

FEATURE

PUBLIC DEFENSE CRISIS IS AN OPPORTUNITY FOR CHANGE

While major funding is needed, this predicament should also be a catalyst for a thorough review of the criminal legal system

BY ROBERT C. BORUCHOWITZ

It has been more than a year since the Washington Supreme Court declared that “the crisis in the provision of indigent criminal defense services throughout our state requires action now to address the crisis and to support quality defense representation at every level.”¹

The Washington Supreme Court required that, effective Jan. 1, 2026, public defender caseloads be reduced “as soon as reasonably possible” to no more than 47 felony case credits or 120 misdemeanor case credits per lawyer per 12-month period. This is a dramatic reduction from the 150 felony cases that the Washington Supreme Court previously had set as a maximum.² The WSBA Board of Governors set the same limits but said they should be met within three years. The court is allowing 10 years for full implementation but is prohibiting any increase from what caseloads were as of November 2025. The Washington Supreme Court is encouraging use of a case credit system as the WSBA standards prescribe.

Washington has exceptional public defenders. Yet high demand



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and high caseloads, combined with inadequate funding, threaten the quality of representation defendants receive and create inconsistencies in convictions and sentencing across the state.

HIGH CASELOADS CAUSE HARM

Under the outdated caseload limit standards developed 53 years ago, attorneys were expected to be assigned up to 150 adult felonies or 300–400 misdemeanor cases per year. Because of changes in technology, including body cameras, various forensic science developments, and increasing complexity in the law, those numbers became increasingly challenging, making it nearly impossible for lawyers to be able

to provide effective representation to all of their clients. At those levels, a lawyer in a misdemeanor case would have, on average, less than five hours to represent a client, including all research, investigation, preparation of briefs, negotiation with prosecutors, trials, and possible sentencing hearings.³ Clients with means would simply reject a lawyer who told them they had only four or five hours to work for them. But we have come to expect low-income people to accept that level of representation. The result

is more innocent people being convicted and clients given longer sentences than judges would order if they had a fuller understanding of the client and the case that a lawyer with more time could present.

MORE STATE FUNDING IS NEEDED

Implementing the updated caseload standards will not be a simple task. More public defenders and support staff will need to be hired, which will cost money. Most local governments will be hard pressed to

find those funds without much greater state support.

The Washington State Office of Public Defense reported⁴ that in 2025 counties spent about \$240 million on public defense. The state contributed only \$6 million to the counties for public defense. While the state amount increased to \$11.9 million for FY 2026, the gap remains vast. Cities spend an estimated \$54 million a year for their municipal court defense and receive less than \$2 million of state funds.⁵

The Washington Association of Counties (WSAC) has projected that by fiscal year 2032, without any improvements to support staff or compensation levels, the counties will need \$471 million to operate their public defense systems.⁶ WSAC has stated that “Local governments lack the capacity to fund public defense adequately.”⁷ WSAC sued the state, and the Court of Appeals found that the counties have standing to raise the issue of inadequate funding for public defense. The court noted, “As highlighted by the complaint, the legislature and the public have been made aware for over 30 years that the current indigent defense system does not ‘meet minimum constitutional requirements.’” *Washington State Ass’n of Ctys. v. State*, 34 Wn. App. 2d 879, 906, 572 P.3d 1225, 1239 (2025). The court remanded the case for trial.

The disparity among counties in providing public defense resources is dramatic. King County spends about \$112 million a year, about 45 percent of the state total.⁸ King County’s population is approximately 2.7 million, about 33 percent of the state’s 8.176 million. In 2023, Benton County spent \$23.35 per capita on public defense. Walla Walla County spent \$16.91. Whitman spent \$12.16. King spent \$34.87.⁹

The spending in cities also varies dramatically. In 2022, East Wenatchee reported spending \$11.30 per capita; Everett, \$14.09; Lacey, \$5.34; Tukwila, \$18.24; Tacoma, \$8.22.¹⁰ The Association of Cities wants the Legislature to increase funding for public defense in the cities from about \$1.6 million to \$10 million annually.¹¹

In a January 2026 report, WSAC declared:

