

## **Washtenaw County: Public Defender Impact on Exceptionally Low Jail and Prison Commitments**

From 1998 through 2002, Washtenaw County, Michigan had the lowest prison commitment rate among the 13 largest Michigan counties when judges had the discretion to give a non-prison sentence. Why?

In 2003, Joseph DeGraff, Community Corrections Manager for Washtenaw County, spoke to the Michigan Legislature<sup>1</sup> on the role the Washtenaw County Public Defender Office had in keeping their counties commitment rate so far below the state average. He first acknowledged that isolating the impact of one component in the system is difficult to do. But he noted several factors that made the case that their presence and activities were the major factor that separated their county from the rest in Michigan.

First, the public defender plays a significant role in case processing in Washtenaw County. They represent 85-87% of the felony defendants in the county. In addition they represent significant numbers of misdemeanants, probation violators and juvenile offenders.

Second, he analyzed the data for measurable outcomes that made the case for the impact of the office. Michigan is a mandatory sentencing guideline state. In addition, there are many felonies that carry mandatory sentences. So he isolated the data where judges have discretion to impose prison or non-prison sentences. This occurs in "straddle cell" cases and probation violations. Straddle cells are those cases that, when scored under the guidelines, they fall in cells that allow the judge to sentence to probation, jail or prison. He found that in the thirteen mid-size counties with populations between 150,000 to 600,000, Washtenaw County had the lowest straddle cell commitment rate. In fact, "it was not even close." Washtenaw was the only county below 30% on the commitment rate. Moreover, Washtenaw County's return rate for probation violators was 6% below the state average – even though they had more straddle cell "risks" out on probation.<sup>2</sup>

<b>County</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Bay	56.5	46.0	41.1
Calhoun	46.3	49.6	46.4
Genesee	50.9	56.7	54.2
Ingham	41.5	34.5	32.2
Kalamazoo	36.4	36.3	44.8
Kent	46.4	40.1	40.7
Macomb	33.7	44.0	44.9
Muskegon	64.3	62.7	63.1
Oakland	31.8	31.6	33.5
Ottawa	35.2	33.3	34.7
Saginaw	61.8	46.3	32.8
Washtenaw	23.3	29.5	24.1
Wayne	25.9	35.8	41.8
<b>State Average</b>	<b>39.0%</b>	<b>41.0%</b>	<b>43.0%</b>

<sup>1</sup> DeGraff, "Reducing the Corrections Budget through Effective Public Defense", Michigan State University, Institute for Public Policy and Social Research, Public Policy Forum; October 15, 2003;

<sup>2</sup> Michigan Department of Corrections / Office of Community Corrections Bi-annual Report, March 1, 2002

### Percentage of Probationer Intakes to Prison CY 2001<sup>3</sup>

County	2001
Bay	44.3
Calhoun	35.9
Genesee	43.6
Ingham	39.2
Kalamazoo	36.9
Kent	27.6
Macomb	29.7
Muskegon	38.2
Oakland	25.9
Ottawa	23.3
Saginaw	38.6
Washtenaw	30.6
Wayne	39.4
<b>State Average</b>	<b>36.3</b>

The low prison commitment and return rate translated to 68 fewer annual prison commitments. Using a conservative cost of incarceration rate, this translates to over \$2,000,000 annually plus additional money returned to the county by the state for using alternative sanctions.

DeGraff reviewed the data of all post conviction disposition to eliminate other possible contributors to the low rate of incarceration such as the use of jail sentences instead of prison or the high use of alternative sentences. However, this could only be true if Washtenaw had a larger than average jail. In fact, the Washtenaw jail is 40% smaller than the state average. It has 332 beds for a population of 334,000. It is the only jurisdiction in Michigan that has less than 1 bed per thousand of population. Since the county pays for the jail and the state pays for the prison, it would seem there would be an incentive to send inmates to the prison rather than the jail, particularly since it is so small. Finally, one would expect to see a widened net of alternative sanctions if the jail and prison commitment rates are low. However, of the 13 mid-size counties, Washtenaw ranks 8<sup>th</sup> in alternative program funding. The existence of a well funded public defender office cannot be the sole factor contributing to these low rates of incarceration and use of alternative sanctions.

