



Texas may offer a model for Missouri's public defender crisis

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The Missouri criminal court system is in big trouble. The system is swamped with cases, and the result is low quality, assembly-line justice. The problem has festered because the persons who suffer the most are poor people without any political power. A new lawsuit, however, may finally bring about pressure for reform.

The ACLU filed a class-action suit in March against state officials, claiming that Missouri faces “an urgent constitutional crisis.” Noting that the U.S. Supreme Court has ruled that every state must provide counsel for poor persons who are accused of crimes but who can’t afford an attorney, the suit contends that Missouri’s criminal defense system “failed to meet its constitutional obligation to provide indigent defendants with meaningful representation.”

Indeed, Missouri ranks 49th out of 50 states in per capita indigent defense funding, an average of only \$356 per case. Missouri public defenders average just 8.7 hours per case for serious non-homicide felonies. This amounts to less than 20 percent of the minimum time recommended by the American Bar Association.

The ACLU claims that \$20 million in additional funding is needed to bring the criminal defense system up to constitutional requirements. Unless there is a settlement, the courts will have to determine exactly how much funding is necessary. In the meantime, policymakers need to consider other reforms that can improve the justice system.

There is at least one example worth replicating. In 2012, big change came to the indigent defense system in Comal County, Texas. Instead of assigning attorneys to clients, the selection process was changed to give the accused a say in who represents him or her in court. Inspired by similar programs in the U.K. and Canada, the Texas Indigent Defense Commission assembled a team of judges, law professors and practicing attorneys to design and implement America’s first ever Client Choice program.

Under Client Choice, indigent defendants are allowed to select their own attorney from a list approved by local judges. Wealthy and middle-class families choose their attorneys based on

reputation, so the idea is to bring some measure of choice to the indigent. Because attorneys want more clients, they will have a stronger incentive to enhance their reputations by working harder to provide quality representation for poor persons accused of crimes.

A new report by the Justice Management Institute determined that Comal County's Client Choice program produced better results for indigent defendants without negatively impacting costs to the taxpayers. Defendants who participated in the Client Choice program were three times more likely to plead to a lesser charge than those who did not participate. There is also evidence that defendants who chose their own attorney had a greater sense of being treated fairly.

The benefits of Comal County's Client Choice program are most desperately needed in states such as Missouri, but they have much broader implications for America's criminal justice system. Better legal representation means fewer mistakes. And that means fewer wrongful convictions lawsuits that will be borne by taxpayers.

Of course, each community is different, and there will not be a one-size-fits-all solution to the problem of indigent defense. By implementing Client Choice programs in Missouri and elsewhere, innovation will necessarily occur and best practices will emerge. The right to a fair trial is guaranteed by the Constitution, but justice can be realized only when both the prosecution and defense have adequate time and resources to argue the case. In this way, the Client Choice program improved the lives of Comal County's indigent defendants and their families.

Policymakers in Missouri need to take bold steps to improve the justice system. Client Choice has been tested and found to be successful. There is no excuse for further procrastination.

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