

Pandemic pushes public defender system to the brink

By GILLIAN FLACCUS
The Associated Press

PORTLAND — A post-pandemic glut of delayed cases has exposed shocking constitutional landmines impacting defendants and crime victims alike in Oregon, a state with a national reputation for progressive social justice.

An acute shortage of public defenders means at any given time at least several hundred low-income criminal defendants don't have legal representation, sometimes in serious felony cases that could put them away for years.

Judges have dismissed nearly four dozen cases in in the Portland area alone — including a domestic violence case with allegations of strangulation — and have threatened to hold the state in contempt.

"We're overwhelmed. The pandemic is exposing all the problems that we have," said Carl Macpherson, executive director of Metropolitan Public Defender, a large Portland nonprofit public defender firm. "It just became abundantly clear that we are broken."

Public defenders warned the system was on the brink of collapse before the pandemic and some staged a walkout in 2019. But lawmakers didn't act and then COVID-19 shut down the courts. Now, the system is "buckling before our eyes," said Kelly Simon, legal director for the Oregon American Civil Liberties Union.

The crisis in Oregon, while extreme, reflects a nationwide reckoning on indigent defense, as courts seek to absorb a pandemic backlog of criminal cases with public defender systems that have long been underfunded and understaffed. From New England to New Mexico to Wisconsin, states are struggling to keep public defender services running.

Maine this month earmarked nearly \$1 million to hire that state's first five public defenders, with a focus on rural counties, after relying entirely on contracts with private attorneys until now.

In New Mexico, a recent report found the state was



Gillian Flaccus/The Associated Press

Carl Macpherson, executive director at Metropolitan Public Defender, in his office in Portland on Thursday, May 5, 2022, examines the file in a double murder case that was recently pushed back for trial. Macpherson says his firm of 90 public defenders recently stopped taking certain types of new criminal cases for a month in two local courts because they had so many cases that the attorneys were violating their ethical obligations to clients. A post-pandemic glut of delayed cases has exposed constitutional landmines impacting defendants and crime victims alike in Oregon, where an acute shortage of public defenders has even led judges to dismiss serious cases.

short 600 full-time public defenders. In New Hampshire, where an estimated 800 defendants were without attorneys, state lawmakers in March approved more than \$2 million to raise public defenders' salaries. And in Wisconsin, where starting pay for public defenders is \$27 an hour, there's a shortage of 60 attorney positions statewide.

"This is America's dirty little secret: Thousands of people in courtrooms all across the country go to jail every single day without having talked to a lawyer," said Jon Mosher, deputy director of the nonprofit Sixth Amendment Center.

An American Bar Association report released in January found Oregon has 31% of the public defenders it needs. Every existing attorney would have to work more than 26 hours each weekday to cover the case-load, the authors found.

"It's horrifying. I don't want to mince words about this. I am not going to make excuses for this," said state Sen. Elizabeth Steiner Hayward, who co-chairs the state Legislature's Ways and Means committee. "That being said, we can't manufacture attorneys out of thin air."

For victims, the situation is devastating and it's hurting the most vulnerable.

Cassie Trahan, co-founder and executive director of an Oregon nonprofit that works with teen and young adult victims of sex trafficking, said trust in the judicial system is fading, especially in minority and immigrant communities. Victims no longer want to come forward when they see cases being dismissed or ending in weak plea bargains to relieve pressure on the courts.

One such victim in a pending trafficking case "lives in constant fear that it's going to be dismissed," Trahan said.

Prosecutors can get an indictment from a grand jury when cases are dismissed for lack of a public defender and police will re-arrest the alleged perpetrator — but that's small consolation to victims.

"In her mind, it's like, 'Now I've outed myself, now I've talked against him and what's going to happen if he gets off?'" Trahan said of the victim. "That's what we're seeing more of, especially in communities of color and groups that don't trust the judicial system anyway."

The Oregon Legislature recently approved \$12.8 million in one-time funding for the four hardest-hit counties, as well as a suite of leg-

islative reforms. New contracts coming this summer will institute lower attorney case caps. And lawmakers are withholding \$100 million from the agency's budget until it shows good faith on numerous reforms, including restructuring, financial audits and performance metrics.

A working group of all three government branches will convene this month to begin tackling a "comprehensive and structural modernization" of the system.

