criminal issues, e.g. juvenile, reentry, indigent delivery, intersecting the work of the other CJI initiatives, the bar and other groups. Judge Stephens explained that Justice Initiatives Committee has four initiatives, and gave a brief explanation of the book of business for each of the initiatives. She added that in addition to the work of the volunteers of the initiatives, support for the work is done by SBM Justice Initiatives staff, led by Director Jerome Reide.

D. Hallmarks, Criteria and Process adopted by Justice Initiatives Committee

Anne Vrooman explained that the Planning Workgroup (Justice Initiatives) had developed an Annual Planning and Evaluation System that was adopted by the Justice

Initiative Committee in May 2005. The system is a date and activity driven system that

ultimately considers both existing and proposed projects using the set criteria and hallmarks developed for the process. Using this method, all projects are prioritized so that resource allocation can be made accordingly. The prioritization decisions are then used as part of the overall budget information for the SBM.

E. Principles of a Public Defense System

Jim Neuhard explained how the ABA's Ten Principles of a Public Defense System evolved from discussions and concern that in most cases the attorney for a case left the case before sentencing. Further, he explained that there is growing interest in providing greater social services within public defender offices aimed at being more continuously involved so that clients have greater likelihood to succeed. He said that the SBM Michigan Representative Assembly had adopted the Ten Principles and an Eleventh: that attorneys providing public defense services will explore and advocate for programs that improve the system and reduce recidivism. He said that Michigan is 1 of only 3 states in the country with zero state dollars committed to trial level defense. Michigan's public defense system operates exclusively at the local funding unit level, thus there is no oversight or standards for attorneys providing assigned counsel services. He said that 50% of people coming to court cannot afford counsel and are assigned counsel. Jim further explained that the State Planning Body is also working on the growing area of civil consequences and at their last meeting identified areas that could be addressed.

V Report on Stakeholder Survey/Interview Results

Anne Vrooman distributed a summary of and presented the results of interviews with 12 key stakeholders to the Criminal Issues Workgroup process (handout of summarized results). The interview asked 4 key questions:

- 1) What do you think is most important to be included in this planning effort/and or what should be produced? Key results: collaboration with other bar entities and external groups; identify outside entities for partners and resources; achievable projects that are Keller permissible; clarity about what it would be asking the SBM to do; broad scope of projects, not just focus on legal service providers.
- 2) What areas/specific topics do you think are most important and most appropriate for the Bar to address? Key results: **Indigent defense** (support for state level system; study holistic approach such as Washtenaw); **Collateral consequences of criminal convictions** (immigration, housing, license sanctions, employment barriers, student loans, college applications, voting, jury service – overall affect on general and target populations); **Expungement** educate various populations about statute and process, develop statewide process within courts; **Pro Bono** (getting pro bono assistance to work on civil issues with criminal legal service providers; **Juvenile issues related to criminal convictions**); **Criminal reform issues aimed at improving the system** (keeping innocent people out of the system, video taping interrogations, identification issues and procedures); and **Prisoner/prison Reform issues** (prisoner re-entry issues, getting ombudsman reinstated, civil issues for prisoners such as child support and visitation)

3) What role and activities are the Bar most uniquely positioned to assume in this area?

Key results: Education for attorneys, judges, legislators, public, target populations; Education aimed at reform; facilitate conversation to raise awareness of issues; focus on how best to educate and reach different populations; develop materials for education and use by service providers; data gathering and research; watchdog role – identify things that are not working in the system and how to fix it; facilitate collaboration with local bar associations.

4) In addition to CIW members, who should we seek input from?

Key results: Other Bar entities; Prosecuting Attorneys Association; David Carroll-NLADA

VI Discussion – Should there be a Criminal Access Initiative within the Justice Initiative Committee, and if so, what aspects of criminal issues can be addressed by JIC, a committee of a bar with compelled dues?

Linda Rexer opened the discussion by asking Anne Vrooman to present a suggestion for a framework for how all of the issues could be tied together. Anne suggested that under the broad heading of collateral consequences, each of the topic areas could be categorized by population, issue and key players. That model worked for all of the topic areas except indigent defense, which led to a discussion and agreement that we should not use the term “indigent defense.” Instead, the category should have a more general label, like “representational services” because many who are not indigent cannot actually pay for counsel, other advocates like GAL’s are involved, and various proceedings besides the criminal trial are affected. A third area, “policy and procedures”, to address legislation, court rules, standards, etc. was also identified and agreed to by the workgroup.

Linda asked each participant to add to the list of topics/issues that had been identified. Issues in addition to those listed in the survey results included:

- lack of consistency among parts of the system that a person encounters - statutes relevant to school policies
- lack of understanding from a juvenile perspective of impact of decisions, what you are gaining(??) as and adult
- child support and visitation procedures for prisoners
- collateral consequences for general population
- funding for legal services
- right to know by the defendant – use information before sentencing
- educating civil, criminal attorneys about issues that intersect both and collateral consequences
- educate clients and those who come in contact with them, e.g. internet information
- data – lack of it a problem to assist system management or reform – shouldn’t use just anecdotes
- coordination of pro bono attorneys
- reframe the debate so that focus is on fair and just system

- look to future – identify better way to do things

- education of all for these issues
- developmentally disabled defendants
- standards for defense attorneys
- prisoner re-entry important, including prisoner financial debt as they leave prison - mentally disabled people end up in prison
- planning for prisoner civil issues should be done upon entry into prison
- should frame message re have people who served their sentence paid their debt – or do they have a life sentence because of collateral impacts of conviction?

