

Washington public defenders say the strained system needs funding

by Jerry Cornfield

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Larry Jefferson went to justices of the Washington State Supreme Court last fall with an unprecedented request for a public defense system he told them is “on the verge of collapse.” Jefferson, director of the state’s Office of Public Defense, asked them to halt, for 90 days, the assigning of new felony cases to public defenders if the accused was not in custody so they could clear a backlog of clients who were in jail. “It has become quite clear that the public defense system in Washington is under significant strain and in need of decisive action,” he said

Too many cases, too few lawyers and too little funding imperil the ability of local governments across Washington to provide timely, equitable and effective counsel to every person unable to afford a lawyer. Jefferson knew he had essentially asked justices to violate the constitutional right to counsel for those not in custody in order to preserve that right for those who were locked up. But he felt compelled to do so “to save the public defenders we have left.” “I am trying to prevent people from committing suicide. I am trying to prevent people from getting divorced,” he said in an interview. “I am trying to keep people in public defense. I am trying to give people some hope and to let them know that someone cares about them.”

The court declined his request but it highlighted persistent challenges that worsened for public defenders during the pandemic: rising caseloads, growing trial backlogs and increasing departures through retirements and resignations of those seeking higher-paying, less-stressful jobs.

In less-populated counties, a lack of public defenders means private attorneys, some with little training in criminal defense, are assigned clients, Jefferson said. [...]

Republican state Sen. Nikki Torres of Pasco has introduced legislation to address funding, caseloads and lack of public defenders in rural communities “where we’ve seen a big struggle.” Senate Bill 5773 would increase state funding to cities and counties, with the state covering half the costs of public defense services by 2028. It also directs the Office of Public Defense to recommend ways to reduce caseloads, erase criminal trial backlogs and boost retention of experienced public defenders in high-need counties and cities.

In September, the Washington State Association of Counties sued the state, arguing the public defense system is inadequately funded by the state, denying poor defendants equal access to justice. Counties contend the state fails to provide them with enough money to cover costs or the means to raise what they need on their own. This leaves counties unable “to furnish constitutionally adequate indigent defense services and denies indigent defendants equal access to justice,” according to the suit.[...] The legislation also would provide money to repay law-school loans for those who commit to working as public defenders and prosecutors. A person could get \$20,000 a year up to \$120,000.[...]

Low pay and high caseload are the top two reasons former public defenders gave for leaving the profession, according to a survey conducted by the Office of Public Defense.

Counties’ biggest challenge is too few public defenders, or in some instances none at all, forcing judges to assign clients to private attorneys – even if they’ve little or no training in criminal cases.

Reducing caseloads to the level recommended in the report would mean every jurisdiction in Washington would need more lawyers – roughly 60% more statewide, in Jefferson’s estimate. “It’s one thing to have standards. It’s another thing to follow them,” Jefferson said. “It costs money.”