
Legal Deserts and Spatial Injustice: A Study of Criminal Legal Systems in Rural Washington

Lisa R. Pruitt, Jennifer Sherman & Jennifer Schwartz

ABSTRACT. This Essay draws on empirical research to compose a sketch of the criminal legal systems of several sparsely populated counties in central and eastern Washington State. The study reveals how, at times, the dearth of attorneys available to do the work of prosecuting and defending criminal cases is subjecting system-involved individuals to delays and leaving them vulnerable to ineffective assistance of counsel. Another stressor is the overwhelming reliance on county governments to fund indigent defense, along with substantial portions of the prosecutorial and judicial functions. Rural counties, with typically weak and undiversified tax bases, are often less able to absorb the rising costs of running their justice systems. These factors result in spatial inequalities and injustices, as manifest in significant and concerning variations in how different counties' systems work.

Rural lawyer shortages are typically associated with dwindling numbers of attorneys, which in turn tend to correspond to overall population loss in a given county or region. Historical data from Washington, however, suggest that the number of active attorneys in most rural counties has increased in the last 25 years, though rarely as quickly as population counts have risen. Thus, the ratios of attorneys to population have mostly declined in rural counties over a quarter of a century. Further, the particular problem on which we focus is the dearth of attorneys equipped and willing to provide indigent defense and to work as prosecuting attorneys, especially in the rural counties we studied. A statewide shortage of those very attorneys has local governments across Washington scrambling to hire or contract with the same shrinking pool of lawyers who have criminal law expertise. This fierce competition is occurring even as the total number of graduates from the state's three law schools has declined in recent decades.

While shortcomings in indigent defense nationally are well documented, this Essay reveals what those deficits look like in rural contexts in which the constitutionally mandated service is provided by attorneys who are not only harried and overworked, but who also may be inexperienced and

working with scant oversight as contractors. The Essay also highlights new challenges arising from the fact that contract attorneys doing this work increasingly live far from their clients and appear only remotely in the courthouses (and, indeed, even the counties) where their clients are. Deputy prosecutors, too, are increasingly physically absent from rural courthouses.

The Essay draws attention to a range of concerns. Some of the stressors and red flags we identify could be alleviated by increased funding from the state – funding that could be used to attract more attorneys to work in indigent defense and prosecution in the state’s rural reaches. Yet, given the possibility that financial incentives would be insufficient to draw enough lawyers to some of these areas, it seems likely that virtual appearances by defense counsel are likely to proliferate. This raises concerns about the adequacy and confidentiality of attorney-client communication, a necessity for effective assistance of counsel. While a federal district court in Washington specifically held inadequate the “meet ‘em and plead ‘em” practices often associated with indigent defense, the systems in the rural study counties raise the specter of just those sorts of practices – albeit without a single in-person, face-to-face meeting between attorney and client ever having taken place. Another concern is whether lawyers making remote appearances, often from the state’s urbanized west side, are culturally competent to provide effective assistance in rural contexts with which they may be unfamiliar.

The crisis in Washington’s criminal legal system has caught the attention of several institutional stakeholders, and we survey their responses. We also suggest other interventions that would be more responsive to rural needs in particular. Among these is more robust attention by state and regional law schools to the training that new lawyers need to hit the ground running in both defense and prosecution roles. Legal educators are also in a position to shift the dominant, urbanormative career narrative by holding out rural practice as a viable and rewarding option. Finally, law schools should do more to admit and support the students most likely to choose rural practice: those who hail from rural communities.

INTRODUCTION

The term “legal deserts” emerged in the last decade to describe places experiencing a shortage of lawyers, most of those places rural by some measure.¹ Legal deserts have been discussed primarily in relation to access-to-justice issues, a

1. See generally Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15 (2018) (discussing legal deserts and applying the term to rural areas in several states).

concept associated with the civil justice system.² This Essay, part of a broader Collection on procedural fairness, explores the relationship between the rural lawyer shortage and the criminal legal system.