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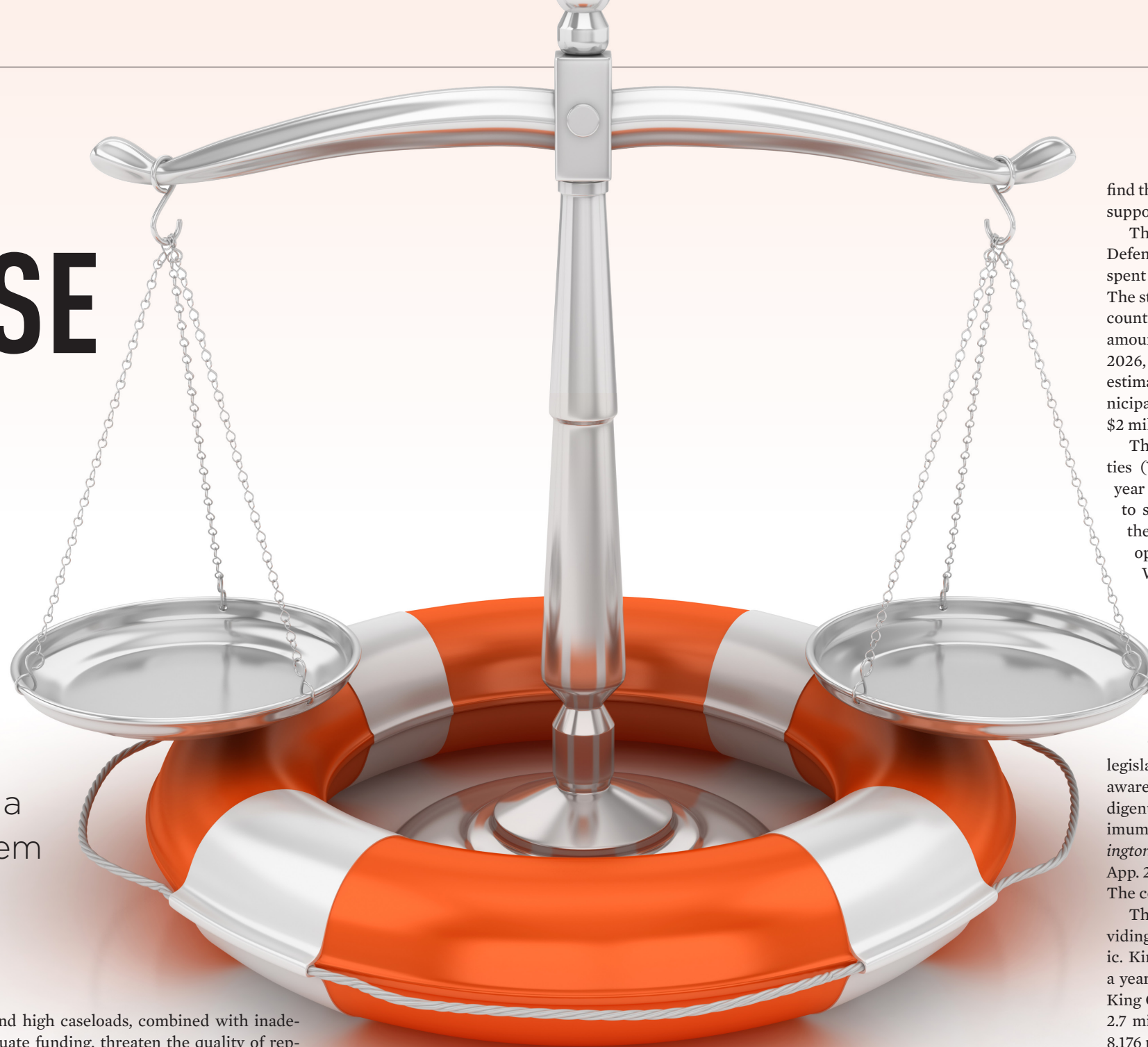


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Underfunding has produced systemic constitutional failures. Excessive caseloads, inadequate counsel, and resulting injustices have been documented by decades of litigation.

Justice depends on geography. The quality of defense varies based on local revenue, not legal standards.

Public safety is compromised when defense systems fail.

Courts stall, cases are delayed, and accountability breaks down.

New caseload standards make reform unavoidable.