VII Next Steps

- We will invite Friend of the Court knowledgeable person to join workgroup as well as a state level education policy person. Linda Rexer and Anne Vrooman will identify key topic areas and set up presentations for next meeting. Meeting summary, agenda, and any meeting materials for February 3 meeting will be sent to workgroup by e-mail.

VIII. The meeting was adjourned at 3:00 p.m.

**Criminal Issues Planning Workgroup
Meeting Summary and Consensus Outcomes
February 3, 2006**

CIW Consensus Outcomes from Meeting

1. Two subgroups will be formed to address a) Collateral Consequences and b) Representational Issues. Both of these subgroups will include review of policy and procedures in their efforts (instead of a separate subgroup on policy/procedure).

2. The two subgroups will meet by phone to consider input from the first two CIW meetings, as well as other information, and address questions such as:

a) If the Criminal Issues Workgroup recommends incorporating criminal issues in the work of Justice Initiatives, what aspect of collateral consequences should be included?

b) Describe broad goals for addressing this area within Justice Initiatives and the State Bar of Michigan, and how it may related to the other JI Initiatives (Equal Access, Pro Bono, Justice Policy Initiative, and Resource Development), other bar entities and external stakeholders.

c) Identify potential partners/collaborators within the Bar and external to the Bar and what their role might be.

d) Describe possible projects that would meet the goals and objectives.

3. Linda Rexer and Anne Vrooman will assign CIW members to each subgroup and provide instructions and support for the subgroups to produce recommendations in advance of the CIW's final meeting on March 2, 2006.

I. Introduction

Linda Rexer called the meeting to order at 2:10 p.m. and asked new members (David Koelsch, Bob Ebersole [for Tony Derezenski], Don Reisig and Sheila Blakney) to introduce themselves.

II. Overview of Agenda and Goals of Meeting

Linda explained that there were two goals for the meeting: a) to determine the number, type and charge of subgroups to develop recommendations for the CIW to act on at its final meeting on March 2nd and b) to provide additional input for use by those subgroups through presentations on key topics identified at the 1/17/06 CIW meeting and reaction, discussion and questions from CIW members related to those topics. Presenters were asked to address the five questions (see section IV below), with CIW members asked to make comments or additions after hearing the presentations.

III. Recap of Consensus of CIW from Meeting #1

Anne Vrooman reviewed the CIW's charge: "What aspects of criminal issues (particularly civil-criminal overlap) could /should be addressed by the Committee on Justice Initiatives, a committee of a bar with compelled dues? And if so: What would its work be, including broad goals, suggested projects? How would it relate to other bar entities and external stakeholders?"

She also reiterated the consensus outcome from the CIW's January 17th meeting:

- 1) CIW agreed its working assumption is that criminal issues should be a part of Justice Initiatives.
- 2) CIW agreed to use the following three categories as a framework to organize the issues it will review:
 - a. Collateral consequences of criminal convictions
 - b. Representational services
 - c. Policy and procedure

Linda noted that the CIW's discussion leading to this consensus is described in the January 17th meeting summary so that we can refer back to that document for information considered in reaching that consensus.

IV. Presentations

Linda said that handouts from the presenters, as well as any resource materials they had provided, were posted on the committee's web page at www.msbf.org/ciw.htm. She notes that time limitations meant the presenters would give highlights on their topic areas in relation to the following five questions they were asked to consider:

- a) overview of the topic;
- b) comment on what data collection is (should be) available to help those working on this issue or educating others about the issue;
- c) who the key players/stakeholders to the issue are
- d) what major activities/projects are already being done to address the issue and by whom
- e) what most needs to be done to address the issue and any suggestions for what an appropriate role for the Bar would be in addressing the issue, particularly within JIC (either as a Bar project or collaboration with others)

A. Collateral Consequences of Criminal Convictions

Karen Tjapkes referenced her handout and noted the CIW had earlier received Miriam Aukerman's article on Collateral Consequences. See handout for full presentation notes. Among highlights Karen cited were: language barriers for limited English proficiency persons, housing (persons convicted of a sexual offense are barred from public housing for a lifetime; persons can be evicted from public housing if, e.g. the guest of a family member has a conviction, parolees cannot live with other parolees); family law (parental rights terminated after two years incarceration, child support arrearages accrue while in prison and become a lifetime debt that cannot be repaid if they are not suspended upon entry into prison); employment (may be new law basing nursing home employment restrictions on seriousness of crime instead of general bar and establishing an appeals

process, complete bar may violate title VII re disproportionate impact on person of color, many employers will not accept applications from those with felony conviction despite individual circumstance); public benefits (welfare fraud can disqualify family from benefits for life; SSI benefits cease after conviction; sometimes with the issuance of a bench warrant); consumer (cannot make payments for home, car, etc.; drug offense means no educational financial assistance or student loans); expungement (may only have one conviction expunged and only after 5 years and sometimes prosecutors are not aware that charging 3 vs. 1 counts creates this lifetime impediment); data collection (there are studies on the benefits of expungement to reducing recidivism but no Michigan studies on the number of people barred from working in the nursing homes which data might help education related to possible policy changes); stakeholders (add persons with criminal records to list in the handout).