We do so in the context of rural central and eastern Washington, where, since 2019, coauthors Jennifer Sherman and Jennifer Schwartz have been researching county-jail incarceration trends, the experiences of system-involved individuals, and indigent-defense delivery. More recently, coauthor Lisa R. Pruitt has researched the state's rural lawyer shortage and its consequences for the criminal legal systems of the region. Drawing on rich qualitative and quantitative data, we sketch a criminal legal system in motion. More precisely, given the significant county-to-county variation, we sketch *several* criminal legal systems.

Our investigation reveals that some counties' systems are quite fragile. With too few local attorneys able and willing to take up vacancies in local criminal legal systems, many county governments are frequently raising the salaries or fees they pay. Yet, despite the promise of better compensation, a growing number of attorneys now live in locations other than the rural counties where they work, appearing in court only remotely. This can have a serious impact on the quality of legal representation.

-
2. See, e.g., HANNAH HAKSGAARD, *THE RURAL LAWYER: HOW TO INCENTIVIZE RURAL LAW PRACTICE AND HELP SMALL COMMUNITIES THRIVE* (forthcoming 2025) (manuscript at 1-3) (on file with authors); Elizabeth Chambliss, *Rural Legal Markets*, 12 *TEX. A&M L. REV.* 961 (2025) (on file with authors); Daria Fisher Page & Brian R. Farrell, *One Crisis or Two Problems? Disentangling Rural Access to Justice and the Rural Attorney Shortage*, 98 *WASH. L. REV.* 849, 853-54 (2023); Michele Statz, *On Shared Suffering: Judicial Intimacy in the Rural Northland*, 55 *LAW & SOC'Y REV.* 5, 8-10 (2021); Michele Statz, "It Is Here We Are Loved": *Rural Place Attachment in Active Judging and Access to Justice*, 49 *LAW & SOC. INQUIRY* 247, 249 (2024); Hillary A. Wandler, *Spreading Justice to Rural Montana: Rurality's Impacts on Supply and Demand for Legal Services in Montana*, 76 *MONT. L. REV.* 225, 227-29 (2015); Kelly V. Beskin & Lisa R. Pruitt, *A Survey of Policy Responses to the Rural Attorney Shortage in the United States*, in *ACCESS TO JUSTICE IN RURAL COMMUNITIES: GLOBAL PERSPECTIVES* 7, 7-14 (Daniel Newman & Faith Gordon eds., 2023); Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 *S.D. L. REV.* 466, 468-69 (2014); Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 *ME. L. REV.* 209, 212-15 (2019); Hannah Haksgaard, *Court-Appointment Compensation and Rural Access to Justice*, 14 *U. ST. THOMAS J.L. & PUB. POL'Y* 88, 89-92 (2020); Michele Statz, Hon. Robert Friday & Jon Bredeson, "They Had Access, but They Didn't Get Justice": *Why Prevailing Access to Justice Initiatives Fail Rural Americans*, 28 *GEO. J. ON POVERTY L. & POL'Y* 321, 324-26 (2021); Courtney B. Garrett, *The Narrow Road for Legal Access in Rural America for Indigent Citizens in the Post-Pandemic Era*, 27 *U.C. DAVIS SOC. JUST. L. REV.* 33, 35-36 (2023); Brian L. Lynch, Note, *Access to Legal Services in Rural Areas of the Northern Rockies: A Recommendation for Town Legal Centers*, 90 *IND. L.J.* 1683, 1687-91 (2015).

This Essay also sheds light on how several hot topics in criminal legal reform are playing out in rural places. These include delivery of indigent defense,³ the imposition of fines and fees (also known as legal financial obligations or LFOs),⁴ and the rural jail boom—the most recent manifestation of the nation’s carceral

