

Scrimp on public defenders now, pay more later

Marty Trillhaase/Lewiston Tribune

Idaho counties spend about \$20 million a year providing criminal defense lawyers for people who can't afford their own attorneys.

It's not enough. Virtually no one disputes that.

If you think otherwise, look at the results.

Public defenders are overwhelmed with work. Sometimes these lawyers are less experienced. Usually, they lack the resources to fully investigate their cases.

Which leads to more people being convicted - no doubt including individuals who should not be - and then sent to prison for longer periods that they otherwise would.

Idaho is a poor state. Most of those charged with crimes rely on Idaho's flawed system of representing them in court. So is it any wonder that one of every 18 adults in the Gem State is in prison, in a county jail, on parole or probation? The Pew Center on the States ranked Idaho second only to Georgia in the percentage of its population tied up in the correctional system.

That may not bother you until it's one of your family or friends who winds up facing a judge with a public defender at his side.

Not that much of this is news.

Five years ago, the National Legal Aid and Defender Association critiqued how the system worked in Nez Perce and six other Idaho counties. It concluded " ... the state of Idaho fails to provide a level of representation required by our Constitution for those who cannot afford counsel in its criminal and juvenile courts."

On the heels of this report, Nez Perce County reorganized its public defender contracts and pumped 29 percent more dollars - up to \$605,875 - into the program.

Meanwhile, Idaho has spent three years and counting figuring out what to do. None of the ways Idaho counties provide the service - either by setting up a public defender's office or by contracting out the program to private legal offices - satisfied the national review.

Gov. C.L. (Butch) Otter's appointees on the Idaho Criminal Justice Commission have zeroed in on reforms, including statewide standards and training requirements. A separate group, led by Twin Falls Prosecutor Grant Loeb, wants to end the practice of contracting out services to private law firms and set up public defender offices.

But neither gets at the core problems: Public defenders can't control their caseloads. If someone comes in the door, they're obligated to take on the client. And unlike prosecutors, defenders don't have a police department or sheriff's office to perform investigations.

Finally, the county commissioners who pay for it all are not elected - or expected - to safeguard the Sixth Amendment rights of criminal defendants. Their gaze is fixated on the bottom line, balancing the budgets and keeping taxes low. Not all 44 counties were created equal. For some, scrimping on criminal defense work is more tempting than for others.

Presumably, a recently appointed legislative interim committee will hear more. Its members may also learn just how impatient the American Civil Liberties Union has become with the process.

But what those lawmakers ought to consider is the 1963 U.S. Supreme Court case guaranteeing every person in this country faced with the loss of his freedom the services of a lawyer, regardless of his ability to pay.

The court didn't tag local county taxpayers with this obligation. The states bear the duty.

A state can delegate that responsibility to the counties, but "it must do so in a manner that does not abdicate the constitutional duty it owes to the people."

Idaho has imposed an unfunded mandate on its counties and shortchanged the constitutional rights of people facing criminal prosecution. Fixing this is going to require state money and more of it.

And until Idaho lawmakers get accustomed to such a notion, any talk of reforming Idaho's public defense system is just nibbling around the edges. - M.T.