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Judicial minds push for creating statewide system of public defenders

By MIKE DENNISON

HELENA -- As the presiding judge in Great Falls' notorious Nathaniel Bar-Jonah kidnapping and murder cases, Kenneth Neill felt compelled to approve almost any costs submitted by Bar-Jonah's court-appointed defense lawyers.

"I had to authorize those expenses to level the playing field," he told a legislative committee Thursday.

As of this week, those expenses have topped \$600,000 - and the clock is still running.

But if Montana had a statewide system of public defenders, those costs might not be as high - and the defendant would still get good representation, Neill said.

"I think the best cost containment is to have salaried (public) defenders to do what they believe is right," he said.

Neill joined other judges, prosecutors and public defenders Thursday in urging development of a state system of public defenders to represent criminal defendants too poor to hire their own attorneys.

The current "system" is a patchwork affair of county public-defender offices and court-appointed lawyers hired by contract, with no real accountability, standards or assurances that it's working well for defendants or the public, they said.

"We don't have a system," said Supreme Court Chief Justice Karla Gray. "Like everything else in Montana, everything grew up county-by-county. ... and I think we ought to have a system."

Gray also told the Law and Justice Interim Committee that creating a system isn't enough - it also must be funded adequately.

"Don't short-change it," she said. "These are core constitutional matters. Don't cheapskate it."

Gray and Neill were part of a roundtable discussion before the committee, which is charged with examining whether to change Montana's system of "indigent defense," or public defenders.

Sen. Duane Grimes, R-Clancy, who is the chairman of the panel, said it would devote nearly half its time working on the public-defender issue over the next year.

The state treasury pays the cost of indigent defense (about \$7.8 million last year), but each local judicial district or county decides how or which type of lawyer will be hired.

Cascade County has its own public-defender office, with several full-time staff attorneys. Other major Montana cities have similar models.

But in many areas, the judge in a case appoints a local attorney, who charges by the hour or works on a flat-fee contract.

John Connor Jr., the state Justice Department's chief prosecutor, said he sees many levels of competence among defense lawyers across the state.

He and others said ensuring high-quality criminal defense across the state is not only "the right thing to do," but also could save the state money in the long run.

Substandard defense work for poor clients could lead to expensive lawsuits from wrongly convicted defendants or expensive retrials when a conviction is overturned because of defense counsel errors, they said.

The state already faces a lawsuit from the American Civil Liberties Union, which is challenging Montana's current system as unconstitutional. The case is scheduled to go to trial next spring.

Eric Olson, the chief public defender in Cascade County, said a statewide system also should lead to better control of defense costs.

If a court-appointed attorney asks a judge to approve hiring an expert witness or other special services, the judge can't ask why it's needed, Olson said: "He basically has to approve it."

A full-time staff of public defenders working under a budget is more likely to debate whether the expert is needed, and see whether other, less-costly alternatives might work, Olson said.

Missoula County Attorney Fred Van Valkenburg said a statewide system could lead to pooling of resources, with public defenders relying on a few tried and tested experts, instead of hiring whoever's available at much higher cost.

"Now, the state's on the hook for all expenses, but has no control over the costs," he said. "If the Legislature decides to create a statewide system, with a chief public defender or administrator, it would have an employee who is accountable to the Legislature."