

Cutting court costs: Would making people pay for lawyers save Kitsap County money?

By Josh Farley

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PORT ORCHARD — For 50 years, providing criminal defendants an attorney if they cannot afford one has been the law of the land.

But should they get a public defender if they can pay?

In Kitsap County's justice system, those accused of a felony are provided an attorney regardless of income, for at least the first month of the case — and, in some instances, longer.

Kitsap County Clerk Dave Peterson, whose office includes that of public defense, raised the issue in recent budget discussions, saying that the county's public defenders are having to take on cases where defendants can pay.

Peterson believes it is the obligation of the county's district court — where felony cases begin in Kitsap — to screen for whether the accused can afford a lawyer. But the court isn't doing that.

He estimates it costs the county about \$71,000 a year, because "we end up representing people who aren't entitled to a court-appointed attorney," said Clarke Tibbits, who heads the Public Defender's Office.

But the accusations came as a shock to the man in charge of the court, as well as Kitsap County Prosecutor Russ Hauge, who says screening defendants won't save money, will slow up the system and is a moot point anyway.

"In my experience, if anyone says they want a lawyer appointed for them, they get a lawyer regardless of the health of their bank account," Hauge said.

SCREENING FOR THE INDIGENT

Nearly four years ago, the Kitsap County Prosecutor's Office began routing its felony charges through district court — normally reserved for lower level misdemeanor crimes — to start the criminal process.

Known as the Felony Early Plea Unit, or FEPU, [the idea was to streamline the system](#) by seeking a resolution to the case in 30 days or fewer. If one was found, a single

hearing could conclude the case in superior court; if not, then it would then be slotted for trial there.

Around the same time, the burgeoning Public Defender's Office, replacing a chunk of what used to be exclusively a system of private contracts, took over handling all initial felony court appearances.

Superior court's felony cases, since FEPU was implemented, have dropped from 2,000 or so a year to around 1,300, proof of the efficiency of the new system, Hauge said.

What didn't follow felony defendants into district court was an analysis, long (and still) conducted in Kitsap County Superior Court to determine whether they could afford an attorney, known as indigency screening.

Maury Baker, administrator for district court, said Peterson, the clerk, never approached him about the screening process. He adds that if doing so is important enough to Peterson, his own office should take it on.

"If they want to screen them, they should screen them," he said.

Peterson says they can't and won't.

"It wouldn't be appropriate for us to screen our own potential clients," he said, adding, "It's not public defense's obligation, it's the court's obligation."

Most courts around the state conduct screenings of income levels. "Certainly the majority of them indicate they do some sort of screening," said Sophia Byrd McSherry, deputy director of the Washington State Office of Public Defense.

Washington law also says they should be conducted.

"The determination of indigency shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit," the law says.

But Hauge says there's a more important court rule that must be followed: that "a lawyer shall be provided at every stage of the proceedings."

The prosecutor believes the screenings would be immaterial, because regardless of income, a defendant will never be denied an attorney.

And, "If someone wants to hire their own lawyer, they are certainly welcome to," he said.

He also doesn't think the screenings would save any money and, worse, would slow up the FEPU system, which he says has made local justice more efficient.

"I don't think it would save a nickel," Hauge said.

Peterson estimates about 3 to 5 percent of defendants in felony cases could afford their own lawyer, leading to the \$71,000 a year savings. But his gripes about FEPU

didn't end there, saying that additional staff had to be hired to staff district court and that the process prohibits the office of public defense from grant money because the state only counts cases originating in superior court to tabulate grant funding.

As for misdemeanor-level crimes, Baker said his court does screening for indigency, if they are released from jail. And, once a case hits superior court, a screening is conducted, according to Kitsap County Superior Court administrator Frank Maiocco.

For any changes to occur, it would require the leaders of the different facets of the justice system — Hauge, Peterson, Baker and others — to come together.

Kitsap County Commissioner Charlotte Garrido said she appreciates efforts aimed at making the local justice system more cost-effective and efficient. But those in charge of each department — prosecutor's or clerk's office, district or superior court — must make their own determinations on how to spend the budgets they're allocated.

"They alone are responsible for running their own shops," she said.



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