

Local Politics

The Seattle Times

WA's public defender system is breaking down, communities reeling

Feb. 25, 2024 at 6:00 am | Updated Feb. 25, 2024 at 6:00 am



📷 1 of 9 | Josh Cuevas, left, public defender, and Joseph Farhoul attend to court cases at the Franklin County District Court in Pasco on Feb. 7. Franklin County has made progress in its backlog of cases requiring public defenders. (Kevin Clark / The Seattle Times)



By **Daniel Beekman**

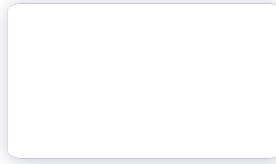
Seattle Times staff reporter

KENNEWICK — When you're charged with a crime that could put you behind bars and you don't have enough money to pay an attorney to defend you, the government is supposed to provide you with one. But that isn't happening in some communities across Washington state, at least not right away.

"We're still working on getting you an attorney," Judge Terry Tanner told one defendant after another in Benton County District Court last month, adopting an apologetic tone as he made his way through a series of cases dating back weeks and months and explaining why each case would remain in limbo. "We have a shortage of public defenders, so that's why we're in a jam."

The right to an attorney is rooted in the U.S. and Washington constitutions, crucial to ensuring that everyone gets a fair shake. And yet, the scene that played out in Tanner's courtroom Jan. 31 has become routine there, to the point where people without public defenders are asked to sit on one side of the room and people with attorneys are asked to sit on the other.

That's an alarming sign, according to many people who work inside Washington's criminal legal system — one warning among many that the state's beleaguered public defense apparatus is in danger of breaking down.



A shortage of public defenders across Washington state is putting strain on the legal system, creating a backlog of defendants waiting to be assigned an attorney. (Kevin Clark / The Seattle Times)

“I compare it to what COVID was for ER nurses,” said Jessica Rodriguez, a private attorney doing contract defense for Benton County. “People are showing up every week to have an attorney appointed and waiting hours, just to be told to come back the next week ... How can anyone hold down a job? They just want somebody to talk to. I see the desperation on their faces.”

Staffing shortages and burnout-inducing caseloads are squeezing urban areas like King County, rural areas like Asotin County and communities in between. Facing each other across the Columbia River, Benton and Franklin counties are struggling as they compete for attorneys from the same shallow pool.

There are consequences. In some instances, people presumed innocent are languishing in jail without counsel. In others, prosecutions have been delayed or dismissed because defendants lack representation, potentially putting crime victims and others at risk. In still others, defendants are getting shortchanged because their attorneys are too busy. It’s difficult to get a grip on the scale of such problems, because statewide data is lacking.

Meanwhile, cash-strapped counties are watching their expenses soar with minimal support from the Legislature. Some counties are actually suing the state over that

reality, and experts say it's only a matter of time before an unrepresented defendant also sues, alleging their rights have been violated.

“We’re at the precipice of collapse,” Franklin County Administrator Mike Gonzalez said recently. “And it’s not just affecting us, it’s the whole state.”

Things grew so bad last year that Larry Jefferson, director of the state Office of Public Defense, begged the Washington state Supreme Court for relief. [He asked](#) the court’s justices for a 90-day moratorium on attorney assignments for out-of-custody defendants in order to clear backlogs of clients who were in jail. He also asked the justices to immediately lower caseload limits for defenders, partly to keep overburdened attorneys from quitting.

The justices declined Jefferson’s requests. While they plan to consider new caseload caps soon, with recommendations [from the Washington State Bar Association](#), lowering the caps too quickly could aggravate the shortages, because more attorneys would be needed for the same number of cases.

Washington lawmakers are working on [a bill](#) that would establish a state-managed internship program to train law students and graduates as defenders and prosecutors in rural areas. But internships won’t reverse the shortages overnight, and a proposal to repay student loans for new recruits has been cut during the bill’s journey through the current legislative session. [A separate bill](#) that would greatly bolster state funding for public defense is likely dead, with no action taken since the session began in January.