Additional points from CIW members included: the sex offender registry act has consequences on custody/visitation because applying it in an overly general manner does not allow individual assessment of whether an offender, e.g. can see his own child; Ingham County matched their FOC data with MDOC to remove persons in prison from child support obligation but that may be a one-time operation and is not mandated or uniform as to data management in other counties or throughout the state; immigration issues include 1) deportation for host of offenses 2) moral turpitude can prevent someone from gaining status (visas, etc.)

B. Prisoner ReEntry

Terri Stangl referenced her handout and other written resources (see committee web page). See handout for full presentation notes. Among highlights Terri noted were: overlap with collateral consequences (view prisoner reentry, collateral consequences and prisoner civil legal needs topic as a continuum of related issues which all underscore the idea that the earlier the action the better the chances for success, creative thinking at plea time may increase success of released prisoner and reduce recidivism - 61% of those going back to prison are doing so from parole status); lack of legal assistance (federally-funded civil legal aid programs cannot represent prisoners on their civil needs, watch for an opening with Congress to permit use of programs' non-federal funds for this representation, it is difficult to recruit pro bono lawyers for this population, maybe look for opportunity for state funding and make the cost-savings case); lack of awareness or education (prisoners may not know how to recognize a problem as a legal issue, nor may staff in prisons), identification (prisoner's identification are lost in the prison system and lack of I.D. can impede reentry success); data collection (need to understand profile of those released -1/3 of all prison releases are to Wayne County with next largest populations from Oakland, Genesee, Saginaw and Kent County); parole conditions (would case by case assessment foster greater success than one-size fits all?).

Additional points from CIW members included: The points being made regarding prisoners apply to jails as well; responses and tools should be coordinated in the community to identify gaps in services and address them; uneven resources.

C. Prisoner Civil Legal Needs

Sandy Girard referenced her handout and other written resources (see committee web page). See handout for full presentation notes. Among highlights Sandy noted were: transition from freedom to incarceration (credit/loan/property - should the car be turned in instead of debt accruing, should a bankruptcy be filed, is will, power of attorney or guardianship needed, ongoing litigation - e.g. divorce - not being writted out to go to court can result in dismissal, difficult to get pro bono lawyers for prisoners but see federal system which has a staffed office to provide pro se assistance, most jailhouse lawyers focus on prison issues not civil needs - maybe create a special category in lawyer referral for attorneys willing to represent prisoners, no federal funding for civil needs and state policies to limit resources for prisoners), matters arising in prison (lawsuits by victim, parental rights, tax matters, SSI payments sometimes continue and then SSI demands restitution, such matters may be helped by pre-emptive action and a screening sheet at the beginning of the prison sentence might be helpful) obstacles (many prisoners with cognitive problems; disabilities, the elderly have special needs, no waiver of fees for indigent prisoners for court fees, need educational and self-help materials in form suitable for prison setting where interactive computers and videos may not be allowed, change state-based policy obstacles such as charging fees for everything which create a long-term debt because they cannot be paid from prisoners low pay).

D. Juvenile Issues

Judge Mayfield offered comments on the memoranda provided by Regina Daniels Thomas who could not be present at the meeting. See memoranda for full presentation notes. She noted that often parents are not prepared to handle the juvenile offender (often parents have own marginal issues), that county ISDs need to be added to the stakeholder list, should juvenile counsel taking a course that helps recognize juvenile incompetence and when appropriate requests competency evaluation; all parts of the community need to be coordinated to take a holistic approach to services/solutions. Don Reisig also noted that dollars and efforts spent on children's early years would prevent many problems later. Bob Ebersole said that some schools now want to expand the zero tolerance policies which may not be the best way to avoid more problems. He asked for citations to or copies of the referenced studies related to school discipline and zero tolerance. He said that the policy review and other ideas should be approach as to what is best for kids.

E. Representational Issues

Frank Eaman discussed problems related to the current indigent defense system. Michigan's system is a county by county system (evolved from the 19th century "reasonable fee method) so local systems were in place when the Gideon case came down in 1963 guaranteeing the right to counsel. The state pays only for appellate cases; counties pay all trial level cases. This results in a lack of coordination and consistency (changes - must go county by county) and reluctance to take money out of county budgets for defense fees, e.g. same budget for fees in Wayne County in 2004 as in 1984.

Now, there is an imbalance between resources for prosecutors and defense counsel; e.g. defense cannot hire investigators, cannot find expert for \$150 provided.

Defense lawyers are not invited to participate in discussions about policy, approaches in courts, legislature (recent improvement due to defense voice through CDAM). Also standards of practice have declined because of lack of resources to train, support and pay appointed counsel (90% of defense lawyers are appointed); low fees cause lawyers to take too many cases which results in poor preparation, poor training, lack of competence, convicting innocent people or “covering” (too many cases in too many courts, associates cover for lawyer even if not met client, and most defense lawyers are ignorant of civil consequences).

There are fundamentally two different systems, one with private counsel and one with appointed lawyers who have less resources = inconsistent and unequal. The costs to the state are high of not investing money at beginning of case (compare the MDOC vs. trial court funding or appeals vs. trial court funding). Michigan is in the bottom 3 states (ABA Gideon Report) and there is no statewide data, must go county by county (PDTF-MCCD seeking grant to do data collection)

The bar has worked on these issues before; Eaman chaired 1986-1988 Task Force (interdisciplinary – courts, prosecutors, judges) which made recommendations on a) state funding, b) state structure/system, and c) defense counsel standards. Now, there is an interdisciplinary task force with MCCD on same 3 items, but leadership is needed to go from talk to action. Key stakeholders include: governor, legislature, attorneys, clients and county commissioners. We need to change to state support instead of counties, which was one of the 1986 Interdisciplinary Task Force recommendations. Attorneys are fearful of changing the system and courts don't want to offend the counties from which they derive resources.