Without major state investment compliance is impossible.¹²

Improvements are desperately needed. According to data compiled by the OPD, only 62 percent of defender offices have salary parity with prosecutors.¹³ Spokane’s entry-level defender attorney jobs have a salary range of \$72,436.44–\$88,119.26, about \$5,000 less than the prosecutor’s office.¹⁴ The Washington State Office of the Attorney General recently sought an attorney for its Spokane office, with a starting salary of \$83,856.¹⁵

As outlined below, most defender offices do not have enough support staff. Washington State Bar Association Standards for Indigent Defense Services¹⁶ set ratios for investigator and social work staff, with a minimum of one full-time mitigation specialist or social worker and at least one full-time investigator for every three full-time attorneys by July 3, 2028.

Six county offices report having no investigators on staff; Yakima has one for its 21 lawyer positions. Thirteen percent of the offices report spending no funds on expert witnesses in superior court.¹⁷

The need for defender social workers has been increasingly recognized nationally.¹⁸ While King County defenders have 33 social workers on staff, most county defenders have no social workers available. Five other

county agencies have between one and three, and 59 percent of the counties report no use of social workers.¹⁹ King County calls its social workers mitigation specialists:

because their job is to research the circumstances surrounding a client’s alleged crime, the client’s mental and development health, and other social-psychological information, all with an eye towards providing mitigating evidence that can be helpful in a client’s defense.²⁰

WHILE SOME CALL FOR JURISDICTIONS TO BE ‘TOUGH ON CRIME,’ A MAJORITY OF AMERICANS SUPPORT SPENDING MORE TAX DOLLARS TO PROVIDE PUBLIC DEFENSE.

Judges recognize the value of defender social workers. King County Superior Court Judge Mark A. Larrañaga, a former defender, told me:

Social workers possess the professional skill set to obtain, assess, and document an individual’s behavioral health symptoms and needs from several sources. Utilizing social workers to develop this comprehensive background information allows judges to better assess requests for pre-booking diversion, therapeutic intervention, and/or sentencing alternatives.

King County District Court Judge Kristin Shotwell, who was both a social work supervisor and an attorney supervisor at The Defender Association, told me:

Through their individualized pre-trial release planning and sentencing advocacy, defender social workers reduce incarceration costs, emergency medical care costs, and lead to more efficient processing of cases. Defender social workers help keep clients engaged in their cases and connected with treatment they may need. Defender social workers address the behaviors, unmet needs, and circumstances that contributed to criminal behavior in the first place.

OPPORTUNITIES FOR CHANGE AND INVESTMENT IN DIVERSION

The crisis in public defense can and should be a catalyst for a major review of the criminal legal system. We should be asking questions about what we choose to punish, how long we incarcerate people, and what alternative ways of holding people accountable without traditional prosecution might exist. There may be changes that not only lead to better outcomes for defendants but also reduce the need for public defenders and

additional investment in the system.

One example of a successful diversion program is LEAD, Law Enforcement Assisted Diversion or Let Everyone Advance with Dignity.²¹ LEAD is a pre-booking program created to divert those suspected of drug and other low-level offenses away from jail and into case management and other services. The program originated in Seattle in 2011 and was later expanded to Mason, Snohomish, Thurston, and Whatcom counties.²² Spokane County operates a similar program called the 5177 Diversion Program.²³

The resulting savings, roughly 2:1 on investment in LEAD, are not only in the legal system. In Whatcom County, there was a 92 percent reduction in the use of emergency medical services for LEAD participants after they had graduated from the program.²⁴ Over a three-year period, there was an annual average 86 percent reduction in potential jail and EMS costs for the participants, including 92 percent reduction in jail bed days, with an estimated total cost avoidance of \$7.5 million. This was with an annual investment in LEAD of about \$1 million for a team of eight people.

Fifteen LEAD participants in Whatcom County had 345 police contacts in the 24 months before they entered the program, and 59 in the 24 months after their enrollment in the program.²⁵

Chad Winfrey, a former Department of

Corrections Specialist who now works with the LEAD Support Bureau, explained how he went from skepticism to strong support for LEAD. He described the program as being creative and compassionate, having a positive public safety impact, and helping businesses. People who normally are “siload” collaborate to keep people from falling through the cracks.

But funding for LEAD and its associated Recovery Navigator Program²⁶ statewide was cut in the past two legislative sessions. Restoring and expanding funding would allow the programs to serve more clients and divert cases from defender workloads.