Some advocates say communities should reduce pressure on public defenders and the entire system by scaling up alternatives to prosecution, especially for nonviolent and lower-level crimes.

“The solutions have to be short-term and long-term and are going to require work from all three branches of government,” Justice Steven González said.

Backstory

Defender shortages and unrealistic caseloads are posing a threat to rights cemented in court decisions like 1963’s [Gideon v. Wainwright](#), where an unrepresented Florida man challenged his state conviction, and 2013’s [Wilbur v. City of Mount Vernon](#), where Skagit County defendants said their public attorneys had too many cases. In *Gideon*, the U.S. Supreme Court ruled that states, per the U.S. Constitution’s Sixth Amendment, must

provide defenders. Wilbur pushed Washington's state Supreme Court to [adopt caseload limits](#).

The underlying principles are simple. Anyone charged with a serious crime needs an attorney and, to be effective, that attorney needs a reasonable workload. But those principles crumble when public defenders are scarce. Defendants have no one to talk with about their options. To argue for their release so they can keep a job or custody of a child. To interview witnesses. To secure evidence, like surveillance video before a recording gets taped over.

Dozens of people had to wait for attorneys [in Whatcom County](#) last year, including people locked up in jail. Defendants are now waiting about three weeks in Yakima County, down from about six weeks, according to Paul Kelley, that county's director of the Department of Assigned Counsel.

The right to a speedy trial — within 60 or 90 days of being arraigned in Washington, depending on whether a defendant is in jail — also gets twisted when public attorneys are scarce, leaving the people in Tanner's Benton County courtroom with bad choices. They're told they can either move closer to trial without representation, or pause their speedy-trial clock while waiting for a defender. That's not fair, said Sheri Oertel, a resource attorney for the nonprofit Washington Defender Association.

“When there aren't enough public defenders, or when public defenders are overworked, the people who suffer are the defendants,” said Jason Schwarz, director of Snohomish County's Office of Public Defense, making the point that a huge number of Americans have been arrested — [about 1 in 3 adults](#) have such records.

[Most Washington defendants](#) are found to be [indigent, meaning](#) they can't afford a private attorney.

“You probably know someone who's been through the system,” Schwarz said. “So when we talk about this, we're talking about your neighbor, or you.”

At the same time, some leaders worry about the attorney shortages complicating cases and allowing bad actors to avoid justice.

“That's the scariest part of the problem,” said Jon Neal, an Okanogan County commissioner. “You may end up releasing people you really don't want to.”

The causes behind the crisis are multiple and debatable, experts say: Fewer people are going to law school; young attorneys are choosing less-intense jobs with better pay; the COVID pandemic created backlogs; policing changes like body-worn cameras are making cases more time-consuming to handle.

There's always been a stigma associated with the job. Like the stereotype of a distracted public defender with baggy eyes and a wrinkled suit.

“We started to see interest really waning” before COVID, and then the pandemic “just threw everything into chaos,” Kelley said. “We started seeing people leaving the profession and that just exacerbated the problem.”

Public defenders aren't the only government workers in short supply. Cities and counties are also struggling to hire enough prosecutors, police officers and corrections officers. And Washington isn't the only state in trouble. [In November](#), a U.S. District Court judge responding to a lawsuit over defender shortages in Oregon ordered counties there to release anyone held in jail without an attorney for more than seven days after being arraigned.

But Washington's challenges are distinctly thorny, partly because its system is decentralized, with each county court administered locally. Most other states pay for public defense services, whereas Washington covered 3% of those costs through grants and special programs in 2022, [according to data collected by the Washington State Association of Counties](#).

For those reasons and others, most counties that responded to [a December survey](#) by Jefferson's office reported vacancy rates of 10% to 67%; 34 reported recruiting/retention issues last year, up from 31 in 2022. Larger counties employ staff defenders and smaller counties rely on contractors.