Val Newman noted that the bar has two groups addressing criminal issues, the Criminal Law Section and the Criminal Jurisprudence and Practice Committee (CJPC), neither of which is dedicated to proactively dealing with representational or collateral issues. The CJPC now has a balance of prosecutors and defense lawyers but is focused more narrowly than the issues CIW is discussing. Some projects have succeeded such as getting a blind draw system for assigned counsel and allowing recorded custodial interviews in some places, but there is a need for the bar to take a more comprehensive approach with more "teeth" (e.g. CJI). There is a need to look at sentencing errors (SADO reverses/modifies 30% of sentences); each year off a sentence (that should not have been there to begin with) saves the state \$30,000 per year. Some courts are willing to revise sentences, but defense counsel do not think to ask, nor are they trained in thinking about collateral consequences up front.

Jim Neuhard noted that there are a quarter million convictions in MI per year and that civil consequences unknown to most defense attorneys, e.g. no one tells the civil consequences of a plea, or if a convicted person's car is forfeited, they cannot participate in a diversion program and so will do time instead. There is usually no defense voice when these decisions are made (except see Washtenaw County's approach and Oakland County's drug court). Michigan has highest incarceration rate in the country outside the deep south. Standards are needed, including work load impact on competency; some lawyers are moving 1,200 cases per year or 650 in defender offices, much higher than

needed for competent counsel. A state structure is needed to increase consistency and enhance accountability. It is the bar's duty to work on this matter because the bar has a monopoly on legal representation. Indigent clients cannot choose counsel so the bar must insure that lawyers are trained, approved. It is not that costly (justice budget is under 3% of state budget), but costs of no reform are high, including the costs of civil consequences. If problems were corrected, there would be much less recidivism. The time of separating civil and criminal aspects of representation is over. States that have gone to a state structure include TX, GA, AL, SC, NC, TN and AR. The CIW should follow the mandate of the 11 principles adopted by the State Bar Representative Assembly in which the 11th principle says we have a duty to explore and advocate for programs that improve the system and reduce recidivism.

V. What Other Bars Are Doing to Address these Issues

Ms. Vrooman discussed her written outline, noting that many states approach projects through collaboration. She said links to some of the written resources in her outline would be posted on the committee web page. CIW members asked if any of the resources were aimed at the judiciary; Ms. Vrooman said she would research that further. Another suggestion was to look at the many states (30-40) which have standing task forces on indigent defense and other issues which often include the bar but are broader than the bar.

VI. Discussion

Ms. Rexer asked members to offer any additional ideas or comments on the presentations, particularly those that related to what the bar could/should do.

Comments included the following: would like to see the data on 49% of juveniles encountering the criminal justice system have IQ's less than 79 (85 is average and less than 70 qualifies for special education); judges should recognize and do something about criminal defense counsel that are not competent; some issues identified reflect deliberate social policy decisions which may be hard to change and neither counties or the legislature may not be receptive to changes in cost structure; federal and state systems often do not mesh (federal law takes into account civil rights complaints); racism plays a part; there are fees included for items that are cost ineffective and are only there to make things difficult for prisoners; data collection should be easier; SCAO requires much data from each county and they must have it and should make it available; CIW efforts should choose key first steps and not try to do everything; there is a difference of perception regarding whether it is malpractice not to discuss civil consequences; lawyers fear it may be malpractice to give erroneous advice and thus sometimes do not give any; we need to change the attitude that all felons are dangerous; may have to advise school districts re school employees with criminal records; it is not likely that federal laws dealing with

immigrants are not going to become less strict, so there is a need to educate judges, prosecutors and defenders about immigration issues, perhaps create a program to train lawyers to represent aliens; should consider changing state law so that there are degrees of larceny; should encourage civil programs to intercept prisoners as soon as they are released to offer assistance with legal problems; civil penalties like no federal housing for life are contrary to the concept of rehabilitation; we should consider creating a video program on

these issues for distribution to the public online and via DVD; things that the State Bar can clearly do include: obtain data the cost per hour of criminal defense, obtain data on the caseload for defense attorneys, create MCLE for defense work, determine a model system (current MI one is inadequate), determine if it can support legislation on this under *Keller*, and obtain data from the counties; educate the public and the members of the Bar about the problems with current policy and the benefits of changes; legislators are afraid of standards and fear lawsuits; do exit questionnaires of defendant regarding the defense assistance; there should be a financial screening at the beginning of the process; the approach should be holistic which may require a reallocation of the amount of resources and how they are used; should not be afraid to embrace standards and mandatory CLE, include the entire community and in juvenile focus on what is best for the child; educating prosecutors/defense/judges/clients about civil consequences could be cost effective and prevent more serious issues later; ad hoc approaches with narrow focus are part of the problem – need integrated, comprehensive view; indigent defense bill is not opposed philosophically just as to money; to take concrete small steps the bar could: define reasonable fees for assigned counsel, address case load limits for competency, debate having a mandatory CLE requirement with required training, require assigned counsel do an ethical job and stop the system of low bids choosing assigned counsel, don't limit view to current reality but look down the road at what a model system looks like (recognize cannot build improvements without a state structure), look at 11 principles and design steps to promote them.

