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# Who knows if public defenders' clients are indigent or not?

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When Florida's overburdened public defenders are appointed to represent people charged with crimes, are their new clients really too poor to hire their own attorneys?



Sen. Victor Crist, R-Tampa, chair of the Criminal and Civil Justice Appropriations Committee, wants to find out.

Currently, he said, nothing is being done to verify information on the one-page "application for criminal indigent status" form that those accused of crimes fill out, along with paying a \$50 application fee.

"Why don't we just save some time and ask them to fill out a form on whether they are guilty or innocent?" Crist asked during his committee's December 8 meeting.

"We have an agency that is very, very valuable, that has a workload that's unbelievable. We have a shrinking budget, and we have a constitutional requirement to ensure access to the courts and representation of all individuals, especially those who cannot afford counsel," Crist said.

"We are trusting, basically, the arrested person and taking their word that what they are telling us is truthful right up front."

On the receiving end of Crist's words was Eighth Circuit Public Defender C. Richard Parker, standing at the podium representing the Florida Public Defender Association.

Parker recalled there used to be a Statewide Indigency Examiner Program, but he thought that it was disbanded because it cost more to administer the program than the savings reaped by ferreting out the few unqualified public defender clients, and a very low number of cases were actually turned back. Parker said the judges are the "final arbiters" of who is appointed the public defender.

In a special session in December 2001, the Legislature eliminated \$979,313 total for indigency examiners in each circuit. According to a report from the Office of Program Policy and Government Analysis, the program was dropped because it was "not operating as the Legislature intended" and was "characterized by uneven implementation and statewide fragmentation."

In some circuits, court bailiffs filled out the affidavits with minimal information or handed the

paperwork to defendants to complete. Overall, examiners only reviewed a small percentage of affidavits. The accounting was so inaccurate that one circuit reported "280 percent of defendants" were determined to be indigent.

"With better direction, the program may be able to pay for itself statewide through costs avoided as a result of inappropriate public defender appointments," the December 2001 OPPAGA report concluded.

That's what Crist wants to explore. He is directing his staff to find out how much money is generated by the \$50 filing fee and what it would cost to do a "reasonable background check that at least is of the level that would be done if you were going to buy a car or rent an apartment."

Crist suggested options may include increasing the filing fee to cover additional costs for background checks or to "peel off a piece of that fee and use it for a background check."

Parker pointed out that the money generated by the \$50 filing fee goes into the Public Defenders Indigent Trust Fund that helps pay the bills in the public defenders' offices, already beset by crippling budget cuts since October 2007 and an unanticipated shortfall in the collection of traffic fines.

The 2009 Legislature allowed the public defenders to receive 100 percent of funds generated by the indigency application fee. Parker said they can't afford to lose any of that money. To use part of the filing fee dollars for financial background checks would amount to another budget cut for the public defenders, he stressed.

"You are defending your operating budget, and you are depending on that fee," Crist nodded. "What I am saying is maybe we need to take a look at what would be a reasonable use of that fee. And if it is a reduction in your budget to work with you in assuring that it's covered somewhere else in the budgetary process.

"But we need to be doing at least a basic check to assure that these individuals are truly indigent. You look down in Miami, and you've got some big drug dealer that hasn't filed a financial statement or a tax return and has a 100-foot yacht and a Bentley. I mean, there's some assets there. And one way to find out is to run a title check on a car and a marine registration. And guess what? We have an auction."

Parker responded: "There are many things I don't want to do, and probably the last thing is representing someone who doesn't qualify. I have no fundamental disagreement with the idea of verifying eligibility."

Sen. Arthenia Joyner, D-Tampa, a member of the committee, said after the meeting: "There will be some people who exaggerate or not be exactly truthful about the amount, but when you weigh it out, I don't think it's practical to spend more to find out."

Over in the Fourth Circuit, Public Defender Matt Shirk seized upon the issue during his election campaign.

"I know it's a problem in this circuit. Certainly, it is a problem statewide. How big of a problem, you don't know, because there's no way to measure that," Shirk said, adding he has 72 lawyers and more than 60,000 apply for the public defenders' services every year.

When he was an assistant public defender, Shirk said he had clients "driving a Mercedes or a BMW, and you just knew they shouldn't get a free lawyer. My predecessor had a different philosophy and thought we shouldn't deal with it. But when I was elected, I made appointments with the county and circuit judges to get them thinking the right way. We are making headway."

One change that seems to be working, Shirk said, is having the judges at first appearance ask defendants: "Will you be hiring your own lawyer?" instead of asking "Will you need the services of the public defender?"

That way, Shirk said, the public defender doesn't "waste time and money opening a file." Also, he said, the clerk was using the wrong form that didn't ask for an accounting of assets. "There needs to be more accountability. Absolutely!" Shirk said. He's telling his assistant public defenders to bring it up if they "see something not right."

"We have had to file motions to withdraw. I always tell the story of a kid in juvenile delinquency court. His parents lived in a posh, gated community but didn't want to hire an attorney to represent their son."

In nearly a year he's been in office, Shirk said, "People are realizing it is the right thing to do, especially in this economic climate and with budget shortfalls."

Collection amounts in Shirk's office from July through December 2009 were \$269,515, up from \$192,246 from the same six-month period a year earlier.

Fourth Circuit PD Public Information Officer Matt Bisbee attributed that to the change in statute that allows the office to keep 100 percent of the \$50 application fee, rather than 25 percent of the previous \$40 fee.

"We expect these numbers to grow with implementation of an aggressive collection program we expect to launch in 2010," he said.

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