-
3. See generally Eve Brensike Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 MICH. L. REV. 207 (2023) (discussing problems with the provision of assigned counsel and flat-fee contract lawyers rather than public defenders to indigent defendants); Maybell Romero, *Lowball Rural Defense*, 99 WASH. U. L. REV. 1081, 1091-93 (2021) (discussing the perverse incentives created when rural communities privatize public-defense services to indigent defendants); Aiden Park, Note, *Alone in the Lone Star State: How a Lack of Centralized Public Defender Offices Fails Rural Indigent Defendants*, 56 U. MICH. J.L. REFORM 571 (2023) (describing the disadvantages caused by the assigned-counsel indigent-defense model in rural Texas); Andrew Davies & Alyssa Clark, *Gideon in the Desert: An Empirical Study of Providing Counsel to Criminal Defendants in Rural Places*, 71 ME. L. REV. 245 (2019) (analyzing data comparing access to appointed counsel in rural and urban counties in Texas); Pamela R. Metzger, *Rural Criminal Justice Reform*, in TRANSFORMING CRIMINAL JUSTICE: AN EVIDENCE-BASED AGENDA FOR REFORM 242 (Jon B. Gould & Pamela R. Metzger eds., 2022) (describing the impact of lawyer shortages on indigent defendants in rural communities and formulating policy reforms); Alissa Pollitz Worden, Reveka V. Shteynberg, Kirstin A. Morgan & Andrew L. B. Davies, *The Impact of Counsel at First Appearance on Pretrial Release in Felony Arraignments: The Case of Rural Jurisdictions*, 31 CRIM. JUST. POL’Y REV. 833 (2019) (investigating the effect of early provision of counsel on defendant detention prior to disposition); Jordan Gross, *Pretrial Justice in Out-of-the-Way Places—Including Rural Communities in the Bail Reform Conversation*, 84 MONT. L. REV. 159, 207 (2023) (“[I]n low resource jurisdictions, purs[ui]ng successful risk-based bail administration may require prioritizing funding pretrial services and access to mental and medical health services for defendants over providing robust legal representation at pretrial release and detention hearings.”); Andrew Davies & Kristin A. Morgan, *Providing Counsel for Defendants: Access, Quality, and Impact*, in THE LOWER CRIMINAL COURTS 45, 50 (Alisa Smith & Sean Maddan eds., 2019) (finding “real evidence that with adequate resources and an expanded role [defenders] help systems become more equitable, better informed, and more just”).
 4. See generally Beth Colgan, *Fines, Fees and Forfeitures*, 18 CRIMINOLOGY, CRIM. JUST., L. & SOC’Y 22 (2017) (identifying problems created by the increasing use of fines, fees, and forfeitures in the criminal context and suggesting reforms); Gabriela Kirk, Kristina J. Thompson, Beth M. Huebner, Christopher Uggen & Sarah K.S. Shannon, *Justice by Geography: The Role of Monetary Sanctions Across Communities*, 8 RUSSELL SAGE FOUND. J. SOC. SCIS. 200, 210-12 (2022) (describing the increasing use of economic sanctions to generate revenue for criminal legal systems); Michelle Bellmer & Cynthia Delostrinos, *The Price of Justice: Legal Financial Obligations in Washington State*, WASH. STATE SUP. CT. MINORITY & JUST. COMM’N. (Jan. 2022), https://www.courts.wa.gov/subsite/mjc/docs/MJC_LFO_Price_of_Justice_Report_Final.pdf [<https://perma.cc/3EZF-T58X>] (investigating the use and impact of legal financial obligations (LFOs) in the state of Washington).

crisis.⁵ We also discuss the emerging challenges and opportunities associated with remote appearances by defense counsel.⁶

With the exception of the rural jail boom, the scholarly literature discusses these and most other criminal-legal-system phenomena in the context of urban settings.⁷ The focus of that work is often the impact of systems on people of