VII. Adjournment and Next Steps

The CIW agreed there should be two subgroups (instead of three) on Collateral Consequences and Representational Issues. Linda and Anne will contact members with assignments (members can request to be reassigned to the other subgroup if desired) and provide instructions and tools to each subgroup.

The meeting adjourned at 4:05 PM

CIW Subgroups Roster

Collateral Consequences

Anthony A.Derezinski
Stuart Dunnings, III
Sandra L. Bailiff Girard
David C. Koelsch
Hon. Mabel Mayfield
Donald Reisig
Angela Kay Sherigan
Terri L. Stangl
Laurin' C. Roberts Thomas
Karen M. Tjapkes

Representational Issues

Sheila Spaulding Blakney
Hon. Alton T. Davis
Nancy J. Diehl
Frank D. Eaman
James R. Neuhard
Valerie R. Newman
Regina Daniels Thomas

Collateral Consequences Workgroup Assignment

The assignment for the Collateral Consequences Workgroup is to produce a draft answer to their assigned questions for consideration by the full Criminal Issues Workgroup at the March 2, 2006 meeting. Suggested resources to aid in consideration of the questions are provided under each question component, and are available on the Criminal Issues Workgroup web page at www.msbf.org/ciw.htm

Part One – Substantive Considerations

1. If the CIW recommends incorporating criminal issues in the work of Justice Initiatives, what aspects (substantive areas) of collateral consequences should be included?

Resources

- List of issues and topic areas identified through meetings and interviews

2. Describe the broad goals of addressing this area within Justice Initiatives and the State Bar of Michigan and how it may relate to the other Initiatives (Equal Access, Pro Bono, Justice Policy Initiative, and Resource Development), other bar entities and external stakeholders.

Resources

- Goals - examples
- List of identified stakeholders
- Jurisdictional statement of Justice Initiatives and each Initiative

3. Identify potential partners/collaborators within the Bar and external to the Bar and what their role might be.

Resources

- List of identified stakeholders

4. Identify areas/issues that should be addressed through policy and procedure.

Resources

- List of issues and topic areas identified through meetings and interviews
- List of policy and procedure issues identified through meetings and interviews

5. Identify existing data collection/research and additional data collection/research that would inform decisions about unmet needs and/or educate target populations.

Resources

- Data collection/research issues and sources identified through meetings and interviews

6. Describe and rank order possible projects that are appropriate for Justice Initiatives

(a committee of a bar with compelled dues) that would meet the goals and objectives.

Resources

- Justice Initiatives Threshold Criteria for projects
- List of projects suggested during meetings
- Examples of projects being done in other states

Part Two – Structural Considerations

1. What structure would best allow Justice Initiatives to address collateral consequences: a) create a separate initiative within Justice Initiatives to address collateral consequences and representational issues, b) address all issues within the existing initiatives (Equal Access, Pro Bono, Justice Policy, Resource Development) or, c) address these issues in some other way? Please provide rationale for answer.
2. If a separate initiative is created to address collateral consequences and representational issues, what would be an appropriate jurisdictional statement, or statement of purpose?
3. If a separate initiative is created to address collateral consequences and representational issues, do you have any suggestions for an appropriate name for that initiative that would be descriptive of both its components and its intended work?

Resources for Questions 1,2,3

- State Bar of Michigan Strategic Plan
- State Bar of Michigan Mission Statement
- Justice Initiatives Committee Jurisdictional Statement
- Jurisdictional Statement for each JI initiative

Representational Issues Workgroup Assignment

The assignment for the Representational Issues Workgroup is to produce a draft answer to their assigned questions for consideration by the full Criminal Issues Workgroup at the March 2, 2006 meeting. Suggested resources to aid in consideration of the questions are provided under each question component, and are available on the Criminal Issues Workgroup web page at www.msbf.org/ciw.htm

Part One – Substantive Considerations

7. If the CIW recommends incorporating criminal issues in the work of Justice Initiatives, what aspects (substantive areas) of representational issues should be

included?

Resources

- List of issues and topic areas identified through meetings and interviews

8. Describe the broad goals of addressing this area within Justice Initiatives and the State Bar of Michigan and how it may relate to the other Initiatives (Equal Access, Pro Bono, Justice Policy Initiative, and Resource Development), other bar entities and external stakeholders.

Resources

- Goals - examples
- List of identified stakeholders
- Jurisdictional statement of Justice Initiatives and each Initiative

9. Identify potential partners/collaborators within the Bar and external to the Bar and what their role might be.

Resources

- List of identified stakeholders

10. Identify areas/issues that should be addressed through policy and procedure.

Resources

- List of issues and topic areas identified through meetings and interviews
- List of policy and procedure issues identified through meetings and interviews

11. Identify existing data collection/research and additional data collection/research that would inform decisions about unmet needs and/or educate target populations.

Resources

- Data collection/research issues and sources identified through meetings and interviews

12. Describe and rank order possible projects that are appropriate for Justice Initiatives (a committee of a bar with compelled dues) that would meet the goals and objectives.

Resources

- Justice Initiatives Threshold Criteria for projects
- List of projects suggested during meetings
- Examples of projects being done in other states

Part Two – Structural Considerations

4. What structure would best allow Justice Initiatives to address representational issues: a) create a separate initiative within Justice Initiatives to address representational issues and collateral consequences, b) address all issues within

the existing initiatives (Equal Access, Pro Bono, Justice Policy, Resource Development) or, c) address these issues in some other way? Please provide rationale for answer.

