

Oregon sued over failure to provide public defenders

By GILLIAN FLACCUS
Associated Press

PORTLAND — Criminal defendants in Oregon who have gone without legal representation for long periods of time amid a critical shortage of public defense attorneys filed a lawsuit Monday that alleges the state violated their constitutional right to legal counsel and a speedy trial.

The complaint, which seeks class-action status, was filed as state lawmakers and the Oregon Office of Public Defense Services struggle to address the huge shortage of public defenders statewide.

The crisis has led to the dismissal of dozens of cases and left an estimated 500 defendants statewide — including several dozen in custody on serious felonies — without legal representation. Crime victims are also impacted because cases are taking longer to reach resolution, a delay that experts say extends their trauma, weakens evidence and erodes confidence in the justice system, especially among low-income and minority groups.

“There is a public defense crisis raging across this country,” said Jason D. Williamson, executive director of the Center on Race, Inequality, and the Law at New York University School of Law, who helped prepare the filing. “But Oregon is among only a handful of states that is now entirely depriving people of their constitutional right to counsel on a daily basis, leaving countless

indigent defendants without access to an attorney for months at a time.”

The lawsuit specifically names Gov. Kate Brown and Stephen Singer, the recently appointed executive director of the state’s public defense agency, and asks for a court injunction ordering criminal defendants to be released if they can’t be provided with an attorney in a reasonable period of time. The lawsuit doesn’t specify what would be considered “reasonable.”

Oregon’s system to provide attorneys for criminal defendants who can’t afford them was underfunded and understaffed before COVID-19, but a significant slowdown in court activity during the pandemic pushed it to a breaking point. A backlog of cases is flooding the courts and defendants routinely are arraigned and then have their hearing dates postponed up to two months in the hopes a public defender will be available later.

A report by the American Bar Association released in January found Oregon has 31% of the public defenders it needs. Every existing attorney would have to work more than 26 hours a day during the work week to cover the caseload, the authors said.

Similar problems are confronting states from New England to Wisconsin to New Mexico as systems that were already overburdened and underfunded grapple with attorney departures, low funding and a flood of pent-up demand as COVID-19 precautions ease. Missouri



Gillian Flaccus/AP Photo

Public defender Drew Flood with the nonprofit law firm Metropolitan Public Defender looks at his files for the criminal cases he is working on in Portland.

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eliminated a waiting list for public defenders after being sued in 2020 and Idaho is also in litigation over a public defense crisis.

The Oregon complaint focuses on four plaintiffs who have been without legal representation for more than six weeks, including a man who can’t afford his bail but has been jailed for 17 days without an attorney and can’t seek a bail hearing without representation.

In two other cases, the lawsuit alleges, plaintiffs were released from custody after their arrest and told to call a number to be assigned

a defense attorney. They left voicemails and called repeatedly and have not had any reply, the complaint says. They show up for hearings alone and have their cases pushed back because no public defenders are available.

Jesse Merrithew, an attorney representing the plaintiffs, said not having legal representation right after an arrest causes a cascade of problems for criminal defendants that are almost impossible to overcome later on. One such example, he said, is the ability to secure any surveillance video that could back up the defendant’s case

because looping security videos are often erased after days or weeks.

“The time directly after arrest is the most critical time, as any criminal defense lawyer will tell you, in the representation of a client,” he said. “It’s unacceptable to allow a delay in the employment of the counsel for weeks or months on end.”

The shortage of public defenders also disproportionately affects Black defendants, the lawsuit alleges. Studies in the Portland area in 2014 and 2019 showed that 98% and 97% of Black defendants had court-appointed lawyers in those years, whereas 91% of white defendants had them.

In the current crisis, 23% of people waiting for an attorney were Black statewide on a recent day, despite the fact that Black people overall make up 3% of Oregon’s population.

The Oregon Justice Resource Center, a legal nonprofit representing the plaintiffs, said repairs to the system shouldn’t just focus on hiring more public defenders. Rethinking criminal defense should also mean reducing penalties and jail time for lower-level offenses and offering more alternative resolutions for crimes.

“The state’s failure in this regard requires urgent action. But the problem cannot be solved with more attorneys,” said Ben Haile, an attorney with the Oregon Justice Resource Center who is representing the plaintiffs. “There are effective alterna-

tives to prosecution of many of the people caught up in the criminal justice system that would make the public far safer at lower cost and with less collateral damage to the families of people facing prosecution.”

Public defenders warned that the system was on the brink of collapse before the pandemic.

In 2019, some attorneys even picketed outside the state Capitol for higher pay and reduced caseloads. But lawmakers didn’t act and months later, COVID-19 crippled the courts. There were no felony or misdemeanor jury trials in April 2020 and access to the court system was greatly curtailed for months, with only limited in-person proceedings and remote services provided.

The situation is more complicated than in other states because Oregon’s public defender system is the only one in the nation that relies entirely on contractors. Cases are doled out to either large nonprofit defense firms, smaller cooperating groups of private defense attorneys that contract for cases or independent attorneys who can take cases at will.

Now, some of those large nonprofit firms are periodically refusing to take new cases because of the overload. Private attorneys — they normally serve as a relief valve where there are conflicts of interest — are increasingly also rejecting new clients because of the workload, poor pay rates and late payments from the state.



