

TWENTIETH JUDICIAL CIRCUIT COURT
OTTAWA COUNTY TRIAL DIVISION

October 9, 2012

Michigan Indigent Commission Act – HB 5804 (H-2)
Senate Judiciary Committee
20th Circuit Court Testimony**Position of Ottawa County Administration**

The testimony provided by County Administrator Vanderberg highlight several issues which are not adequately addressed by the draft legislation, including: the need to define minimum standards and metrics prior to approving the legislation; the need to avoid Headlee implications (or violations) by more carefully analyzing the costs of indigent defense delivery; and the need to avoid penalizing well managed counties which are already providing quality indigent defense services.

The 20th Circuit Court in Ottawa County is supportive of this position and in agreement with the “Preferred Solution” offered, which includes prior definition of minimum standards and metrics (with Court input); ensures counties which meet reasonable standards are exempted from added costs; and ensures there is a detailed fiscal analysis to determine precise financial impacts.

Position of Ottawa County Judiciary

The judges of Ottawa County recently met for their annual review of court appointed counsel in the 20th Circuit and 58th District courts. In the process of evaluating attorneys providing indigent representation during the past year, the judges reiterated their primary goals of

1. ensuring all indigent defendants are provided high quality representation (meeting constitutional requirements), and
2. ensuring this quality indigent defense is provided in the most efficient and cost effective manner.

Historically, these goals have been achieved by selecting experienced attorneys in a fair and transparent manner, paying a reasonable hourly rate that encourages the participation of competent attorneys, ensuring continuity in representation, and generally complying with most of the Michigan Principles of a Public Defense Delivery System. In fact, there is full or substantial compliance with most of the 11 principles adopted by the State Bar of Michigan. In addition, to further ensure indigent defendants receive competent counsel, the Ottawa County

judges rarely appoint new attorneys to criminal cases. Instead, the judges rely on attorneys who are highly rated by Martindale-Hubbell, local judges, and indigent defendants.

Chief Judge Edward R. Post specifically asked me to point out that no one has indicated the current Ottawa County system is unfair or that indigent defendants get a bad result. In fact, the National Legal Aid and Defender Association reported in their 2008 Evaluation of indigent defense systems that *"the attorneys interviewed in Ottawa County all stated that the judges are fair in the assignment of cases and payment of claims. All attorneys stated they can aggressively represent clients and this is not a problem for the judges."* (p.65) In addition, the Ottawa County judges met with representatives of the Michigan Campaign for Justice and carefully listened to their presentation on effective public defender systems. At the conclusion of the presentation, the judges requested Campaign staff to identify any Michigan County or other similarly situated jurisdiction which has an effective defender system that complies with all 11 Principles. This request was made so we could personally review such systems to determine how we may improve our delivery of services. Although the request was made and subsequently repeated, no response was ever provided. Consequently, the judges have chosen to continue with a proven solution to the provision of indigent defense services. The judges do not support legislation which purports to improve constitutionally effective assistance of counsel, but offers no specific standards, no implemented models of achievement, and no reliable estimates of actual costs.

Position of the Ottawa County Criminal Defense Bar

The general position of the Ottawa County attorneys who regularly handle court appointed cases is represented in the attached document entitled, *"FACT SHEET – The Eleven Principles of a Public Defense Delivery System as Applied to The Ottawa County Felony Public Defender Program."* This analysis of Ottawa County's compliance with the State Bar association standards (i.e., the standards which presumably will guide the work of the proposed Michigan Indigent Defense Commission) demonstrates how most standards are currently followed. The author, Attorney Joseph Legatz (Ottawa County Public Defender since 1973) highlights in his summary comments that "by any objective standard (prison commitment rate, percentage of not guilty verdicts or dismissals, client satisfaction, reversals on appeal, cost per case, Bar grievance complaints, etc.), Ottawa County ranks with the very best public defender programs anywhere in the country." It is acknowledged mandatory training may improve the program, but otherwise there is grave concern that well intention efforts to solve problems affecting other counties will likely have a negative impact on an extremely effective defender program that is meeting the constitutional needs of indigent defendants in Ottawa County.

