

Right to counsel eroding in Texas?

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DATE: June 18, 2006

PUBLICATION: Austin American-Statesman (TX)

EDITION: Final

SECTION: Metro & State

PAGE: B01

The benches in the courtroom are packed like church pews on Easter Sunday with neatly dressed defendants of all ages sitting shoulder to shoulder as they wait for the judge to arrive.

A few men and women whisper among themselves about the pleas they will make or whether they've hired attorneys. They all face Class A or B misdemeanor charges, offenses less serious than felonies, some carrying penalties of up to one year in jail.

But those misdemeanors can be more serious than sometimes perceived, costing people jobs, apartments or even a chance for student loans. And in county after county, courtroom after courtroom, there are questions about how well the legal system is preparing defendants to face those charges.

Last week, Williamson County landed at the forefront of the debate about how well misdemeanor courts provide legal counsel for defendants who cannot afford attorneys and how the courts inform defendants of their right to counsel.

The Texas Fair Defense Project filed a class-action lawsuit against the county and three of its court-at-law judges last week, saying the county habitually denied poor defendants their right to appointed legal counsel.

Lawyers and advocates on both sides of the indigent defense debate say the lawsuit could apply almost anywhere in Texas; Williamson County, they say, is a microcosm of a larger - and, some argue, flawed - system.

Everyone from court clerks to judges encourages defendants without lawyers to plead guilty or no contest - meaning that the defendant does not dispute the charges - and work out deals with prosecutors, said Dominic Gonzales of the Texas Criminal Justice Coalition.

Judges typically make a single announcement to a group of waiting defendants that mentions their right to request an attorney; Gonzales and other advocates think judges ought to ensure that each defendant understands that right by clarifying the information before each case.

"We've been interested in misdemeanor defendants not getting lawyers as a statewide problem for a long time," said attorney Andrea Marsh, director of the **Texas Fair**

Defense Project. "We certainly don't think that Williamson County is the only county that has practices like the practices we're targeting in the lawsuit."

Researchers from Marsh's group and the coalition were drawn to traditionally tough-on-crime Williamson County after hearing complaints from people who had been through the county courts-at-law.

The county will not comment on the allegations in the lawsuit, but the county attorney's office has said it is and always has been following the law. The county court-at-law judges named in the lawsuit, Suzanne Brooks, Don Higginbotham and Tim Wright, and Georgetown magistrate William Thomas Eastes all declined to comment. Two of the three named plaintiffs in the lawsuit got court-appointed attorneys a day after the suit was filed after waiting more than a month. Kerry Heckman and Monica Maisenbacher now have attorneys, but the third plaintiff, Sylvia Peterson, does not.

Maisenbacher, who is charged with assault with bodily injury, a Class B misdemeanor, had been trying since early April to get an attorney appointed to her case. She lives with her mother and says she is unable to work because of health problems.

During her first court appearance in May, she said, judges and other court personnel pressured her to speak with a prosecutor without a lawyer and to resolve her case quickly with a plea. She considered it, she said, but decided to plead not guilty and requested an attorney.

"The attorneys are the ones who are supposed to help you," Maisenbacher said. "If they don't give you an attorney, you have no way out of the system."

County Attorney Jana Duty, whose prosecutors represent the state in the county courts-at-law, declined to comment specifically on the lawsuit.

Duty said that her office does not plan to change any policies, saying the current policy - under which prosecutors speak to defendants who do not have lawyers after they have been told of their rights - is legal.

"We attempt to work the cases out with people who do not hire lawyers," Duty said. "That's the way it happens in other counties, and that is how we will proceed."

Most counties with large misdemeanor caseloads try to move through cases quickly because of the sheer volume of unrepresented defendants, said David Sheppard, an Austin lawyer who also teaches at the University of Texas. Hefty dockets do not justify compromising defendants' rights, however, Sheppard said.

Judges who hesitate to appoint lawyers often do so because it is expensive, said Bill Allison, a clinical professor at the UT School of Law.

It's easier for county governments to justify minimal spending on indigent defense because it is not popular to help defendants, especially poor ones, he said.

The state awarded grants for indigent defense after the Legislature enacted the Fair Defense Act in 2001, which required counties to develop indigent defense plans, outlined qualifications for court-appointed lawyers and established state-funded grants to offset new costs. Those grants still do not cover the entire cost for most counties.

But tight budgets are not a good enough reason to deny counsel, in Williamson County or anywhere else, Marsh said.

"Judges may be concerned about spending money to give people lawyers," she said, "but . . . people's constitutional right to have a lawyer in the system trumps that financial concern."

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Indigent defense in Williamson County

Criminal misdemeanor cases for fiscal year 2005 in which attorneys were appointed:

- * Williamson: 6.4 percent of 8,352 cases
- * Travis: 42.5 percent of 29,623 cases
- * Hays: 14 percent of 4,539 cases
- * Llano: 8.9 percent of 357 cases
- * Fayette: 12.6 percent of 520 cases

For court-appointed attorneys, Williamson County pays:

- * \$175 for plea bargains
- * \$40 per hour for more complicated cases
- * \$200 per half-day of trial

State grants for fiscal 2005 don't keep pace with overall costs:

Williamson County courts-at-law: More than \$104,000 spent on indigent defense

District courts: More than \$600,000 spent on indigent defense

State grant: \$137,619 for both court-at-law and district court costs.

Source: Texas Task Force on Indigent Defense