5. If a separate initiative is created to address representational issues and collateral consequences, what would be an appropriate jurisdictional statement, or statement of purpose?

6. If a separate initiative is created to address representational issues and collateral consequences, do you have any suggestions for an appropriate name for that initiative that would be descriptive of both its components and its intended work?

Resources for Questions 1,2,3

- State Bar of Michigan Strategic Plan
- State Bar of Michigan Mission Statement
- Justice Initiatives Committee Jurisdictional Statement
- Jurisdictional Statement for each JI initiative

**Collateral Consequences Sub Work Group
Final Draft – February 28, 2006**

I. Most Important Issues (Broadly Stated)

- A. Lack of information at all stages of process about civil collateral consequences caused by criminal convictions and incarceration
- B. Lack of standards and procedural requirements at all stages (court rules, ethics, automatic triggers for information)
- C. Lack of assistance for defendants at each stage (multi-disciplinary)
- D. Resource Development (tools, materials, people, funding)
- E. Lack of understanding by policy makers, criminal justice system, the public about the social and financial costs of civil collateral consequences
- F. Lack of procedures that would permit more individualized determination of nature and extent of collateral civil consequences following a criminal conviction (e.g. restrictions on activities, inability to work at certain jobs, inability to receive certain types of programs or benefits, extent of restitution)

II. Goals (related to each of the issues)

- A. Provide Information to stakeholders at all stages of criminal justice and post-release process:**
 - 1. Educate stakeholders (criminal defense attorneys, judges, prosecutors, community agencies, schools, defendants)
 - 2. Prepare and disseminate information that provides assistance to individual at each stage of process
 - Pre-prosecution
 - Prior to entry of plea
 - At time of sentencing
 - During incarceration
 - At time of release
 - Post-release

- B. Recommend and Advocate for Systems and Standards**
 - 1. To develop and propose systemic methods and tools to make information available to stakeholders key times (checklist, court rules)
 - 2. To develop and publish best practices
 - 3. To codify appropriate practice standards

¹“All stages” includes pre-prosecution (when school zero tolerance policies and special education rules are important, and also when consideration of alternatives to prosecution or conviction could be considered as is sometimes done in “drug courts”), prior to entry of plea (when defendants need to know about the consequences to themselves and their families of various convictions), prior to entry of sentence (since type and length of incarceration may affect consequences), at time of sentencing (when defendant should try to address civil legal problems prior to incarceration), during incarceration, at time of release, and in the community (when expungement or rehabilitation may become a possibility).

- C. Increase Multi-disciplinary assistance to defendants**
 - 1. To promote better integration and connections between related components of the system (e.g, schools with criminal justice system)
 - 2. To bring together multi-disciplinary task force to identify issues, best practices and opportunities for collaboration and to assess what can be done
 - 3. To increase the capacity of communities in identifying and proactively addressing needs of persons entering criminal justice system as defendants, as inmates, and as ex-offenders

- D. Increase financial, staffing, and information resources in Michigan to help prevent or mitigate collateral civil consequences at each stage of process**
 - 1. Identify, recommend and advocate for increased or new funding to provide multi-disciplinary assistance at key points in criminal justice process
 - 2. Identify and help coordinate resources that are currently available in Michigan and document unmet needs.

- E. Educate Stakeholders and Public About Issues, Their Consequences for Michigan, and Opportunities for Improvement**
 - 1. Identify data collection/analysis needed, how to obtain it and, if appropriate, where to build it into the system.

- F. Study and identify areas of law and procedure where lack of flexibility interferes with successful rehabilitation and re-entry of offenders.**
 - 1. Nature and extent of civil consequences are often not based on individual factors and circumstances related to the offense, the defendant, etc.
 - 2. Civil consequences often cannot be mitigated or ended based on time, rehabilitation or other factors.
 - 3. Civil consequences deprive offenders of income, resources, opportunities needed to help offender successfully re-establish him/herself in community upon release.

III Priority Projects for SBM Related to Goals

Information, Education, Training

- 1. Create a multi-disciplinary task force (through SBM leadership/support and/or with partners) that works over a period of two years to identify issues, best practices, opportunities for collaboration, data, resource and funding needs and partners; identify necessary policy changes; develop proposed standards; and to make recommendations based on these findings. The task force would include working groups which target both juvenile and adult issues. Strategies

that the task force might use to address its work include convening a conference with a call for presenters to educate stakeholders, public, and media about the issue areas to encourage research analysis of issues on the fiscal and social impact of collateral consequences on Michigan, and spur ideas for action recommendations and partnerships. This effort would seek to coordinate with state and local re-entry initiatives.

2. Develop and disseminate training and educational materials and self-help assistance tools customized for key audiences such as prosecutors, defenders, judges, schools, defendants, families of defendants, MDOC, jail personnel, prisoners and community agencies, and others related to civil consequences of criminal convictions. Such information would include analysis of the fiscal and social impact for both adult and juvenile populations, as well as the state as a whole.

IV Policy and Procedure

A. Areas to be developed through policy and procedure

1. Adoption of standards and systems related to information about and strategies for mitigating civil consequences
2. Multi-disciplinary services – could involve recommendations concerning funding or procedures to ensure that this is available
3. Increasing resources – could involve recommendations for increases in or greater flexibility in using governmental funding to meet identified needs
4. Proposed changes in law or procedure to increase individualized determinations, consequences, and rehabilitation could involve recommendations for changes in policy or practice

B. Possible Policy Issues for Consideration (this list will be circulated to CC group for edits/additions and would be contained in appendix of CIW report) These issues would be analyzed and the appropriateness of policy changes (legislative, administrative, etc.) would be evaluated. This list may increase or decrease based on the review of issues undertaken by the proposed task force.