-
5. See generally Jacob Kang-Brown & Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America*, VERA INST. OF JUST. (June 2017), <https://vera-institute.files.svdcn.com/production/downloads/publications/out-of-sight-growth-of-jails-rural-america.pdf> [https://perma.cc/4DDP-7B4Q] (discussing the growth of jail incarceration in rural areas); Madeline Bailey & Jennifer Peirce, *Reversing the Rural Jail Population Boom*, 57 IDAHO L. REV. 525, 526 (2021) (describing how “jail incarceration in the U.S. is now increasingly a rural phenomenon”); Aaron Littman, *Jails, Sheriffs, and Carceral Policymaking*, 74 VAND. L. REV. 861 (2021) (describing the influence of local sheriffs and county commissioners on rural jail expansion and construction); Sandra M. Yokley, *An Examination of Predictors of Rising Jail Incarceration Rates in Rural Counties* (July 2022) (M.A. thesis, Washington State University) (ProQuest) (finding incarceration rates are higher in rural areas due to weaker economic bases); Sarah Walton, *Reformers Looking to Intervene in Mass Incarceration Must Understand the Role of Rural County Jails*, SCHOLARS STRATEGY NETWORK (May 4, 2023), <https://scholars.org/contribution/reformers-looking-intervene-mass-incarceration> [https://perma.cc/4V36-NK YV] (suggesting that “[r]ural [j]ails are [t]oo [o]ften the [s]ite of [s]ocial [s]ervice [p]rovision in [l]ocal [g]overnment [j]urisdictions”).
 6. For early scholarship on remote criminal legal systems, see Taylor Benninger, Courtney Colwell, Debbie Mukamal & Leah Planchinski, *Virtual Justice? A National Study Analyzing the Transition to Remote Criminal Court*, STAN. CRIM. JUST. CTR. 11 (Aug. 5, 2021), <https://law.stanford.edu/wp-content/uploads/2021/08/Virtual-Justice-Final-Aug-2021.pdf> [https://perma.cc/PT9F-V3VT], which found that lawyers in remote proceedings had more difficulty “access[ing] their clients and maintain[ing] confidentiality . . . and building trusting relationships,” while also lacking the opportunity to speak with their clients in “instantaneous in-court communications”; Jenia I. Turner, *Remote Criminal Justice*, 53 TEX. TECH L. REV. 197, 253-54 (2021) [hereinafter *Remote Criminal Justice*], which discusses defense attorneys’ concerns regarding online proceedings; Jenia I. Turner, *Virtual Guilty Pleas*, 24 U. PA. J. CONST. L. 211, 216, 250 (2022) [hereinafter *Virtual Guilty Pleas*], which expresses concern about the haste and lack of care taken by judges in accepting guilty pleas in remote proceedings and noting, in particular, the rarity of judges reminding defendants of the right to consult with clients confidentially; and Michele Statz, *A World-Threatening Feeling: Grief, Moral Injury and Institutional Loss in Rural Courts*, 93 FORDHAM L. REV. 1257, 1257-60 (2025). See also Margaret Romanin, *Practicing Ethically in Virtual Environments and the Rise of Remote Proceedings in a Post COVID-19 Era*, 36 GEO. J. LEGAL ETHICS 813, 822 (2023) (asserting that lack of real-time explanation or discussion between counsel and the defendant “severely undermine[s]” “the client’s ability to make an informed decision regarding their case,” implicating protections sought by Rule 1.4 of the Model Rules of Professional Conduct).
 7. See, e.g., MALCOLM M. FEELEY, *THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN LOWER CRIMINAL COURT* xxvii-xxviii (1979) (defining the scope of study to be the misdemeanor and lesser-felony system in New Haven, Connecticut); Steven C. Deller & Melissa A. Deller, *Rural Crime and Social Capital*, 41 GROWTH & CHANGE 221, 222-25 (2010) (asserting that rural communities are relatively understudied in the criminal-justice literature); cf. Kirk et al., *supra* note 4, at 201-02 (setting out to explore differences along the rural-urban continuum by

color.⁸ In contrast, most system-involved individuals in the jurisdictions we studied are white, although our data show that these rural systems engage people of color at a rate disproportionate to their presence in the population.

Our data about criminal legal systems in rural Washington also reveal many similarities to what we know about the shortcomings of urban systems. In addition, we note some other challenges associated with the rural context. These include challenges arising from the high prevalence of acquaintanceship – the fact that rural residents are more likely to know one another.⁹ Another rural feature is high levels of social stigma regarding criminal behaviors, addiction, and mental-health issues.¹⁰ Some challenges arise from rural deficits such as a lack of services and infrastructure to support system-involved individuals, from drug-treatment programs to public transportation.¹¹ In an era when courts are

studying monetary sanctions “across a spectrum of community population size and density” in Missouri, Illinois, Minnesota, and Georgia).