Autumn Shreve, govern-

ment relations manager for the state Office of Public Defense Services, said the pandemic finally forced the hand of state lawmakers who haven't taken a close look at public defenders in nearly 20 years.

"It's been a ragtag group of people trying to cover the caseloads year-to-year and because of that there's been a lot of past papering over of problems," she said.

Meanwhile, the situation in the state's courtrooms is dire. Often those going without attorneys are charged with heinous crimes that come with hefty prison sentences if convicted, making it even harder to find public defenders qualified to handle such complex cases. And those who handle misdemeanors are often young attorneys carrying 100 cases or more at a time.

"You can't keep everything in your head when you have that many clients at the same time. Even things like, you know, 'What's your current plea offer?'" I can't remember that for 100 people. Or I can't remember, 'What exactly does the police report say?'"

Other public defender services, including private investigators and legal advisers, have also reached a breaking point.

Renardo Mitchell, who is jailed on attempted murder charges, chose to represent himself after he said he didn't hear from his public defender for five months. The legal adviser assigned by the court to help him hire expert witnesses and file motions died suddenly in February and Mitchell has been without legal counsel since then.

Two years after his arrest, he still hasn't seen all the discovery in his case, said Mitchell, 37. His public private investigator — Mitchell's only connection to his proceedings — recently had to petition the court to get more paid hours developing evidence for his defense.

"We're all innocent until proven guilty. Nothing has been proven yet — I haven't been found guilty," said Mitchell, who faces more than 22 years in prison if convicted. "Even if I did those things that they allege, I still have a right to due process of law."

The chief prosecutor in Portland has become an outspoken advocate of public defender reform for that very reason.

"The most important thing is everybody has a right to an attorney, it's a constitutional right," said Multnomah County District Attorney Michael Schmidt.

"It's an ecosystem, like a coral reef. If you take away one aspect of this system, then all the other aspects fall apart."

With federal investment, 7 highways to get charging stations every 50 miles

By ALEX BAUMHARDT
Oregon Capital Chronicle

SALEM — An electric vehicle charging station could soon exist every 50 miles on some of Oregon's main highways.

The Oregon Department of Transportation announced Friday, May 6, it would direct \$100 million over the next five years to growing a network of charging stations for cars, trucks and SUVs. Some will charge even medium-duty vehicles such as delivery vans. Electric vehicles built before 2016 have an average range of 100 miles on a single charge and today get an average of about 250 miles, according to the Plug-in Hybrid & Electric Vehicle Research Center at the University of California, Davis.

The state transportation department itself won't be in charge of installing or operating the stations, but will contract with private companies to build them, according to a press release.

The money comes from a mix of federal and state funds, but the bulk of it comes from the 2021 federal infrastructure bill.

Of the \$100 million, about two-thirds will go to building charging stations every 50 miles on seven major corridors. Those include Interstates 5, 84 and 82, U.S. Highway 26, U.S. Highway 101, U.S. Highway 20, and U.S. Highway 97. Each charging station will have at least four ports, and be built so that more can be added over time.

There aren't yet estimates for how stations will be built because costs vary depending on the type of charger and where they are installed, according to Matt Noble, a public affairs specialist at the Oregon Department of Transportation.

"We're confident that this \$100 million investment will be able to build a backbone network every 50 miles across the seven corridors," he wrote in an email.

About \$36 million will go to building out charging infrastructure in rural areas and cities, especially at apartment complexes.

Noble said the department will meet with stakeholder groups during the next two years to figure out what needs are and where the stations would be best located in rural and urban areas.

ODOT set a goal in 2021 of tripling the number of electric vehicles in Oregon by the end of 2023, and of expanding the statewide electric vehicle charging network in the state 10% by 2025. There are currently about 2,100 electric vehicle charging stations in Oregon, according to the Oregon Department of Energy.

The transportation department will be going after billions of dollars in federal grants for additional charging infrastructure that will work for heavy-duty electric vehicles such as commercial trucks and buses, according to the ODOT press release.

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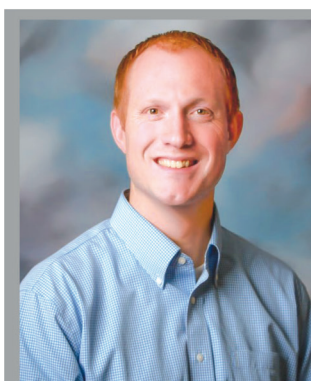
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