

BAILING ON THE JUSTICE SYSTEM

System of public defense is inadequate, attorneys say

The public defender system in Eugene and Springfield discourages quality representation by free attorneys, according to local lawyers.

Public defenders are paid a flat rate for each case, so attorneys make less than minimum wage on cases that go to trial. And the bail system in Springfield keeps impoverished defendants in jail before they get to trial, putting defendants in a strained situation and prompting a misleading number of guilty pleas, according to local attorneys.

As recently as 2016, public defenders were being paid \$50 to \$60 an hour for their work on misdemeanor cases in Eugene Municipal Court, according to local attorney Willow Hillman, who works as a public defender in both Eugene and Springfield. But a shift in the Eugene contract changed the pay structure from hourly to a flat rate.

“There’s some incentive there to try to get that case resolved and not spend your whole day in trial for \$100-something” Hillman says. She says most attorneys doing this work aren’t in it for the money; they’re doing it for the public good.

But if an attorney took every case to trial and spent 10 hours on it, “You would be living under the poverty line yourself. That’s where the system falls apart,” she says.

Ashlee Wiese is an attorney with Eckart Wostmann Wiese, a firm that contracts with Eugene to provide public defense. She says Eugene lawyers get \$180 per case, but doesn’t think the low rate affects how public defenders treat their clients.

“A case going to trial for me is kind of the cherry on top of work,” Wiese says. “I enjoy going to trial and the rate of pay doesn’t affect that.”

Many attorneys in public defense enjoy trials, but there’s a limit. “If I had 15 cases going to trial in a month at \$180 a case, that would break us. It’s based on the idea that not all cases go to trial,” she says.

But Wiese says she prefers the flat rate to hourly, as it typically ends up being better pay in the long run. “A lot of cases resolve at less than three hours, so you would be making less money than at the per-case rate.”

She adds that a flat rate limits the administrative paperwork required for each case, and “the average defense lawyer fee is \$50 to \$60 an hour” for public defenders.

“The flat rate is the way the majority of courts are nowadays. It’s hard to find a court that’s by the hour because they can’t control their costs,” Wiese says.

Amber Fossen, the public affairs coordinator for Springfield, says that in Springfield Municipal Court, “by and large most cases settle without going to trial — roughly 90 percent. And that’s not just locally, that’s nationwide. Here in Springfield, we have about one case a month that goes to trial.”

That high plea rate isn’t because of low rates of pay for public defenders, Hillman says — it’s because of the structuring of Springfield Municipal Court. Unlike Eugene, which releases most low-level offenders until they’re next required to appear in court, Springfield holds defendants unless they can post bail.

Most defendants, Hillman says, spend at least a week in jail before they even meet their public defender. “You get a lot of clients who say, ‘I’m innocent, but I’m not going to trial, get me out of here. I don’t care what I have to do, get me out of here now.’”

Many defendants, Hillman says, plead guilty or no contest to a crime even if they’re actually innocent to avoid spending more time in jail — 30 to 90 additional days, depending on the severity of the crime — before the trial.

Defendants are encouraged by the system to plead out and get their lives back on track, regardless of their actual guilt or innocence. But even if the punishment for pleading guilty in the short term appears to be a better option, the long-term consequences can be troubling.

In Eugene, those same defendants would be out of jail

much sooner, unless they were considered a threat to the public or likely to skip their next court date.

At Eugene Municipal Court, the vast majority of cases settle out of court. In 2017, 0.3 percent of cases went to trial, 61.6 percent were dismissed, and 37.9 percent ended with a plea. In Springfield, just 0.1 percent of misdemeanor cases went to trial — a total of 20 cases out of 5,260 in Eugene and seven out of 3,739 in Springfield.

“When you go to apply for a job, that stealing of razors or food, as it may be a lot of the time, just shows up as a theft 3,” Hillman says. “It doesn’t show what or why you were stealing, or that you pleaded guilty because you were in Springfield and you want to get out, so when you go to apply for a job all they know is that you stole, and we don’t want someone who steals here.”