8. See, e.g., ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL 5, 10-12 (2018) (asserting that “the American misdemeanor system often violates basic legal principles of justice and fairness” and disproportionately impacts people of color); Brendan D. Roediger, *Abolish Municipal Courts: A Response to Professor Natapoff*, 134 HARV. L. REV. F. 213, 224 (2021) (responding to Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964 (2021) and emphasizing that “warrants legitimize virtually all police activity in Black neighborhoods”). See generally ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING (2018) (investigating the post-arrest misdemeanor system in New York City).
9. Cornelia Butler Flora & Jan L. Flora, *Entrepreneurial Social Infrastructure: A Necessary Ingredient*, 529 ANNALS AM. ACAD. POL. & SOC. SCI. 48, 52 (1993); see Ralph A. Weisheit & L. Edward Wells, *Rural Crime and Justice: Implications for Theory and Research*, 42 CRIME & DELINQ. 379, 384 (1996) (“[T]he rural dweller has substantially more *physical privacy* but substantially *less social privacy*.”).
10. See JENNIFER SHERMAN, THOSE WHO WORK, THOSE WHO DON’T: POVERTY, MORALITY, AND FAMILY IN RURAL AMERICA 73 (2009); John M. Eason, L. Ash Smith, Jason Greenberg, Richard D. Abel & Corey Sparks, *Crime, Punishment, and Spatial Inequality, in RURAL POVERTY IN THE UNITED STATES* 349, 355-59 (Ann R. Tickamyer, Jennifer Sherman & Jennifer Warlick eds., 2017); Claire Snell-Rood & Elizabeth Carpenter-Song, *Depression in a Depressed Area: Deservingness, Mental Illness, and Treatment in the Contemporary Rural U.S.*, 219 SOC. SCI. & MED. 78, 81 (2018) (citing Emily J. Hauenstein, *Building the Rural Mental Health System: From De Facto System to Quality Care*, 26 ANN. REV. NURSING RSCH. 143 (2008)); and Claire Snell-Rood, Emily Hauenstein, Carl Leukefeld, Frances Feltner, Amber Marcum & Nancy Schoenberg, *Mental Health Treatment Seeking Patterns and Preferences of Appalachian Woman with Depression*, 87 AM. J. ORTHOPSYCHIATRY 233 (2017).
11. Jennifer Schwartz & Jennifer Sherman, *Rethinking Rural Recidivism: System Navigation Problems and the Myth of the Revolving Door* 13-14 (2023) (unpublished manuscript) (on file with authors); see also Walton, *supra* note 5 (showing that rural jails are often the site of social service provision by local governments); Sarah Walton, Linda Lobao & Matthew Dube, *Jail Incarceration Across the U.S.: The Role of the Local State and Place-Based Punishment*

increasingly relying on remote appearances,¹² broadband deficiencies loom large in rural places.¹³ Also in short supply are attorneys to help navigate the civil legal challenges that nearly always attend involvement with the criminal legal system.¹⁴

Our focus in this Essay skews toward misdemeanors, and the district courts where they are primarily adjudicated, in the State of Washington.¹⁵ We focus on

Vulnerability 22-23 (2024) (unpublished manuscript) (on file with authors) (“[C]ounties that have cut services to balance the budget in the last three years have higher levels of jail incarceration than counties that did not cut services, suggesting that counties that engage in service cuts to balance budgets are also more punitive This finding . . . demonstrates that even as counties in budgetary crisis are cutting other services, jail incarceration rates still remain high, suggesting that in these service cutting environments, carceral capacity is unlikely to be cut.”).

