

Conclusion: Michigan's *Eleventh Principle*

Though NLADA assessed the state of the right to counsel in Michigan against the ABA *Ten Principles*, we note that the Michigan Task Force has promulgated an *11th Principle*: “One function of an indigent defense system is to explore and advocate for programs that improve the effectiveness and efficiency of the criminal justice system and that reduce recidivism.” NLADA supports this platform.

However, current opportunities to act in such a responsible manner are being missed in Michigan. For example, in the district court of Grand Traverse County, approximately 10 percent of all cases are for driving with a suspended license (DWLS). The jail manager told us that two percent of the people in jail are there for DWLS charges. Diverting these cases out of the regular prosecution system and establishing a program to help people regain their licenses could free funds for other far more serious defense purposes, avoid the need to appoint counsel, and help defendants maintain their jobs and avoid court costs and jail costs. The court administrator in Grand Traverse County indicated an interest in such a program. The prosecutor also noted that DWLS needs to be addressed, that “it’s an economic issue,” and that most of the defendants have no other criminal record. One of the judges told us the state “driver responsibility” fees are so high that most people cannot pay them and many are caught driving again with a suspended license.

Another area worth exploring in Grand Traverse County is the extensive use of probation for long periods of time, resulting in a number of probation revocations and jail sentences. We heard more than once the local motto for this resort community: “Come on vacation, leave on probation.” It is not our place to say Michigan must deemphasize incarceration, only to note that without a uniform statewide structure, Michigan will always lack the ability to implement its *11th Principle*. The ability of defense advocates to currently speak with a single, unified voice on justice matters and effectively advocate in such a manner is seriously diluted in Michigan by the Balkanization of service providers.¹⁴¹

Our Constitutional rights extend to all of our citizens, not merely those of sufficient means. Though we understand that policy-makers must balance other important demands on their resources, the Constitution does not allow for justice to be rationed to the poor due to insufficient funds. The issues raised in this report serve to underscore the failure on the part of the state of Michigan to live up to the mandate of the U.S. Supreme Court *Gideon* decision. Though some may argue that it is within the law for state government to pass along its constitutional obligations to its counties, it is also the case that the failure of the counties to meet constitutional muster

regarding the right to counsel does not absolve state government of its original responsibility to assure its proper provision. Unfortunately, the state's abdication of its responsibilities exposes counties like Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne to potentially costly litigation around these issues.