

Washtenaw County system seen as best way to serve indigent population



Washtenaw County Public Defender Lloyd Powell

By Tom Gantert

Legal News

Muskegon County is adopting a public defender's office that is similar to Washtenaw County's in an effort to provide better defense for people who can't afford their own attorney, the Muskegon County Legal News reported.

Currently, Muskegon County has private lawyers sign contracts to represent indigent clients. The switch to a public defender's office such as Washtenaw County's will take place by 2014.

Muskegon's transition was done as the state examines how it defends the indigent population in major legal cases. According to a 2008 study by the National Legal Aid & Defender Association, Michigan ranked 44th in the country for public defense spending.

In Chippewa County, court-appointed lawyers had to meet with their clients in a public restroom because no space was made available for them.

In Ottawa County, public defenders were not assigned investigators to look into the facts of their case.

Such stories showing the plight of defendants too poor to afford their own lawyers have now caught the attention of the state legislature.

Michigan lawmakers have introduced House Bill 4529 and Senate Bill 300 that would create the Michigan Indigent Defense Commission, which was recommended by a study group set up by Gov. Rick Snyder.

State Representative Tom McMillin said the commission would allow the counties to control how they go about meeting specific standards.

"One of the few things that the government must do well is to have a fair judicial system," McMillin said. "Today we have people who are sentenced unjustly in Michigan. We have people who are sent to jail who are innocent or sentenced to longer terms because they were not represented properly."

In Washtenaw County, the judge assigns attorneys who work in the public defender's office to indigent clients. Also, the public defenders can earn as much as assistant prosecutors.

"In my opinion, it's the best way to go," said Washtenaw County Public Defender Lloyd Powell, noting that judges assign the cases in Washtenaw County.

State Bar of Michigan President Bruce Courtade said the SBM has long supported making the changes necessary to assure that indigent defendants in our State are afforded the basic constitutional rights recognized by the United States Supreme Court more than 50 years ago in the Gideon v Wainwright decision.

"The current indigent defense legislation is another step--but not the final step--in assuring that those in our state who cannot afford to hire attorneys on their own still receive high quality legal advice necessary to protect against the potential loss of liberty and justice," he wrote in an e-mail. "Without competent counsel to advise them of their rights or explain the ramifications of their actions, we cannot truly say unrepresented defendants have access to justice, which is a fundamental right for each of our citizens. Indeed, the message that we send under our current system is that justice is sometimes only available to those who can afford it."

Powell said it was important to consider the American Bar Association's 10 principles pertaining to the defense of indigent clients that are considered the national standard.

Those ABA principles cover such things as how soon attorneys are appointed, whether the same attorney handles the client for the entire case, and how much time and confidential space the defense counsel is provided, as well as other safeguards regarding the quality of work provided by the attorney.

When using the ABA's 10 principles, Powell said a public defender's office is in a better position to represent indigent clients than those that are contracted out to individual attorneys.

In Jackson County, the clerk randomly assigns attorneys from a list who have signed up to represent indigent clients for major felonies. A judge must qualify them to represent the client.

Jackson County Prosecutor Jerry Jarzynka wondered how expensive it would be to create a public defender's office.

"That costs money to have an office that is equally as funded as the prosecutor's office," Jarzynka said. "Counties are facing budget issues. How do you fund that?"

Having independent attorneys assigned to work with indigent people works in Jackson County, he said.

"The reality is, local attorneys know the local judges, they know what they do on certain types of charges, they know the local prosecutors," Jarzynka said. "They have knowledge that applies locally that is really important. They do a good job."

Ingham County District Court Judge Thomas Boyd said that the standards set by the soon-to-be-formed indigent defense commission will be introduced over perhaps two to three years.

"It's not going to happen overnight," Boyd said.

Boyd said one reform he thinks will be the first standard enacted is to separate the judiciary from the process of how indigent clients are assigned their attorneys.

Boyd said it's important that judges not be involved because of potential conflicts of interest.

He said he was at a conference and a Wayne County Judge asked how he would fund his re-election campaigns if he wasn't allowed to assign attorneys public defender cases.

"He wasn't kidding. No one laughed," Boyd said. "It leads to corruption."

Jackson Attorney George Lyons is one of the few attorneys who is a public defender in major felony cases in Jackson. Lyons said he thought indigent people are represented well in Jackson County.

"But if they are concerned about it, how about paying the lawyers more?" Lyons asked. "How about that? They are talking about bathrooms. Often times you have the persons who are making the laws who never tried a case. They need to talk to us, the people who are on the ground doing the work."

The two bills are now in committee.

Published: Thu, Jun 6, 2013