Additional opportunities for reducing defender caseloads include changing the types of offenses we prosecute. For example, although several larger counties have developed non-criminal alternatives to driving with a suspended license in the third degree (DWLS 3), which usually results from not paying a traffic ticket, many cities and some counties still prosecute these cases. When some of the larger cities stopped prosecuting DWLS 3 criminally, they reduced their defender caseloads by approximately one-third.²⁷ Some jurisdictions also prosecute camping in public as a crime.

Sentencing is another important consideration for potentially reducing costs associated with the criminal legal system. The cost of long sentences is significant; reducing sentences even by 10 percent would save \$100 million a year. In 2024, Washington spent an average of \$75,576 per year to incarcerate a single person.²⁸ There were 13,919 people in prison in May 2026, costing more than \$1 billion a year, not counting capital or administrative services costs.²⁹

In fiscal year 2025, Washington sent 404 people to prison for drug offenses, with an average sentence of 43.9 months.³⁰ The state sent 1,841 people to prison for property offenses, with an average sentence of 30.8 months.³¹ There are 715 incarcerated people aged 65 and over.³² In these areas in particular, there may be opportunities for shorter sentences or diversion away from prison altogether and into support programs.

One-third of Americans have a criminal history.³³ A recent Cornell University study found that 45 percent of Americans have had an immediate family member locked

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up.³⁴ For African Americans and for people with lower education levels, nearly 3 in 5 have had an immediate family member incarcerated.³⁵

We cannot ignore the racial disparity that is interwoven with inadequate public defense funding. In the King County Jail, for instance, 40.9 percent of the people booked in recently were white, in a county that is 61 percent white.³⁶ In Washington prisons, Black people are 19 percent of incarcerated people³⁷ but they are approximately 4.7 percent of the state’s population.³⁸ Native Americans are 5.4 percent of the prison population but 1.7 percent of the state’s population. Hispanic people are also incarcerated at a greater percentage than they are in the population.³⁹

Public defense affects all of us. While some call for jurisdictions to be “tough on crime,” a majority of Americans support spending more tax dollars to provide public defense.⁴⁰ As stated in WSAC’s early 2026 report, adequate public defense contributes to public safety, efficient processing of cases, and more consistent outcomes for defendants.

In January 1987, I wrote an article in *Bar News* titled “Funding Crisis Threatens Right to Counsel.” In February 2007, I wrote “Right to Counsel Remains Threatened in Washington.” In 2027, I would like to be able to write: “Legislature Commits Major Investment of State Funds to Public Defense.” Let’s work on helping to persuade the Legislature to make that commitment. BN

NOTES

1. In the Matter of the Standards for Indigent Defense Implementation of CrR 3.1, CrRLJ 3.1, and JuCR 9.2, June 9, 2025, www.courts.wa.gov/court_rule_related_orders/orders/25700-A-1644.pdf.
2. The Court declined to adopt the mandatory method of case weighting recommended by the WSBA. “However, we endorse the importance of case weighting to measure case credits and actual case counts, including inherited cases, to make the mandatory caseload limits meaningful. Thus, case weighting to measure case credits is permissible and encouraged.”