Lydia Ely/The Astorian

Astoria said staffing issues have improved at the 911 dispatch center.

Dispatch: ‘This is a major project that will take significant time’

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Conversations about consolidating Astoria and Seaside’s dispatch centers are ongoing.

Sheriff Matt Phillips, who has advocated for consolidation, has said that the temporary merger demonstrated the model can work. He believes a single countywide 911 dispatch center would be in the

best interests of the public and emergency responders.

Over the years, separate studies that analyzed emergency dispatch in the county encouraged consolidation. The studies suggested a single center could maximize staffing and resources, improve call times and enhance coordination.

Phillips said a team has been assembled that rep-

resents the police and fire agencies from around Clatsop County to determine what consolidated dispatch could look like.

The group meets twice a month, and are working on what the governance structure might look like, the sheriff said. Most of the consolidated dispatch centers formed under intergovernmental agreements have two boards

and an executive director, Phillips said, adding that the group is drilling down on the roles and authorities.

“This is a major project that will take significant time,” the sheriff said. “Once the process is complete we will be able to determine if consolidation provides better service to the citizens and the public safety users than our current system.”

Bjaranson: Saw firsthand the impacts COVID

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Throughout the pandemic, Bjaranson saw firsthand the impacts COVID-19 had on seniors.

“The concern for our seniors in isolation was huge in making sure they got the care they needed, because a lot of people were fearful of going in and out and seeing people or caring for people, or seniors being concerned of people coming into their homes,” she said. “Some of the stuff had to halt and we had to take a lot

more precautions — rightfully so.”

While seniors adjusted their day-to-day lives to protect their health, Bjaranson and NorthWest Senior and Disability Services had to make adjustments of their own, shifting programs away from in-person and offering classes via Zoom.

As face-to-face interactions became limited, Bjaranson said, older generations have embraced remote communication and in turn, the organization’s outreach has extended and reached

wider audiences.

“A lot of the people that I have dealt with are ready to be out and about again,” she said. “We do run into some people that are apprehensive but ... people are really eager to see one another again and get the help they need.”

When Bjaranson came to the North Coast a decade ago, she did marketing for an assisted living facility and saw the many challenges that seniors face on a daily basis with health, access and transportation.

As a self-described people person, Bjaranson developed a passion for working with seniors and hearing a lifetime of stories.

“It’s so fun working with seniors because they love to talk to people,” she said. “... People need help and they don’t know where to turn to, so I am more than happy to do the research and find out.”

“It just became really rewarding to help people and connect the dots so they can visually see it and plan for their future and life.”

Vacation rentals: Rise in prices, the study says, is largely due to demand outstripping supply

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While North Coast property owners have long rented their homes to out-of-towners, the activity — eased by online platforms — has increased in popularity. The county began regulating vacation rentals for health and safety reasons in 2018.

In April, the board amended the operating standards to address occupancy and the behavior of vacationers — how they interact with neighborhoods and the natural environment.

Poised to vote on which zones should allow vacation rentals, some commissioners said they wanted more information on how rentals affect housing prices and availability in the region.

The board also extended a moratorium on new vacation rental permits until late August. The freeze was approved last summer and extended in December.

Residents hoping that the board will ban and phase out vacation rentals in residential zones have claimed the rentals contribute to housing price spikes. The county’s report says that no relationship exists between the issuance of short-term rental permits and home values.

“The data illustrates that the increased housing prices have occurred and continue to occur for both short-term rental properties and non-short-term rental properties,” the report said. “Communities such as Cannon Beach, which has severely curtailed short-term rentals, saw the largest real market value increase between 2018 and 2021 for properties holding an STR permit. This is likely due to the value placed on what is perceived as a limited and scarce ownership opportunity, thus commanding a higher price.”

The rise in prices, the study says, is largely due to demand outstripping supply. “This trend, which is occurring nationwide, has been fueled by a combination of factors including low interest rates and increased opportunities for

remote work during the pandemic,” the report said. “The data does not demonstrate that short-term rentals have driven up housing prices or that houses are being purchased to be converted to short-term rentals.”

The report points out that short-term rental units in Clatsop’s unincorporated areas compose 0.07% — 177 of 23,017 — of all housing units in both incorporated and unincorporated areas, according to the 2020 census.

The county has held more than two dozen meetings on the vacation rental issue since late 2019, when residents in South County’s Cove Beach neighborhood began raising concerns about the industry’s impact on their quality of life.

Next steps

In the coming months, the board will consider two recommendations.

County staff, based on board direction, recommends that vacation rentals become a recognized use in all residential and commercial zones — essentially maintaining the status quo but under the newly amended operating standards.

The Planning Commission’s recommendation is more restrictive: that rentals be allowed only in commercial and multifamily residential zones, plus Arch Cape.

Planning commissioners who favored this option said that most residential zones were not meant to support the commercial ventures. The development code, they argue, should respect the character of the neighborhoods as zoned.

This recommendation would lead to the elimination of vacation rentals in other residential zones, including Cove Beach’s Coastal Residential Zone, where rentals make up roughly a third of homes.

It would also remove about \$500,000 in annual lodging taxes from county coffers, according to Assessment and Taxation.