12. See Email from Brenden Higashi, Senior Rsch. Assoc., Wash. State Ctr. for Ct. Rsch., to Lisa R. Pruitt (July 9, 2024, 3:34 PM) (on file with authors) (“[T]he Washington State Supreme Court has recently ordered the adoption of several amendments to existing rules designed to provide flexibility to local courts and enable them to permanently use remote or hybrid proceedings.”); see also Benninger et al., *supra* note 6, at 13 (“Having embraced tele- and videoconferencing for over a year, some jurisdictions are considering whether and how to use virtual court post-COVID.”); *Remote Criminal Justice*, *supra* note 6, at 199-201 (discussing concerns regarding the use of videoconference technology); *Virtual Guilty Pleas*, *supra* note 6, at 216 (expressing concern about the haste and lack of care taken by judges in accepting guilty pleas in remote proceedings).
13. FED. COMM’N. COMM’N, FCC 20-50, 2020 BROADBAND DEVELOPMENT REPORT 5 (2020).
14. Legal Services Corporation (LSC) data show that “[o]nly 8% of the civil legal problems facing Washington’s low-income residents receive any legal help,” even if LSC provided \$1,230,446 to serve agricultural workers in 2023, \$429,491 to serve Native Americans in the same period, and \$729,529 towards technology innovation since 2020. *Civil Legal Needs & Services in Washington*, LEGAL SERVS. CORP. 1 (2023), <https://lsc-live.app.box.com/s/y4tgdtql3wei1bhm575qab69ev93u53md/file/1278067946007> [<https://perma.cc/7BMH-X2FG>]. While one in eight Washingtonians is LSC eligible, that proportion rises to one in five among rural residents. *Id.*; see also Kathryn M. Young, Karin D. Martin & Sarah Lageson, *Access to Justice at the Intersection of Civil and Criminal Law*, 26 PUNISHMENT & SOC’Y 599, 601 (2024) (observing the overlap between civil and criminal systems); Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants’ Experiences with Civil Legal Needs*, 52 U.C. DAVIS L. REV. 2105, 2120 (2019) (finding that indigent defense clients were unfamiliar with civil legal resources, though they often needed those resources to navigate civil legal problems).
15. WASH. CONST. art. IV, § 6 (providing that Washington Superior Courts have original jurisdiction over “all cases of misdemeanor not otherwise provided for by law”); WASH. REV. CODE ANN. § 3.66.010(1) (West 2024) (discussing the powers of the Washington District Courts over criminal cases); WASH. REV. CODE ANN. § 3.66.060 (West 2024) (“The district court shall have jurisdiction . . . [c]oncurrent with the superior court of all misdemeanors and gross misdemeanors committed in their respective counties and of all violations of city ordinances.”); WASH. REV. CODE ANN. § 3.50.020 (West 2024) (“The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and

misdemeanors because three years of jail-booking data reveal that the pretrial booking ratios of misdemeanors to felonies is much greater in rural counties – an average of just over eleven to one – than in urban ones, with an average of less than three to one.¹⁶ The data are shown in Table 1.

exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes.”). All municipalities must have municipal courts or pay the county for the costs of adjudicating the misdemeanors and infractions that occur within their city limits. *See* *Whatcom Cnty. v. City of Bellingham*, 909 P.2d 1303, 1307-08 (Wash. 2024). In Washington, all misdemeanors are subject to potential jail time, making those charged eligible for counsel. WASH. REV. CODE ANN. § 9A.20.010 (West 2024); WASH. REV. CODE ANN. § 9A.20.021 (2024); WASH. CRIM. R. FOR CTS. OF LTD. JURISDICTION 3.1(a) (“The right to a lawyer shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.”).

16. We do not have jail data for Seattle, so we excluded King County, which has a ratio of 5.2 misdemeanors to one felony (exclusive of Seattle), similar to other urban counties. Urban counties listed here are the next five largest by population. On average, the misdemeanor booking rate in rural counties was twice that of the urban counties (13.8 misdemeanor jail bookings per 1,000 rural residents versus 7.0 per 1,000 urban residents). Rates in rural counties ranged from 9.9 to 25.8 compared to the 3.4 to 12.4 range in urban counties. For felonies, however, urban booking rates exceeded those of rural counties – on average, 2.4 felony bookings per 1,000 urban residents compared to 1.3 per 1,000 rural residents.