Hillman adds that the flat rate for public defender cases in Springfield is lower — \$100 compared to \$180 in Eugene.

“In general I think that public defenders are horribly underpaid,” Wiese says. “But when you’re talking about a per-case rate versus an hourly rate, I don’t think there’s a significant disparity in representation.”

Clayton Tullos, a private attorney in Eugene, thinks a disparity is bound to happen. “It turns it into a plea mill,” he says. “Like a puppy mill, it’s a plea mill. The attorneys get less money if they take a case to trial.”

Tullos argues that the public defender system is unfair to attorneys and clients alike. “There’s no benefits, it’s pre-taxes, they don’t even pay your bar dues or your insurance. It doesn’t make sense economically.”

Wiese agrees that it’s unfair. “None of us have benefits.” She adds that all overhead for her office is covered by that \$180 fee, including benefits and the wages of assistants and secretaries.

Prosecutors in Eugene, on the other hand, are public employees, receiving insurance, PERS, and even student loan forgiveness because of their status, she says.

Wiese says the entire public defense system is failing. “Nobody wants to pay for defense. You don’t get a public levy for defense funds, you get a public levy for jails.”

But she wouldn’t trade jobs. “I love what I do and I would say that for everyone in my office. I really like helping people. I do the Community Court work on Fridays and it’s turned into the love of my life.” ■

STATE SENATE TAKES ON CLIMATE CHANGE

Clean Energy Jobs bill would establish cap and price limits on greenhouse gases

While Gov. Jay Inslee’s proposed carbon tax in Washington has been making headlines, here in Oregon a cap and price climate bill is gaining traction — and causing some controversy — in the state Legislature’s short session.

Senate Bill 1507, the Clean Energy Jobs bill, sets forth a policy to cap and price climate pollution from the largest emitters of greenhouse gases in Oregon. It would reinvest the proceeds into the state’s clean-energy economy to create jobs and improve the climate.

Brad Reed of the clean energy advocacy coalition Renew Oregon says the bill would set a cap on those who emit 25,000 or more tons of greenhouse gases per year. Large polluters would purchase a “permit allowance for every ton of greenhouse gas emissions they put out, and every year that pool goes down,” until 2050.

According to a list compiled by the state Department of Environmental Quality in 2016, the largest emitters in Lane County included International Paper and the county’s Short Mountain Landfill.

The Clean Energy Jobs Bill has been endorsed by the Portland Timbers and Nike and lauded by Gov. Kate Brown. Locally, EWEB, in its comments on the bill, says that “economy-wide carbon pricing, achieved through a cap and trade proposal that can also be linked to other states, will produce the least-cost path to meeting Oregon’s GHG reduction goals.”

The cap and price bill would link Oregon’s greenhouse gas emissions trading programs to California and parts of Canada through the nonprofit Western Climate Initiative.

Senate President Peter Courtney and Majority Leader Ginny Burdick indicated at an Associated Press legislative session preview in January that they felt the bill needed more work and shouldn’t be passed in the 2018 short session.

Courtney has not responded to *EW*’s request for further comment.

“We’ve heard people say it’s not ready; it’s brand new, we categorically disagree with that,” Reed says.

Versions of the bill have been brought up and worked on for almost a decade, he says, and after a version of the bill didn’t pass in last year’s regular session, members of the Senate Committee On Environment and Natural Resources continued to work on the bill.

“National experts have been advising our campaign,” Reed says. “They say they have haven’t seen a cap and invest policy as detailed as ours.”

Sen. Floyd Prozanski, a Democrat representing south Lane and north Douglas counties, is a member of the natural resources committee. He says the bill “definitely needs to go forward.”

Prozanski says there seems to be a policy in the Legislature of not taking something to the floor for a vote “unless it has a 100 percent chance of passing.” But, he says, with gridlock on the federal level on the issue of climate change, “it’s time for states to move forward.” Prozanski wants to see the democratic process carried out. “Issues of major importance should be going to the floor to see what is supported or not supported,” he says.

The 2017 version of the Clean Energy Jobs Bill died in committee without going to the full House or Senate for a vote. ■