3. WSBA Standard 3J: “The maximum number of case credits for a fully supported, full-time public defense attorney each calendar year is based on an assumed 1650-hour ‘case-related hours’ available each year.” www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/standards-for-indigent-defense-services_2024.09.07_final.pdf?Status=Master&sfvrsn=8bdb19f1_5.
4. From a presentation at the Defender Initiative conference at Seattle University School of Law on June 26, 2026, on file with author.
5. See, “Enhance Indigent Defense”, *available at* https://wacities.org/docs/default-source/legislative/factsheetindigentdefense2026.pdf?sfvrsn=ae8a2c4f_2.
6. Washington State Association of Counties, The Public Defense Crisis in Washington State, Jan. 30, 2026, *available at* https://wsac.org/wp-content/uploads/2026/02/2026_WSAC_Public-Defense-Crisis-in-Washington-State_v02.pdf.
7. *Id.*
8. https://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=7680373&GUID=B4E9E09C-A982-4A8C-A0DA-6CC195D69EE0&Options=Advanced&Search=.
9. Washington State Office of Public Defense 2024 County Status Report, https://opd.wa.gov/reports.
10. *Id.*
11. Enhance Indigent Defense, *supra* note 4.
12. The Public Defense Crisis in Washington State, Washington Association of Counties, Jan. 30, 2026, at https://wsac.org/wp-content/uploads/2026/02/2026_WSAC_Public-Defense-Crisis-in-Washington-State_v02.pdf.
13. *Supra* note 4.
14. Spokane County job openings page at https://spokanecounty.wd503.myworkdayjobs.com/en-US/Spokane/details/Attorney-1---Pub-Def_JR100012, last checked July 11, 2026.
15. Attorney General’s Office Job Opportunities, at www.governmentjobs.com/careers/washington/atg?keywords=attorney percent20, last checked July 11, 2026.
16. WSBA Standards for Indigent Defense Services (2024), www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/wsba-indigent-defense-standards-as-approved-by-bog-2024.03.08.pdf?sfvrsn=3c831ff1_5.
17. *Supra* note 4.
18. See, ABA Ten Principles of a Public Defense Delivery System (2023): “Public Defense Providers should have the assistance of investigators, social workers, mitigation specialists, experts, and other specialized professionals necessary to meet public defense needs,” www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lisclaid-ten-princ-pd-web.pdf.
19. *Supra* note 4.

20. Felony mitigation specialists at DPD, https://kcmemployees.com/2019/06/08/felony-mitigation-specialists-at-dpd/.
21. https://wearepda.org/programs/seattle-king-county-lead/.
22. www.hca.wa.gov/assets/program/fact-sheet-lead.pdf.
23. www.spokanecounty.gov/4253/Spokane-County-Diversion-Program.
24. www.whatcomcounty.us/4782/LEAD-and-GRACE.
25. Presentation by Whatcom County LEAD participants at June 2026 Defender Initiative conference.
26. www.hca.wa.gov/assets/program/fact-sheet-recovery-navigator-program.pdf.
27. See, e.g., National Indigent Defense Reform: The Solution is Multifaceted, American Bar Association (2012), at 17, www.nacdl.org/getattachment/bb36efa7-6701-4877-a2cf-7dbda7e5ca67/national-indigent-defense-reform-the-solution-is-multifaceted.pdf.
28. DOC Institutional Costs, Average Daily Population (ADP), and Cost per Incarcerated Individual per Day, https://doc.wa.gov/sites/default/files/2025-08/200-RE019.pdf.
29. Department of Corrections chart for May 2026, https://doc.wa.gov/sites/default/files/2026-03/400-RE001.pdf.
30. Statistical Summary of Adult Felony Sentencing Fiscal Year 2025, https://cfc.wa.gov/sites/default/files/Publications/Adult_Stat_Sum_FY2025.pdf.
31. *Id.*
32. Department of Corrections webpage at https://app.powerbigov.us/view?r=eyJrljoiMzk5Mzk0ZDYtMTg3OC00MWJmLTg4OWQtMDJjN2Q1NjRiYjlkiiwidCI6IjExZDBiMjE3LTl2NGUtNDAwYS04YmEwLTU3ZGNjMTI3ZDcyZCJ9, last checked July 11, 2026.
33. www.ncsl.org/civil-and-criminal-justice/criminal-records-and-reentry-toolkit.
34. “Nearly half of Americans have had a family member jailed, imprisoned,” Bronfenbrenner Center for Translational Research, *available at* https://bctr.cornell.edu/nearly-half-of-americans-have-had-a-family-member-jailed-imprisoned/.
35. *Id.*
36. King County Jail statistics, Adult Bookings in Past 14 days, https://app.powerbi.com/view?r=eyJrljoiYWVRkYTkzMTYtMjNhZi00YWZiLTgwYzUtOWVIMTk3MTc3NGU4liwidCI6ImVhNjA5N2ExLTUwZGltNDdmMi05ZGZkLTVkYjMwNzY3NDElZiJ9, checked July 11, 2026.
37. *Supra* note 32.
38. Census quick facts at www.census.gov/quickfacts/fact/table/WA/PST045225.
39. *Supra* note 32.
40. www.american.edu/spa/justice-initiatives/initiatives/right-to-counsel-nc/upload/americans-27-views_11-7-17.pdf.