

Two-month wait for public defenders as Yakima County attorney shortage grows worse

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Attorneys at work in court Thursday, May 5, 2022, in Yakima County Jail in Yakima, WA. (Evan Abell, Yakima Herald Republic)

As the shortage of public defenders hits a crisis point, Yakima County's chief prosecutor said he has no plans to sacrifice public safety due to the situation.

"This is not going to be a fire sale on my watch," Yakima County Prosecuting Attorney Joe Brusica said Wednesday, after updating police chiefs, the U.S. Attorney's Office and others about a two-month delay in assigning court-appointed attorneys for defendants.

Paul Kelley, director of the county's Office of Assigned Counsel, said with the departure of one defense attorney and two more expected to leave soon, a defendant now charged with a felony crime will have to wait until June to get an attorney.

While a new state law creates an internship program for public defenders and prosecutors in rural communities, Brusic, Kelley and Yakima County Commissioner LaDon Linde said that will do nothing to address the immediate need.

Under federal and state law, the county must provide attorneys for defendants who cannot afford to hire their own. Kelley said that represents more than 90% of the more than 2,000 felony cases charged in Yakima County Superior Court each year.

To ensure that public defenders effectively represent their clients, the attorneys are limited to 150 cases per year. Kelley said more serious felonies can be counted as more than one case toward an attorney's caseload.

Since September 2022, [Kelley's office has had to notify the court that it could not immediately appoint an attorney](#) to represent indigent clients until the start of the following month, when caseload levels would permit taking on new cases.

Since then, it has ranged from a couple weeks to a month to get an attorney appointed, but Kelley notified Brusic Tuesday that, due to the departure of one attorney and the announcement that two others plan to leave by June, that his office has reached its capacity for cases through May.

"Don't tell me that nobody saw this coming," Kelley said. "I've warned about this in the last couple months."

Both Kelley and Brusic have raised alarms about the situation for the [past two years](#).

Constitutional issues

It is an issue that has constitutional ramifications for defendants and the justice system.

The U.S. Constitution guarantees defendants a right to a speedy trial. In Washington, that means people arraigned on a criminal charge have to be brought to trial within two months if they are being held in custody, or three months if they were released on bail or their own recognizance.

Arraignment happens two weeks after someone is arrested, and Kelley said the countdown clock starts ticking on the arraignment date, whether the person has an attorney or not. Trial dates can be extended if one or both sides convinces a judge that a delay is needed to better prepare for trial, but an unnecessary delay can result in someone being released.

In November, a federal judge ordered prosecutors in [Oregon to release defendants](#) if an attorney couldn't be appointed to represent them within a week after the first appearance in court due to a similar shortage of attorneys.

"Frankly, we are headed on the road to disaster," said Linde, whose county commission responsibilities include law and public safety.

Yakima County has boosted pay and provided bonuses to attract and keep both prosecutors and public defenders, Linde said. But Yakima County is competing with other counties, as well as private law firms, for attorneys.

Linde also lobbied in support of Sen. Nikki Torres' recently passed bill [creating an internship program for law students wanting to go into prosecution or public defense](#) in rural communities, as well as providing training for public defenders and prosecutors starting out.

But Linde, Brusic and Kelley said that is a long-term solution that does not address the immediate need. Even a new graduate from law school cannot step in as a felony public defender, who is required to have experience trying felony cases to ensure that defendants receive proper representation.

Linde said Torres' bill was amended to remove what he thought would be the best tool for recruiting attorneys: A provision to help aspiring public defenders and prosecutors eliminate their student loans.

Linde, who has worked in the health care field, said such loan forgiveness options have helped bolster the ranks of medical personnel in underserved communities.

Coping with the shortage

Brusic said his office has no intention of backing off on filing charges, but he said prosecutors will use more discretion in which cases they file, as well as looking for ways to divert potential felonies to municipal courts where they can be tried as misdemeanor or gross misdemeanors. For example, he said a felony burglary case can be reframed as theft and trespass cases, which are misdemeanors.

“The one thing that cannot change, never change, is the constitutional rights of someone accused of a crime,” Brusic said.

Selah police Chief Dan Christman said he empathizes with Brusic, as police departments also struggle to find recruits. He's also seen his officers prepare cases only to have them dismissed, which he said can frustrate crime victims who direct their anger at police.

“We still have to do our job,” Christman said, and the county is doing its best to attract lawyers to work.

In a prepared statement, Yakima police Chief Matt Murray said his department has been in regular contact with Brusic about the attorney shortages and appreciated Brusic keeping him and others apprised of the situation.

“Our role will be to continue to weigh the need to utilize arrest as an option when lawfully appropriate, understanding fully that some arrests may result in a decision that

is made out of necessity to ensure the due process rights of the accused, with respect to the availability to provide court-appointed counsel as required by law,” Murray said.



Yakima County Prosecuting Attorney Joe Brusica prepares to join a video chat meeting with his peers in the Washington Association of Prosecuting Attorneys, a liaison for county prosecutors at the state and national levels, Thursday, May 7, 2020, at the Yakima County Courthouse in Yakima, Wash. (Amanda Ray, Yakima Herald Republic – FILE)



Paul Kelley



LaDon Linde (Amanda Ray/Yakima Herald Republic file)