

Column: Solving Oregon's public defender problem will involve more than money

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Oregon's public defender problems have been getting much better and much worse at the same time.

Finding a solution that makes sense doesn't involve doing what most people have long argued: spending more money on legal services. The answer lies in how the money is managed and spent, and how the workload is organized.

In all, it resembles any of several serious Oregon problems – drug abuse and homelessness among them – where the willingness to do the right thing, and the ability to pay for it, are not the bottleneck. The problem lies in smartly managing the problem-solving.

The problems with the public defense of people charged with a crime who cannot afford an attorney but have the right to one is not new, and legislators and the state executive branch actively have been working on it for years.

The Oregon Legislature has responded. The Oregon Public Defense Commission, which is assigned to manage and deliver public attorneys for at-need defendants, has been given a massive infusion of new money, its budget more than doubling in the past seven years.

The larger picture in defense caseloads looks better than even a couple of years ago. In January 2022, the American Bar Association produced a report called *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workloads Standards*, which found that Oregon had fewer than a third of the attorneys, or more exactly attorney work-hours, needed to meet the demand and ought to have the full-time equivalent of about 1,300 more attorneys.

Since then, other states have studied exactly how much attorney time is needed in public defense, and when variations in the types of cases are factored in – a simple misdemeanor versus a knot of complex felonies, for example – it turns out Oregon's need is far smaller than estimated by the bar association. Those studies indicate it needs about 600 attorneys.

But the problem is more complicated than that.

There's been more focus on providing counsel for in-custody defendants, but the problem seems to have worsened among the larger group of out-of-custody defendants, with the lack of counsel problem worsening overall.

Their ranks have swelled after a federal judge last October ordered that any inmate not assigned an attorney within a week had to be released from county jails. (The legal debate about the judge's action is ongoing.)

On top of that, the average time an out-of-custody felony defendant now is without counsel is running upward of 100 days.

This has been happening even at a time when the numbers of Oregon crimes, notably property crime, have been trending downward.

Under terms of the state-attorney contracts awarded in June 2022, the defense attorneys are limited in the number of cases they can accept. By April of 2023, however, many attorneys already had hit those ceilings and could not take on new clients as new defendants entered the system. In Multnomah County, private lawyers overall reported hitting 122% of the maximum caseload in recent months. So in the spring of 2023, the state throttled back the number of cases defense attorneys could take.

There have also been serious problems with billing by the commission. The amount of time elapsed for payment to attorneys has grown from just over a week in 2016 to more than 45 days this year – a situation bound to become unacceptable to many attorneys and other contractors, such as private investigators.

More flexible rules for attorney contracting could help, along with a sharper focus on problem-solving and less on rule-making. But there's a larger systemic block getting in the way of solving many state problems that both agency directors and the governor, and the Legislature, should start to consider more broadly.

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