FACT SHEET

THE ELEVEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM AS APPLIED TO THE OTTAWA COUNTY FELONY PUBLIC DEFENDER PROGRAM

1. *The public defense function is independent.*

Judges in Michigan have both a constitutional and a statutory duty to provide attorneys to criminal defendants who cannot afford to hire an attorney. In Ottawa County, the judges discharge this duty by overseeing, in a very broad and properly detached way, the roster of attorneys who accept court appointed cases. But the judges do not interfere with or influence how those attorneys handle their cases. Thus, the public defenders in Ottawa County are completely independent, as they should be. The selection of defenders is a fair process, open to any attorney in Ottawa County. A separate agency to perform this function is completely unnecessary.

2. *High caseloads require both a defender office and participation by the private bar.*

This does not currently apply at all to Ottawa County.

3. *Defense attorneys are promptly appointed following arrest, detention, or request for counsel.*

This has always been done in Ottawa County. At the very first court appearance (arraignment) an attorney is appointed and promptly notified of the appointment. Further, in excess of this standard, all felony cases in Ottawa County are immediately set for a beneficial pre-preliminary examination conference (often called a "pre-pre"), which is held anywhere from 1 to 7 days after the arraignment (in the Grand Haven District Court, for example, the pre-pre is always held on the next Tuesday morning following the court appearance, whatever day that might be). This conference allows prompt action on many issues important to the defendant and to the defense of her/his case.

4. *Defense counsel has sufficient time, and a confidential space in which to meet the client.*

This is the case in Ottawa County. Both at the various courts and at the county jail, lawyers are able to meet confidentially with their clients. Because the lawyers are paid on an hourly basis, they have a strong incentive to take the time to properly meet their client, and get to know their case.

5. *Defense counsel's workload is controlled to permit quality representation.*

This is a highly questionable standard. Arbitrary caseload limitations for public defenders make no more sense than imposing such limitations on privately retained lawyers. Both retained and appointed lawyers alike should be trusted to use proper professional judgment in determining how much work they can handle. This has always been properly handled by the public defenders in Ottawa County.

6. *Defense counsel's ability and experience matches the complexity of the case.*

Ottawa County fully follows this standard. The judges of Ottawa County wisely require any attorney new to the program to prove, by gradual steps, that the attorney can properly handle the cases assigned. There are three levels of lawyers on the defender roster, based on experience and years of service. Ottawa County defenders have never been forced to take cases beyond their training and experience.

7. *The same attorney continuously represents the client until case completion.*

Ottawa County fully follows this standard.

8. *There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is an equal partner in the justice system.*

Ottawa County fully follows this standard. When defense counsel needs an outside resource (investigator, expert witness, etc.) that resource is available. Importantly, the judges have designed, and the county commissioners have supported, a program that pays the defenders by the hour. The hourly rate is reasonable and encourages good lawyers to be a part of the program on a long term basis.

9. *Defense counsel is provided with and is required to attend continuing education.*

Ottawa County does not comply with this standard. A review of this situation would be appropriate.

10. *Defense counsel is supervised and systematically reviewed for quality and efficiency.*

Ottawa County fully complies with this standard, but in a way that the writers of national standards will never understand. The judges of Ottawa County see the public defenders in action on a daily basis. The judges would know of any performance problems long before any outsider could conduct a "review". Further, the public defenders themselves constantly watch the performance of each other, and they assist each other in solving new or unique problems. This standard, if it means a formal, outside review process, is unneeded in Ottawa County.

11. *When there is a defender office, one function of the office is to advocate for programs that improve the system and reduce recidivism.*

There is no defender office in Ottawa County, but interestingly enough Ottawa County fully complies with this standard. Indeed, this standard has been more than met for at least 35 years, long before any national standards were written. Ottawa County has always been way ahead of the curve on this standard.

Summary

Assuming that national standards are important (a debatable question), it is beyond doubt that Ottawa County complies with those standards, particularly those that are truly important to criminal justice outcomes. Indeed, by any objective measurement (prison commitment rate, percentage of not guilty verdicts or dismissals, client satisfaction, reversals on appeal, cost per case, Bar grievance complaints, etc.), Ottawa County ranks with the very best public defender programs anywhere in the country. The only true weakness appears to be the lack of provided, mandatory training. The writer has attended numerous state and national training events, and questions whether this standard would have much of an impact on case outcomes. Nonetheless, training might improve an already excellent program.

Respectfully submitted,



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