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Court's limit on public defender work likely to force changes

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Complying with new caps on public defender caseloads could lead to fewer criminal charges being filed against crime suspects because it would be cheaper than hiring more lawyers.

Spokane-area authorities say they're still evaluating the state Supreme Court's new caseload rules, which won't take effect until September of next year, and are uncertain specifically how they'll adapt. But with tight budgets it's unlikely they'll be able to simply hire enough public defenders to reduce average caseloads.

As a result, reforming how the county's costly criminal justice system deals with certain minor offenses is expected to be key to the equation, sources said.

"It's a huge thing," Spokane County Public Defender John Rodgers said. To comply, "you can either put more resources in the public defenders or do some systemic reforms. I don't know how it's going to play out."

Options include essentially decriminalizing certain traffic offenses, which comprise the bulk of district and municipal court caseloads, and treating them as lesser violations rather than misdemeanor crimes. That move would avoid the need for public defenders to be assigned and eliminate such offenses from the caseload mix.

Regardless of how local public defenders choose to proceed, however, changes are coming.

The Washington Supreme Court last month voted 7-2 to cap the number of misdemeanor cases each public defender can handle in a year at 300 to 400, depending on how those crimes are classified.

The rules also set a limit of 150 felony cases per year and require public defenders to show they have certifications to handle cases, such as serious felonies or death penalty cases.

Some reform attempts already are under way.

Spokane City Public Defender Kathy Knox said she's still evaluating the numbers, but she believes her attorneys would be over the limit. That's despite steps city prosecutors have already taken to reduce the overall caseload by changing how they handle cases involving residents who continue to drive with a suspended license. While the charge is technically a misdemeanor, most of those cases are now being handled as infractions, Knox said.

Infractions can be handled with the offender paying a fine. But misdemeanor charges trigger court hearings where the defendant has the right to be represented by a defense attorney and a corresponding prosecutor.

“We like it because we want the person to get their licenses back and not keep having fines and fees added to them,” Knox said. “We don’t want to fill the jail up with” offenders charged with driving on a suspended license.

Knox said city prosecutors handle the charges on a case-by-case basis, meaning that serial nonlicensed offenders continue to face the stiffer misdemeanor penalties. But for first- or second-time offenders, handling those cases with infractions frees up attorney and court time.

“I’m going to suggest to the city attorney that we do some others,” Knox said, referring to handling other crimes in the same way. “What’s wonderful is that it allows us to focus on the more serious offenses like DUI and domestic violence defense.”

While Rodgers supports a similar program for the county, Spokane County Deputy Prosecutor Brian O’Brien said he doesn’t expect changes in how his department makes charging decisions based on the caseload cap for public defenders. O’Brien supervises the other prosecutors who handle misdemeanors.

“Because of their dilemma,” said O’Brien, referring to the new cap on public defender cases, “that wouldn’t be a consideration for us in our protection of the community. We don’t take into account how many public defenders there are.”

The new rules allow public defenders to take 300 to 400 cases, depending on how they are counted. For instance, if a defendant violates his or her release conditions, that would be considered one-third of a case and count against the public defender’s 300 cases. If the local jurisdiction doesn’t weight cases, that same release condition violation would constitute a full case under the 400 count, Knox said.

O’Brien said his office handles about 10,000 cases a year and faces its own caseload problems. “We are back to 1982 levels in District Court as far as staffing, at the same time the number of cases has probably more than doubled.”

Both sides of the criminal justice system have faced cuts from the ongoing budget crisis, he said.

“If there was something unfair in the system, it would be that,” O’Brien said.

Rodgers added that if changes don’t come, it could lead to a constitutional showdown, in which the judicial system requires legal representation but the county won’t have public defenders available because they all have exceeded the mandated caseload cap.

“The solution will be either give us more money or make system reforms or stop charging as many cases,” Rodgers said. “My guess is we will try a little bit of all three.”