Rural areas

What exactly the crunch looks like depends on where you're arrested.

In some of Washington's smallest counties, officials scramble to hire out-of-town contractors and pay them by the hour to represent defendants because there are so few local attorneys and even fewer who want the work.

Ten counties in the state have no more than 30 residents practicing law of any sort, Dan Clark, a senior deputy prosecutor in Yakima County, wrote in [a column](#) for the state Bar

Association last year, noting that attorney shortages are resulting in vacancies on the prosecutorial as well as the defense side.

“Most law school graduates tend to be in their 20s or 30s, and to be blunt, most rural areas simply do not offer the variety of restaurants, entertainment, and social opportunities that urban areas can provide,” Clark wrote. “Many law school graduates have significant student loan debt, and lower salaries in rural areas — particularly for governmental attorneys — can be a barrier to attracting and retaining new and young lawyers to rural communities.”

Several defense attorneys under contract with Okanogan County in North Central Washington live elsewhere, including over the mountains in Western Washington, said Anna Burica, who leads the work and manages the roster. Judges allow them to appear in court via video, reluctantly.

“You want that face-to-face contact before making a big decision, and a lot of people just don’t get that opportunity,” Okanogan Judge Robert Grim said.

In January, tiny Asotin County in Eastern Washington had only one attorney under contract to represent defendants charged with felonies, and he lived 100 miles away in Spokane, County Commissioner Brian Shinn said. Shelling out \$150 per hour to other attorneys boosted the county’s defense costs (by about 43% last year), putting strain on an already-tight budget, he said.

Although Asotin County is raising its sales tax rate this year, most stores in the area are located across the Idaho border, so the revenue bump will be modest, Shinn said, explaining why he’s glad the Association of Counties sued the state [in September](#), claiming the Legislature should step in.

“The state sends us \$30,000,” while the county spent about \$825,000 last year, the county commissioner said. “The state is really dropping the ball.”

Bigger cities

Urban areas like King County have more attorneys available to hire and more tax dollars to spend on salaries. But such areas also have more big cases, which involve extra work and require special experience. For example, only attorneys who have already completed three lower-level felony trials are allowed in Washington to represent people charged with rape or murder.

Those conditions have sucked King County's Department of Public Defense into a vicious cycle. Attorneys burn out, leave and can't immediately be replaced, creating additional work for a smaller number of remaining high-level attorneys, who burn out, leave and ... the cycle continues.

In an email to the Metropolitan King County Council last October, Ramona Brandes said she quit working high-level cases because she worried her load of "approximately a dozen homicides, another dozen rape cases" and many others was going to give her "a stroke, a heart attack or an aneurysm."

"The weight of the souls on my shoulders was crushing me," Brandes wrote, saying she often worked more than 16 hours per day and knew she had to make a change because "I would not survive another felony rotation."

At an October [council meeting](#), officials said King County saw 18 high-level felony defenders leave in two years, while pending high-level cases climbed 80%. The attorneys who remain in place are drowning, they said, pointing to recommendations in September in an American Bar Association report.

The National Public Defense Workloads Standards [Report](#) determined that caseload limits should be much, much lower than those currently used in Washington and elsewhere (150 felony cases or 400 nonfelony cases per year, based on data from the 1970s). Reworking the limits may be hard and take time, yet "We've got to break the cycle," said Anita Khandelwal, King County's public defense director.

The status quo "means people sit caged — waiting, waiting — because we have too many cases," King County defender Adam Heyman told the council.

"Everyone is fighting righteously to do their best," but there aren't enough hours in each day to do all the work needed, Heyman added this month. "There's no question that mistakes are being made. Honest mistakes."

Tri-Cities

State Sen. Nikki Torres, R-Pasco, has championed several attempts to respond to the defender crisis during the Legislature's current session, including the bills that would establish internships and increase state funding. Her district, which includes parts of Benton and Franklin counties, has been hit hard, eliciting concerns from prosecutors as well as defense advocates.

