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Public Policy Memo

Washington needs a state-wide agency devoted solely to improving access to justice. The current systems are failing, and the state has already demonstrated that existing agencies are willing to allow problems to spiral out of control.

In a memorandum¹ to the Washington Supreme Court on November 27th, 2023, the Washington Office of Public Defense (OPD) called for a moratorium on new case assignments state-wide, an order requiring appointing authorities to avoid new assignments until defense attorneys are at 60% of state caseload limits, and the creation of new caseload limits. OPD stated the state's criminal defense system is "on the verge of collapse."

OPD's memo follows a significant nation-wide examination of the standards of public defense.² The issue has not been ignored or unnoticed, from Yakima³ to Everett⁴ the claxon is being rung. The issues are myriad. There is no uniform state-wide system for public defense, leading to inconsistent representation. The burden for implementing and funding the defense system falls to individual counties, a coalition of whom are suing the state because of this.⁵ Caseloads are so significant that the Washington State Bar Association has requested defense attorneys seek relief from the courts themselves.⁶ The throughline is clear - more funding and consistent, accountable administration is needed.

Despite these concerns, little is currently being done to address the matters. No move is being made to create a statewide defense system. It is the humble opinion of the author that the

¹ (Washington State Office of Public Defense, 2023)

² (Pace et al., 2023)

³ (Denkmann & Anderson, 2023)

⁴ (Simmons & Schwarz, 2023)

⁵ (Washington State Association of Counties, 2023)

⁶ (Washington State Bar Association, 2021)

creation of a new statewide agency of justice, by the legislature, is the only way to stave off a collapse of our criminal justice system. This demand for a new agency is because the state has already demonstrated that its current apparatuses are wildly insufficient to addressing critical issues around the rights of the accused, and are happy to allow the criminal justice system to face cascading failure, as demonstrated in the Trueblood decision.

In Trueblood et al. v Washington, the state was sued for failing to provide timely competency evaluations to incompetent defendants.⁷ Effectively, the state is required to evaluate those who may not be competent to stand trial, and must do so for those in jail in a very short amount of time. The state fell woefully short of this burden. Even after being forced via settlement to address incredible wait times for prisoners seeking evaluation, the state failed to act and allowed the problem to simply worsen. DSHS, the entity tasked with addressing this problem, was found to be at fault for failing to meet any standard or deadline, and fined for one-hundred million dollars by a federal judge.⁸

A new state agency, solely tasked with providing and enhancing access to justice, may be able to avert this new looming crisis. If Washington is to address the myriad issues facing criminal defense, it is clear that what exists now will not work, and that existing agencies will not act when faced with a crisis. This author urges the legislature to take action.

⁷ (Washington State Department of Social and Health Services, n.d.)

⁸ (Jimenez, 2023)

References

- Denkmann, L., & Anderson, H. (2023, June 16). Lawyer shortage creates potential constitutional crisis. *KUOW*. Retrieved December 15, 2023, from <https://www.kuow.org/stories/public-defender-shortage-creates-potential-constitutional-crisis>
- Jimenez, E. (2023, July 7). Federal judge fines WA agency \$100 million for mental health failures. *The Seattle Times*. <https://www.seattletimes.com/seattle-news/mental-health/federal-judge-fines-wa-agency-100-million-for-mental-health-failures/>
- Pace, N. M., Brink, M. N., Lee, C. G., & Hanlon, S. F. (2023). *National Public Defense Workload Study* | RAND. RAND Corporation. Retrieved December 15, 2023, from https://www.rand.org/pubs/research_reports/RRA2559-1.html
- Simmons, T., & Schwarz, J. (2023, April 1). *Comment: State must bolster poorly funded public defense system* | *HeraldNet.com*. Everett Herald. Retrieved December 15, 2023, from <https://www.heraldnet.com/opinion/comment-state-must-bolster-poorly-funded-public-defense-system/>
- Washington State Bar Association. (2021, July 21). *Statement: Public Defense Lawyers Should Seek Relief from Excessive Workloads*. Retrieved December 15, 2023, from <https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/council-on-public-defense-statement-statement-public-defense-lawyers-should-seek-relief-from-excessive-workloads2d3d6fbd-73c1-46ee-8aec-0c2ff2006de5.pdf?Status=Ma>

Washington State Association of Counties. (2023, September 7). *Washington's Counties File Suit Against the State of Washington for Unconstitutional Indigent Defense System* –

Washington State Association of Counties. Washington State Association of Counties.

Retrieved December 15, 2023, from

<https://wsac.org/washingtons-counties-file-suit-against-the-state-of-washington/>

Washington State Department of Social and Health Services. (n.d.). *Trueblood et al v.*

Washington State DSHS | DSHS. Washington State Department of Social and Health

Services. Retrieved December 15, 2023, from

<https://www.dshs.wa.gov/bha/trueblood-et-al-v-washington-state-dshs>

Washington State Office of Public Defense. (2023, November). *Urgent Request for Moratorium and Reform in the Public Defense System*. Retrieved December 15, 2023, from

<http://wsba2.informz.net/z/cjUucD9taT00MDcxMjIyJnA9MSZ1PTQwODkyMjUxMCZsaT00NDZMDQxNQ/index.html>