

IPPSR FORUM
Reducing the Corrections Budget through Effective Public Defense

Speaker: Joe DeGraff, Washtenaw County's Community Corrections Manager

I am the Community Corrections Manager for Washtenaw County. Dennis Schrantz, the Deputy Director has called on me to talk about the role of the public defender in mitigating prison commitments in Washtenaw County. Washtenaw County is just finished up the fifth consecutive year, at least fiscal year, of prison commitments significantly below the state average. The question has been raised whether the public defender office is a contributing factor of the success. So when they told me to come and talk about Washtenaw County's experience, I am a community corrections manager and we tend to evaluate data and process these, and I said, you know, there are so many points of discretionary decision making within the first among so many of the key factors in the justice system, it is going to be difficult to be able to isolate the extent of the impact of one key player, like the public defender, in influencing prison rates. However, to make the case, I guess you would start with two things.

One of the things you would start with is: Does the public defender have a significant role in the process? In Washtenaw County the public defender office represents 85% to 87% of felony defendants. This number does not include public defenders who are assigned at preliminary exam, and who later withdraw due to the discovery of a conflict, and does not include representation of probation violation hearing. So, the public defender certainly has a significant impact.

The second thing we would be looking for are measurable outcomes that support the case for the public defender having effective impact. The first place we looked was the two areas that sentencing guidelines left a fair amount of discretion for judges, straddle cell prison commitments and probation violations. What we found is that Washtenaw County has had the lowest straddle cell prison commitment rate among the thirteen mid-size counties in Michigan with a population of 150,000 to 600,000 from 1998 to 2001. In fact it is not even close. We were the only county that was below 30% on the prison commitment rate. The 2002 statewide data is not available and for 2003, the first nine months, Washtenaw County is second of those 13 counties. For the last 2 years, Washtenaw County's return rate, intake for probationers to prison, has been 6% below the state average. For probationers convicted of technical violation or new offense, if you take the low prison commitment rates for straddle cells and probation violators and combine them, that translates approximately to 68 fewer annual prison commitments from a county of our size. Even at a conservative rate of cost and incarceration, open savings in state incarceration costs would be a little over 2 million dollars, which is in fact more than the 2003 budget of the Washtenaw County public defender. That two million number does not include the county jail reimbursement or reimbursement for treatment that the county may get from the state for alternative sanctions. Which raises the question are there other factors that might explain these low prison commitment rates and that may mitigate prison commitment rates like effective alternative programming or county jail reimbursement incentives. In Washtenaw County, the jail capacity is 40%

smaller than the state average. We have 332 beds for 334,000 people based on the 2002 population. We are the only jurisdiction in Michigan who averages less than one bed per thousand. Certainly there are lots of system disincentives to lodging somebody locally. In fact, in the mid-nineties, when we experienced our last rash of jail crowding, we saw the suppressed jail use spiked prison commitments, of course this was before the sentencing guidelines restricted judges' discretion. So, certainly there are non-incentives to keep people locally instead of sending them to prison. Secondly, if you look at the level of funding in Washtenaw County for alternative programs, for example under PA511, Washtenaw County ranked 8th among the 13 mid-sized counties in funding for 2002. So while this community corrections manager I am proud of the programming that we offer, it is certainly not an empire or an expansive selection.

The other way community corrections...you know I am certainly not trying to make the argument that the existence of public defender offices is the sole reason for low prison commitment rates in Washtenaw County, but from a systems perspective, we have identified at least 4 different characteristics of a public defenders office that we think support the case for effective impact. I call these proximity. From a physical and functional standpoint, a public defender is always nearby in Washtenaw County. The physical sight of their office is adjacent to the courthouse. The assignment of public defenders across county courts allows the flexibility to provide attorneys for the wide array of legal services, including things like lineups, PPO's, or preliminary exams. The second thing identified is continuity. The Washtenaw County Public Defender has been a fixture in the local justice system for more than thirty years. Staff are often experienced criminal defense attorneys. This is a career public defender office. Many have more than a decade of service and are retained through a compensation package that is on par with our prosecutor. The public defenders in Washtenaw County are required to go to ongoing training and career development and the public familiarity with the office and the experience of the staff contribute to a community trust and the competency of the legal services delivered. The third thing is parity. The public defender is a full and equal partner in the justice system in Washtenaw County. They are represented in virtually every programming policy or procedural committee. Just to give some examples, public defenders are represented on the community corrections advisory board, the judicial oversight domestic violence initiative, the jail mental health diversion work group, the juvenile drug court initiative, the jail overcrowding task force, the executive sessions of the judicial counsel, the restorative justice committee, the foster care abuse and neglect board, the racial profiling committee, the attorney appointment board, and I am sure I left out some. From this position the public defender influences policy, educates justice, decors on issues, or advocates on behalf of alternative sanctions. The forth is economy. Public defender creatively allocates the resources, provides services that may not be readily available from contracted sources. Many of these services generate hidden efficiencies in the management of dockets, the containment of costs, or they provide important services at no additional cost to the county. In the midst of the budget crisis in 1995, Washtenaw County commissioned an internal budget analyst to study indigent counsel expenditures in six Michigan counties, to evaluate whether to continue funding the public defender office. The study's conclusion, it was simply two paragraphs and I will read it,

“Of the six counties, Washtenaw County did have the highest indigent counsel expenditures. But this can be attributed in part to the fact that many of the counties administrators admitted to have low and outdated fee schedules. Besides a comparison of dollars, the question of quality of services should also be taken into consideration.

The office of the public defender provides a great deal of flexibility to the county’s court system and offers other programs and services that a contracted attorney or firm would not, such as the extensive use of college interns. We are taking these factors into consideration along with the reasons behind the difference between indigent counsel expenditures does not appear to be advantageous to look at alternative models.”

So our county has certainly looked at alternative models and the conclusion, at least the most recent conclusion is that a professional well paid public defenders office is in the best interest of everybody in the justice system.

End.