In one Franklin County case [last year](#), a woman accused of embezzling more than \$500,000 saw her charges dropped because she had gone without an attorney for so long, the Tri-City Herald reported. [In another](#), a man accused of stealing a car had his bail cut because he lacked representation, was released and was arrested again within days, this time for burglary.

In a third, a man spent months in jail without a defender and pleaded guilty because he was desperate to leave, said Kathryn Russell Selk, a Seattle appellate attorney who [asked the state Supreme Court](#) whether such pleas should be declared invalid, hoping to set a precedent. Prosecutors responded by agreeing to vacate the man's conviction in exchange for him dropping his appeal, so the court didn't rule, Russell Selk said.

Benton and Franklin counties share the Tri-Cities, population 316,000. Richland and Kennewick belong to Benton, while Pasco belongs to Franklin.

In each place, the turnover has been head-spinning, said Benton County defense manager Charlie Dow, previously a staff defender for Franklin.

"This time last year, everybody working here now as an attorney wasn't working here," said Dow, who jumped across the river in June.

Because Benton has a backlog, Dow's difficult job includes deciding who gets an attorney right away and who doesn't. He's prioritizing people in jail.

"They get appointments over and above everybody out of custody," he said.

That explains the unrepresented people waiting in Tanner's courtroom with nonfelony charges for offenses like assault, theft and driving with a suspended license. On Feb. 7, the judge saw about 20 such defendants in a row, shepherded by a defense staffer who spoke to each for a few seconds.

"None of us are comfortable with what's going on," said Dow, the defense manager. "We're doing everything we can with the little we've got."

Hugo Mendoza, 29, had no attorney when he showed up, despite multiple prior appearances. Once again, the warehouse worker heard he would have to come back. Each time, he misses work. Each time, his stress level rises.

"I feel like it should have been dealt with a long time ago," Mendoza said, anxious to see his case resolved. "They just keep rescheduling."

Potential solutions

Things have improved in Franklin County since last year's backlog made headlines, partly because officials have pumped more money into piecemeal contracts with private attorneys, said Gonzalez, the county administrator. Unfortunately, "constantly signing off" on deals worth "five grand, seven grand, ten grand," is unsustainable, he said, calling for relief from Olympia.

"We're just running around chasing our tail," Gonzalez said.

In theory, the internship program would hone more staff defenders like Franklin County's Josh Cuevas, who can see his childhood apartment from the 111-year-old brick courthouse where he works today. Being from Pasco and speaking Spanish, Cuevas is more likely to stick with the job and is better equipped to serve a county that's majority Latino, Gonzalez said.

"Maybe people have bigger dreams," but public defense "is a big deal for me," said Cuevas, who spends more time conferring with clients in hallways than jousting in court. "I'm happy to do it in my community."

Dow, in Benton County, doubts an internship program would accomplish much without monetary incentives, thinking about the student loans and housing costs that burden new attorneys. Like Cuevas, Dow grew up in the Tri-Cities and returned after law school but, "We can't rely on that," he said.

More spending on public defense and lower caseloads may not even be adequate to solve the crisis, given its severity and the magnitude of costs involved, according to advocates like King County's Khandelwal.

"We need to find more efficient and evidence-based ways of addressing harm in our community," the defense director wrote in a Seattle Times op-ed with King County Councilmember Girmay Zahilay [in September](#).

Until then, the system will lean on defenders like Cuevas, whose recruiting pitch is straightforward: The lows may be low, but the highs really matter.

"There's a high of getting someone who was in an impossible situation into a much better position," Cuevas said. "That's incredibly rewarding."

Seattle Times staff reporter Claire Withycombe and news researcher Miyoko Wolf contributed.

*This coverage is **partially underwritten** by Microsoft Philanthropies. The Seattle Times maintains editorial control over this and all its coverage.*

***Daniel Beekman:** 206-464-2164 or dbeekman@seattletimes.com; Seattle Times staff reporter Daniel Beekman covers politics and communities.*