

Justice doesn't come cheap

Counties seeking death penalty must pony up for public defender system

The Atlanta Journal-Constitution
Published on: 03/16/08

State lawmakers and local taxpayers are rightly annoyed about the high cost of defending accused Fulton County Courthouse murderer Brian Nichols. But those frustrations shouldn't be taken out on the state's public defender system, which deserves to be fully funded.

State legislators can't turn back the clock on defense spending in the Nichols case — which has reached nearly \$2 million. Nor can they dial back to 2003, when there was no uniform public defender program in Georgia. The patchwork system in place to provide lawyers for the poor often left criminal defendants with lawyers who were overburdened, inexperienced or simply inept.

Five years ago, the state faced the threat of a lawsuit over inadequate representation of poor defendants. So lawmakers set up a system of regional public defender offices to replace uneven, county-run programs. It was the right thing to do. But to work, the system needs funds. The Legislature should stop shortchanging it.

A new judge has taken control of the Nichols case in recent weeks, forcing appropriate spending controls on the publicly financed defense team and setting what appears to be a hard-and-fast trial date for July. Now the Legislature must shore up the funding for the more than 700 defendants in the state who are facing major charges and are being represented by attorneys working with and for the Georgia Public Defender Standards Council.

The defenders program is paid for through a combination of state and local funds. The state provides money from the general treasury, while counties fork over fees assessed for filing civil cases and bail bonds and fines paid by defendants convicted of criminal charges.

That system should work, but it has one hitch: All the money collected goes into the state treasury. Instead of funneling all of it back into indigent defense, the Legislature has routinely shortchanged the system by refusing to appropriate the full amount. This year, the council needs \$3.5 million in the proposed supplemental budget so that it can keep operating through June 30.

The council is running out of money because, among other things, the 2007 Legislature took \$2.4 million of the money collected through local court fees and used it elsewhere in the budget. Because of the shortfall,

the council has been unable to pay more than \$475,000 in bills to private attorneys who are defending clients in death-penalty cases; in addition, the council may have to furlough some of its own attorneys.

The House approved the \$3.6 million, but the Senate slashed the midyear budget request to \$513,000 — a disparity that will have to be settled in the remaining days of the 2008 session. At least some of the Senate's petulance about spending for the public defender system stems from frustration over the Nichols case. The fear is that there will be other costly death-penalty cases in the future and that spending on the system will be virtually unchecked.

A bill approved in the House earlier this month may help address those fears and put more of the responsibility for paying defense costs in trials where it belongs — on counties where prosecutors insist on the death penalty for defendants. House Bill 1245 creates a cost-sharing formula for those cases when the state has to hire private attorneys to represent capital defendants.

Under the bill, the state picks up the first \$150,000 of defense costs, but the county where the trial is being held would pay \$25,000 of the next \$100,000. Beyond \$250,000, the state and county would split the costs. The legislation also recommends the council set a flat fee for private attorneys taking capital cases. Because the counties may be asked to pay more — local fines and fees are paying about 60 percent of the \$110 million cost to run the indigent defense system this year — county commissioners would get four additional seats on the defender council's board of directors.

"There is not an endless pot of money to spend on these cases," said House Majority Whip Barry Fleming (R-Harlem). "We have limited resources. We should spend it wisely." Earlier this month, the state Supreme Court ruled that when a convicted person files an appeal claiming inadequate legal counsel, the person must be provided a new lawyer to determine whether the claim is legitimate. If the person is indigent, he or she has a right to be represented by a public defender, the court said. The ruling could require a whole new area of spending at the appeals level for the public defender system.

The state's elected leaders always proclaim Georgia voters want the death penalty. If so, they must be willing to pay for it — and that includes the cost of defending those who can't afford attorneys of their own. That basic principle of justice will never be cheap.

— **Mike King**, for the editorial board.

http://www.ajc.com/opinion/content/opinion/stories/2008/03/15/indigented_0316.html