The question arises whether the existence of *any* public defender office or other assigned counsel system or contract private practitioner would have a similar effect. The answer is clearly no. Of the 13 counties compared in this study, Bay and Washtenaw had public defender offices. However, the prison commitment rates and probation violation commitment rates were significantly higher than Washtenaw – among the highest in the state. In fact as noted below, while the Washtenaw office comes fairly close to meeting the American Bar Association's 10 Principles of a Public Defense System, the Bay County office is woefully under funded. Even cursory comparisons reveal important differences. The caseloads in Bay City are 4-5 times higher than in Washtenaw. There are four characteristics of the Washtenaw Public Defender

<sup>3</sup> Michigan Department of Corrections/Office of Community Corrections Bi-annual Report, March 1, 2002

office that the community corrections office believes supports the case for the impact of this defender office.

1. **Proximity and Presence.** The office is located adjacent to the county courts and provides attorneys for a wide array of services from Personal Protection Order's, line-ups and probation violations to murder trials and felony sentencings and diversion programs.
2. **Continuity and experience.** The office has been a fixture in the county for decades. They have salary parity with the prosecutor, have career defenders and are required to attend training. The experience of the staff and office contributes to community trust and the competency of the services delivered.
3. **Partner in the System.** The public defender is a full and equal partner in the justice system in the county. They are represented in virtually every programming, policy or procedural committee. For example, they are represented on the community corrections advisory board, the judicial oversight committee, the domestic violence initiative, the jail overcrowding task force, the jail mental health work group, the executive sessions of the judicial counsel, the restorative justice committee, the foster care abuse and neglect board, the racial profiling committee, and the attorney appointment board. The public defender influences policy, educates justice, and advocates for alternative dispositions.
4. **Economy in the system.** The public defender creatively leverages and allocates resources and provides services not readily available from the private sector appointees or contractors. They also generate hidden efficiencies in docket management and other cooperative programs to increase efficiencies or reduce costs at no additional county expense. In the midst of a budget crisis in 1995, they looked at eliminating the defender office to use cheaper methods. They found that while the office cost more than 6 other similar sized counties' defense systems, they needed to look at the impact on the entire system.

“Besides a comparison of dollars, quality of services should also be taken into consideration. The office of the public defender provides a great deal of flexibility in 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...”

There is one more factor that separates this office from all other public defense systems in Michigan and greatly contributes to its success. The office sees all persons lodged into the county jail on the day they are arrested. As they fill out detailed information on the defendant, this information is then used at the first arraignment when bond is set through all the possible pretrial release decisions and plea discussions. Unlike anywhere else in the state, this information drives every potential option out for the client. Unlike data scraped together by the defendant or overworked impersonal pretrial released services or court personnel, Washtenaw's defendants have the information screened and verified by the defender office. Moreover, they have the ability to obtain additional supporting information at ever step of the pre trial process. This early entry coupled with the offices contacts throughout the system and community produces the profound and predictable impacts noted above to the benefit not only of the county but also to the budgets of their county and their state.

As a result of the above factors, the office has even more, significant impacts on the local justice system. The office advocates extremely effectively for pre-trial alternatives, such as supervised release, to financial bail for non-violent offenders. These pre-trial programs are typically designed for, and populated by, drug or alcohol addicted clients, many of whom cannot afford retained legal counsel.

- In FY 2001-02, **only half of 200 felons enrolled in pre-trial supervised release were ultimately convicted of a felony charge**, with charges actually dismissed for 7% of these defendants.
- In FY 2001-02, **the prison commitment rate for these defendants was less than half** that of all non-violent offenders county-wide.
- Since FY 1998-99, **the percentage of inmates lodged in jail for alcohol-related offenses has decreased from 11% of the total jail population to less than 7%** through the use of electronic alcohol monitoring as a condition of pre-trial release for defendants charged with alcohol-related offenses. The reduction translates to 12 fewer defendants in jail on any given day. Approximately 90% of the clients completed the average 70-day period of round-the-clock alcohol monitoring without evidence of further alcohol use. According to County Jail Reimbursement Program Data, Washtenaw County's average length of stay for OUIL 3 defendant's in jail is among the State's lowest, because offenders are efficiently placed into treatment programs.

This is an office that not only provides a zealous defense on the merits of the case, but profoundly reduces incarceration and recidivism. Good defense is good business – for everyone.

Excerpted from "Making the Case: Therapeutic Jurisprudence and Problem Solving Practices Positively Impact Clients, Justice Systems and Communities They Serve," Cait Clark and James Neuhard, Spring, 2005, published 17 St. Thomas L. Rev. 781.