

Judge tosses counties' lawsuit pressing for more state funding for public defenders

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By Jerry Cornfield - Washington State Standard



A Yakima County Superior Courtroom Tuesday, Oct. 13, 2020, at the Yakima County Courthouse.
Amanda Ray / Yakima Herald-Republic

A Thurston County judge has dismissed a legal challenge to Washington's system of covering the cost of counsel for criminal defendants who can't afford an attorney.

The Washington State Association of Counties and three counties – Lincoln, Pacific and Yakima – sued the state last fall, alleging inadequate state funding leaves counties unable to provide constitutionally adequate defense services for indigent individuals. But Thurston County Superior Court Judge Allyson Zipp dismissed the lawsuit March 22, agreeing with state attorneys that the counties lacked standing to sue. She ruled from the bench and is expected to issue a written order in the coming days.

While acknowledging serious challenges facing the public defense system, she said only individual indigent criminal defendants, not counties can assert claims.

The right to sue “rests with the individuals whose rights are purportedly being violated and those individuals are best positioned to establish how those rights are being violated and to advocate for the remedy to address those alleged violations,” according to the proposed order Zipp is expected to sign. She read portions from the bench. Attorney General Bob Ferguson did not comment on the outcome.

“Public defenders play a critical role in our justice system,” he said in a statement. “I respect and support the important work they do.”

Once Zipp issues a signed order, the counties will have 30 days to file an appeal. Revising the complaint and refile is also an option, said Eric Johnson, executive director of the state association of counties.

Or they could look to 2025 to press lawmakers and the next governor for more funding.

Counties received no boost in aid in the supplemental budget passed this last session.

There is \$1 million for various statewide efforts to increase the ranks of public defenders, including encouraging recent law school graduates or law students who are eligible to practice as legal interns to work in rural areas where the lack of counsel is most pronounced.

“They left out a lot of extra zeros to fix their benign neglect of their constitutional responsibility,” Johnson said.

How it works

The U.S. Constitution and the Washington state Constitution guarantee court-appointed counsel for indigent defendants facing criminal prosecutions.

In Washington, the state picks up the tab for civil commitment actions where people are sent to psychiatric hospitals, representing parents in cases involving child custody, and handling appeals of indigent defendants, according to the suit.

Counties are left to cover legal defense costs for poor defendants in criminal prosecutions. It's eating up larger chunks of local government budgets as cases multiply, and get more complex and time-consuming.

Too many cases, too few lawyers and too little funding imperil the ability of local governments to provide timely, equitable and effective counsel to every person unable to afford a lawyer, the counties contend.

Not a new fight

The American Civil Liberties Union is familiar with this debate and has challenged the shortcomings in the delivery of public defense services in Idaho, Nevada, Missouri and other states.

Washington, too. A 2011 case against the cities of Mount Vernon and Burlington ended with a federal judge ruling against the cities, leading them to beef up funding of legal services. Another case, *Davison v. State of Washington*, centered on the constitutional adequacy of services to juvenile offenders in Grays Harbor County. The case reached the Washington state Supreme Court where justices acknowledged the overwhelmed system though they did not find the state responsible in the specific case.

ACLU Washington isn't taking sides in the counties' legal fight with the state. Its focus, the group's attorneys said, is assuring the system operates in a manner that ensures individuals can defend themselves in a thorough and effective way.

"It is not about whether the state pays or the county pays," said ACLU staff attorney David Montes. "If you're prosecuting people you have to assure they have adequate counsel. It doesn't matter who pays."

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