

Restoring Justice to all in Tennessee

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The U.S. Supreme Court has ruled that every state must provide counsel for criminal defendants who can't afford one.

At first, the ruling was widely celebrated as a victory for the poor, but the right to adequate legal representation has been severely undermined by overcrowded court systems.

Imagine an injured person arriving at a hospital only to wait hours to see a busy doctor with inadequate supplies of the necessary medicine.

This has been a concern for State Supreme Court Justice Sharon Lee, who decided that the state "can't keep doing the same thing and hoping for a different result."

In 2015, Justice Lee established a special Indigent Representation Task Force with orders to find solutions. After 18 months, the Task Force released a report detailing Tennessee's underfunded indigent defense system.

Although the results are bleak, other parts of the country may have a solution worth importing.

Currently, Tennessee provides legal representation to indigent defendants by way of three separate bodies: a capital post-conviction office, the district defender office system, and the private attorney appointment system.

The Task Force found that all three are critically underfunded, with a disproportionate amount of funding being allocated to the many sparsely-populated districts at the expense of urban areas with larger caseloads.

As Tennessee's public defender system was coping with overcrowded courts, the state increasingly turned to the private attorney appointment system. Judges appoint a private attorney to take the case, who is then paid a fixed hourly rate.

The Task Force notes that these rates haven't changed since 1997, and are often not sufficient even to cover an attorney's expenses. That explains why attorneys are reluctant to accept more indigent clients.

While underfunding is an important element of Tennessee's indigent defense problem, the Task Force did not focus on other promising models that deliver legal services to the poor.

For example, in 2012, big change came to the indigent defense system in Comal County, Texas.

Inspired by similar programs in England 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 the new program, indigent defendants were allowed to select their own attorney from a list approved by Comal County judges.

The idea was to improve the quality of indigent defense representation by establishing a stronger "customer" relationship, incentivizing the attorney to invest more time and effort into each individual case.

To get more clients, attorneys will try to enhance their reputations by fighting harder. After all, that's the market dynamic for legal services for wealthy and middle-class families—when they need an attorney, they ask around for who does good work.

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 2.96 times more likely to plead to a lesser charge than those who did not participate.

The local judges were surveyed and they said the attorneys that were chosen were better prepared and met sooner and more frequently with their clients.

The benefits of Comal County's Client Choice program are most desperately needed in states like Tennessee, but they have much broader implications for America's criminal justice system.

Better legal representation from the start of each case means that defendants will have a greater opportunity to expose mistakes. Fewer mistakes will mean fewer wrongful conviction lawsuits, which are ultimately paid by taxpayers.

State policymakers have let the indigent defense problem fester long enough. It's time to get on with the job of fixing it.

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