

## **Idaho lawyer: Counties, not state, liable for public defense**

By REBECCA BOONE, Associated Press

BOISE, Idaho (AP) — An attorney for the state of Idaho says the American Civil Liberties Union is suing the wrong people over the state's allegedly unconstitutional public defense system.

Deputy Attorney General Michael Gilmore told a judge Wednesday that neither Gov. C.L. "Butch" Otter, the Public Defense Commission nor the state as a whole has the legal authority or responsibility to enforce standards on county public defense systems.

"That's not how a system of government based on a separation of powers principle works," Gilmore told the judge.

It would have been more appropriate for the ACLU to sue county commissioners, magistrates or judges, Gilmore said.

The ACLU contends state officials have known for several years that overwhelming case loads, underfunded budgets and a patchwork system that varies county by county prevent defendants from receiving adequate legal representation guaranteed by the U.S. Constitution. Though the ACLU has brought similar cases over public defense systems in parts of Michigan, Washington state and other regions, attorneys on the Idaho lawsuit say it's the first such case against an entire state.

ACLU attorney Jason Williamson told 4th District Judge Sam Hoagland that the organization could have taken a county-by-county approach, but that would take years, leaving defendants to continue to get unconstitutional representation well into the future.

"We were not quick on the draw" to bring the lawsuit, Williamson told the judge, but instead gave the state plenty of time to take action.

Idaho can't escape liability just by claiming there's no one to sue, Williamson said. He agreed that the state could delegate that responsibility to counties, but he said the counties must also have the resources and training to carry out the task.

Idaho is one of just three states that don't provide funding for public defense, Williamson noted.

"Delegation is not the problem," Williamson said. "It's when delegation turns into abdication — that's the problem."

The judge said he would take the matter under advisement and will issue a written ruling later on whether the lawsuit can move forward.

Earlier on Wednesday, an interim legislative committee met to talk with county leaders and mull over possible legislation intended to improve public defense across the state. The Idaho Association of Counties is pushing for any changes to be paid for by the state, with the counties contributing whatever they currently pay for public defense. Several lawmakers on the committee are more supportive of a grant program where counties that meet certain standards could get a portion of state money.

The interim committee didn't reach consensus on Wednesday, but members hope to introduce a bill for the 2016 Legislative session.

Dan Chadwick with the Idaho Association of Counties warned lawmakers that the ACLU lawsuit wasn't the only one — Canyon County has been sued by a former employee. The employee purports to be a whistleblower and says the public defense caseloads are too high and funding is too low, Chadwick said.

"Quite frankly it's a big frustration for us, and we're talking about a state responsibility," Chadwick said. "The only reason it's a county responsibility is that the state has chosen to delegate that to the counties ... no matter what we do and how hard we try to fix it, we end up in court anyway."

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