1. Legislation to place time limit on employment application requirement for information regarding prior criminal convictions.
2. Legislation for increased opportunities for individualized determination of collateral consequences and civil penalties.

3. Legislation to increase expungement opportunities.
4. Administrative changes to standard parole conditions that result in overbroad or excessive conditions.
5. Research and proposed changes to policies and laws regarding reimbursement, restitution, forfeiture, and other income/asset laws that impact ability of offenders to successfully re-enter society.
6. Legislation that would permit rehabilitated ex-offenders to request removal of specific (or clusters of) civil disabilities or disqualifications.

C. Capture all project ideas suggested in this process for inclusion in appendix of CIW report (CC group will review and add to list on CIW web page at www.msbf.org/ciw.htm)

V Structural Considerations

The Collateral Consequence Workgroup identified the following “key elements” for the appropriate structure determination for discussion by the entire CIW on March 2nd.

1. The structure should be one that allows for high visibility of the issues
2. The structure should allow for integration across the bar with all relevant sections and committees, including integration with representational issues structure/efforts and other JIC Initiatives
3. The structure should allow for multi-disciplinary participation with multiple stakeholders with SBM leadership and/or support

Possible institutional structure options:

1. A limited term task force housed under Justice Initiatives Committee as the initial entity with reconsideration of the appropriate structural institution at the end of that limited term.
2. A task force within the SBM, independent of JIC
3. A separate initiative within JIC

Suggestions for the title of the task force or initiative

- A. Community Justice Development and Restoration (task force or initiative)
- B. Community and Restorative Justice System (task force or initiative)

Representational Issues Sub Work Group Final Draft – February 28, 2006

I Most Important Issues

- A. The need for a statewide system for providing effective indigent defense at trial level and continuity of representation at post conviction proceedings (including adequate funding)
- B. Need for standards for criminal defense
 - System standards
 - Performance standards
 - Ethics
 - Determination of reasonable fee (formula, factors)
 - Provision of needed resources (investigation, experts, etc.)
- C. Need for mandatory training (initial and continuing) for criminal defense attorneys, and tools/course pending mandatory training requirement
- D. Lack of available data for all aspects of indigent defense, including cost of current problems, rationale for needed changes, and pilot/model lessons

II Goals (related to each identified issue)

- A. **Promote statewide system for effective indigent defense at trial level and continuity of representation at post conviction proceedings:**
 1. To provide competent and fair representation of indigent defendants
 2. To minimize gap and provide access to resources (investigation, experts, etc.) and to provide more equality of public defense in all courts within the state
 3. To address funding disparities of locally funded system
 4. To incorporate the Eleven Principles of Public Defense adopted by SBM Representative Assembly into each county
 5. To reduce errors, recidivism, and overall costs, and increase accountability of public defense services.
- B. **Develop and promote standards for criminal defense**
 1. To develop system standards which incorporate the Eleven Principles of Public Defense, with focus on each person as individual and not one size fits all
 2. To promote holistic (multi-disciplinary) services linking prosecutors, defense and other legal and non-legal services as appropriate
 3. To develop performance standards for criminal defense attorneys including caseload standards to codify appropriate practice standards
 4. To evaluate ethical issues (including low fees, conflict of duties, scope of permissible representation) which create minimum standards, and pursue ethics opinions where needed
 5. To establish formula and factors for “reasonable fee” standard
- C. **Develop and promote training and education for criminal defense attorneys**
 1. To ensure that lawyers receive appropriate training (initial and continuing) for the specific case type handled (pending mandatory training as part of a statewide structure, develop tools such as information about collateral consequences to help representational decisions and consider requiring courses before being allowed to

- take a case in specialized areas, e.g. juvenile)
2. To educate criminal defense attorneys, prosecutors, and courts in civil consequences of criminal convictions

D. Develop and conduct research/data collection on indigent defense system

1. To gather and maintain uniform statewide data on key elements of indigent defense system (SCAO – use existing caseload report; victim advocates in prosecutor office as resource)
 - How much money is spent in each county for indigent defense for each of following categories: felonies; misdemeanors, juvenile representation, appeals -
 - Number of cases and specific case types assigned
 - Number of lawyers handling cases and number of cases assigned per lawyer -
 - Rate of pay for criminal defense attorneys of all types
 - Amount of money being spent on investigators and expert witnesses
 - Qualification requirements for being appointed counsel for specific case types, including requirements for maintaining that status (re-qualification) for each county
 - Process used for determining qualification and oversight of process and system for each county
 - Review studies done by other states to identify how/what data they gather and what recommendations the data supported
2. To identify model systems and best practices and evaluate practices relative to cost savings, error reduction and other benefits
3. To determine prevalence of juveniles and adults in system as defendants due to mental health issues and recommend appropriate action for those individuals

III Project Priorities for SBM

1. Develop and conduct research/data collection (see II D above) on indigent defense system. Review studies conducted in other states to develop and advance model systems for indigent defense. Possible strategies include

working with NLADA /SBM data collection project for data requested by legislature.

