

# BAR BULLETIN

HOME > FOR LAWYERS > BAR BULLETIN

## We Need More Defenders

May 1, 2020 | in [General](#)

**MAY 2020 BAR BULLETIN**

**By Robert C. Boruchowitz**

If you or a loved one are charged with a crime, fairly or unfairly, you probably will have to rely on a public defender to represent you. But in many places, that can be risky.

This month marks 57 years since the Supreme Court announced that people accused of crimes in state court who could not afford to hire their own lawyers should have counsel appointed at no cost to them. The enforcement of this fundamental right, announced thousands of times in television shows, has led to transformational change in American courts, but even before the current virus crisis, there were wrenching challenges across Washington and the country.

In some parts of the country, most people facing misdemeanor charges never see a lawyer and they go before a judge alone. In many other places, public defenders are so

overwhelmed with cases that they are not able to provide effective representation to all of their clients.

Washington, and particularly King County, can be proud of the general quality and the improvement over time of their public defender services. King County Defenders have been recognized nationally as leaders. Statewide, the Washington Defender Association plays a major role in advancing reform in the criminal legal system, including in the Legislature.

But there remain major challenges. Even though the Washington Supreme Court has set maximum caseload levels for defenders, we have learned that those levels, which are based on standards set more than 45 years ago, are too high. For example, defenders have to spend hours reviewing video recordings and carefully evaluating scientific evidence. When they have 400 misdemeanor cases per year, nearly two per workday, they can be overwhelmed.

Social workers can help defenders identify clients' mental health and substance abuse issues and find treatment alternatives. But most Washington defenders have few or no social workers to help them. Investigators can track down and interview witnesses, take photographs, assemble exhibits. But many defenders do not have enough investigation resources.

Although King County protects its chief defender who can only be terminated for cause, in other places defenders have been summarily fired for filing a brief or asking for more resources.

Because our system is county and city based, the resources from one part of Washington to the next can vary dramatically. For example, in 2017, Whitman County spent \$6.89 per capita on public defense, Island County spent \$11.37, Grays Harbor spent \$13.41, Snohomish County spent \$12.37, Spokane spent \$19.19, King County spent \$32.42, and Skagit County spent \$35.21.

At this moment, the state Supreme Court is considering a case brought by the ACLU claiming that the state knew and should have done something about ineffective representation in Grays Harbor juvenile court. A writ of mandamus is pending in Island County Superior Court because the District Court refused to appoint counsel for a prisoner charged with a misdemeanor. In Spokane in 2019, the public defender suspended accepting felony cases for a week because the attorneys had reached caseload limits. The Spokane Defender has experienced significant turnover. One defendant waited more than 30 months in jail without trial while one after the other, his four defender attorneys resigned. The fourth one told the court that no substantive investigation had been done.

As we reflect on the 57th anniversary of *Gideon v. Wainwright*, in which Clarence Earl Gideon from prison wrote to the Supreme Court on yellow legal paper asking for a lawyer, the legislature should increase funding to support public defense and to

strengthen the state Office of Public Defense staff to monitor and respond to local practices that threaten the fundamental right to counsel. v

*Robert C. Boruchowitz is Professor from Practice and Director, The Defender Initiative, Seattle University School of Law. He was Director of The Defender Association in Seattle for 28 years and President of the Washington Defender Association for 20 years. He is available at boruchor@seattleu.edu.*