2. Develop and promote training and education for criminal defense attorneys. Some training elements would be identified and advanced through standards to be developed, but some training should be designed and conducted even if mandatory CLE or standards are not in place , e.g. knowledge/skills training for defense counsel, educating stakeholders on collateral consequences.
3. Develop and promote standards for criminal defense which incorporate the Eleven Principles of Public Defense; promote holistic (multi-disciplinary) services; performance standards; caseload standards; ethical issues; and reasonable fee standard.
4. Promote statewide system for effective indigent defense at trial level and continuity of representation at post conviction proceedings.

IV Structural Considerations

The Representational Issues Workgroup identified the following “key elements” they believe are needed to carry out the RI goals and priorities in whatever structure is chosen by the full CIW.

1. Structure must provide high visibility of issues
2. Structure must allow for integration with all relevant sections and committees throughout Bar, including integration with collateral consequences structures/efforts and other JIC Initiatives
3. Structure must allow for participation of stakeholders outside of Bar
4. Structure must have staff and monetary resources to conduct work

Structure Options for further consideration by full CIW:

1. Independent task force not within Justice Initiatives supported through funding and resource allocation of State Bar.
2. Task force within Justice Initiatives (could review results later re institutionalizing longer term structure within JIC
3. Parallel structure within State Bar to JIC for criminal issues with separate State Bar resources

Criminal Issues Workgroup (CIW) Web Page Menu

(available online at www.msbf.org/ciw.htm)

A. CIW Final Report March 14, 2006

B. CIW Meeting and Working Materials

1. CIW Roster

2. CIW Charge: SBM CJI Jusisdiction; SBM Mission

3. CIW Timeline

4. CIW Materials for Meeting One: January 17, 2006

A. Agenda

B. Stakeholders Interview Summary

C. MSC Administrative Order 2004-1 ("Keller" Order)

D. Link to SBM Strategic Plan

E. Committee on Justice Initiatives Planning Process

1. CM Initiatives (subgroups)

2. Annual Planning Process/Calendar

3. Hallmarks

4. Criteria

F. Other materials

1. "From Day One" by Cait Clarke and James Neuhard

2. "11 Principles of a Public Defense Delivery System" Michigan Public Defense Task Force

3. "Gideon's Broken Promise" A Report on the ABA's Hearings on the Right to Counsel in Criminal Proceedings

4. Draft Indigent Defense Bill

5. "Barriers to Reentry" by Miriam J. Aukerman

6. ABA Juvenile Justice Committee on Collateral Consequences

1) Part I

2) Part II

5. Materials for Meeting Two: February 3, 2006

- A. **Agenda**
 - 1) **Two Subgroups Draft Model**
 - 2) **Three Subgroups Draft Model**
- B. **Meeting Notes from CIW 1/17/06 Meeting**
- C. **Materials for Presentations (and Questions for Presenters)**
 - 1) **Collateral Consequences Presentation Outline**
 - 2) **Prisoner ReEntry Presentation Outline**
 - a) **Michigan Prisoner ReEntry Initiative**
 - b) **MPRI Organizational Structure for Implementation**
 - c) **Prisoner ReEntry in Michigan Report - Executive Summary**
 - 3) **Juvenile Issues Presentation Outline**
 - a) **Possible Planning Project**
 - 4) **Prisoner Civil Legal Needs**
 - 5) **Representational issues**
 - 6) **Examples from Other States**
- D. **Other Materials**
 - 1) **Race and Poverty Vol 14 - #4**
 - 2) **Education on Lockdown - Schoolhouse to Jailhouse Track Exec Summary**
 - 3) **National Law Center - Homelessness & Poverty**

6. Sub Work-group Materials

- A. **General Information**
 - 1) **Roster of Members for Two Sub Work-groups**
 - 2) **Subgroups Call Dates and Call-In Numbers**
- B. **Sub Work-group Assignment Instructions 1) Representational Issues Sub Work-group Assignment Instructions**
 - a) **RI Resources**
 - 1) **Cranmer 02-06 MBJ Article on MI Indigent Defense**
 - 2) **2005 ABA Information on**

statewide indigent defense systems

b) **Call #1 Agenda - February 17, 2006**
1) **ABA Talking Points - Indigent Defense Systems**

c) **Call #2 Agenda - February 23, 2006**

1) **RI Draft Report - 2/17/06**

2) **Collateral Consequences Sub Work-group**

Assignment Instructions

a) **Call #1 Agenda - February 15, 2006**

1) **Collateral Consequences Issues**

Overview

b) **Call #2 Agenda - February 23, 2006**

1) **CC Draft Report - 2/15/06** C. Resources for Sub Work-groups

1) **Issues and topic Areas Identified Through Meetings and Interviews**

2) **Identified Stakeholders Identified Through Meetings and Interview - UPDATED 2/17/06**

3) **Policy and Procedures Issues Identified Through Meetings and Interviews**

4) **Data Collection/Research Issues Identified Through Meetings and Interviews**

5) **Projects and Activities Suggested Through Meetings and Interviews - UPDATED 2/28/06**

6) **Goals - Definition and Examples**

7) **Examples of Projects in Other States**

8) **Jurisdictional Statements of Justice Initiatives and Each Initiative**

9) **Justice Initiative Threshold Criteria for Pr oLcts**

10) **SBM Strategic Plan**

11) **SBM Mission Statement**

12) **SBM Bylaws**

7. Materials for Meeting Three: March 2, 2006

A. **Agenda**

B. **Meeting Notes from CIW 2/03/06 Meeting**

C. **Sub Work-group Reports**

1) **Collateral Consequences Sub Work-group**

2) **Representational Issues Sub Work-group**

D. **Structure Discussion Outline**