TABLE 1. MISDEMEANOR AND FELONY COUNTS AND RATIO OF MISDEMEANOR TO FELONY PRETRIAL JAIL BOOKINGS IN URBAN VERSUS RURAL COUNTIES (2020, 2021, 2022)¹⁷

| Rural County | Misdemeanors (#) | Felonies (#) | Ratio (M/F) |
|---------------------|-------------------------|---------------------|--------------------|
| Asotin | 1,748 | 93 | 18.8 |
| Kittitas | 1,536 | 109 | 14.1 |
| Ferry | 222 | 22 | 10.1 |
| Okanogan | 1,877 | 218 | 8.6 |
| Grant | 3,238 | 412 | 7.9 |
| Whitman | 1,626 | 231 | 7.0 |
| <i>Rural Avg</i> | | | <i>11.1</i> |
| Urban County | Misdemeanors (#) | Felonies (#) | Ratio (M/F) |
| Snohomish | 26,662 | 6,774 | 3.9 |
| Spokane | 20,515 | 6,678 | 3.1 |
| Pierce | 12,884 | 4,531 | 2.8 |
| Clark | 6,097 | 2,690 | 2.3 |
| Thurston | 3,010 | 1,897 | 1.6 |
| <i>Urban Avg</i> | | | <i>2.70</i> |

17. See *Jail Booking and Reporting System Data, 2020-2022*, WASH. ASS'N SHERIFFS & POLICE CHIEFS [hereinafter *Jail Booking Data*], <https://www.waspc.org/jail-booking-reporting-system-jbrs-> [<https://perma.cc/Y5LT-AQ49>]. The jail-booking data referenced here was obtained through formalized agreements with local sheriffs' departments. Due to confidential nature of these data, they could not be independently viewed or verified by the editors of the *Yale Law Journal*. More information on the study's methodology is contained in Appendix A.

We are unsure why misdemeanors are charged at a much higher rate in rural counties. It may be that recent national critiques of misdemeanor charging and municipal courts have influenced practices in Washington's urban jurisdictions,¹⁸ which are more left-leaning than the state's rural counties.¹⁹ It may also be that rural jurisdictions are excessively policing and prosecuting minor offenses, a topic we return to below.²⁰

This Essay begins by describing our methodology in Part I. Part II describes the demography and economics of the study area. Part III tracks where Washington State's attorneys are—and are not. We next survey policy interventions responding to the state's lawyer shortages, many of them aimed specifically at ameliorating deficits among the ranks of prosecutors and indigent-defense counsel. Part IV sketches the indigent-defense delivery methods of the six study counties. In Part V, we offer a profile of one of the study counties, Okanogan, to provide a fuller, more nuanced portrait of the various stressors on a rural criminal legal system. Part VI documents the relative fiscal strain of these deficits on local-government coffers. Part VII draws on interview data to give a sense of how system-involved individuals experience indigent-defense delivery in the six study counties. Part VIII discusses the policy implications of our findings.

-
18. See generally NATAPOFF, *supra* note 8 (critiquing the American misdemeanor system in 2018); KOHLER-HAUSMANN, *supra* note 8 (discussing New York post-arrest misdemeanor procedures in 2018). Reports suggest that in 2022, the Seattle City Attorney's Office stopped prosecuting certain misdemeanors due to a backlog of almost 5,000 cases. See *City Attorney's Office Announces Plan to Eliminate Criminal Case Backlog*, SEATTLE (Apr. 19, 2022), <https://news.seattle.gov/2022/04/19/city-attorneys-office-announces-plan-to-eliminate-criminal-case-backlog> [<https://perma.cc/B4HU-BAE7>]. That Office declined to prosecute about 2,000 cases, mostly criminal trespass, theft, property destruction, and non-DUI traffic cases. *City Attorney's Office Announces Plan to Eliminate Criminal Case Backlog*, *supra*. Since that time, however, King County has increased spending on the prosecutorial function. See *infra* note 240 and accompanying text (documenting county-level spending on prosecution).
19. See Jennifer Sherman & Jennifer Schwartz, *The Fine Line: Rural Justice, Public Health and Safety, and the Coronavirus Pandemic*, 68 *AM. BEHAV. SCIENTIST* 1216, 1219 (2024); Gregory Brazeal, *Rural Mass Incarceration and the Politics of Punitiveness* 55 (Aug. 23, 2024) (unpublished manuscript), <https://ssrn.com/abstract=4950389> [<https://perma.cc/QXD8-TGQT>]; see also Joseph O'Sullivan, *Purple Haze: The Battle over Washington State's Political No-Man's Land*, CASCADE PBS (Nov. 1, 2022), <https://www.cascadepbs.org/inside-crosscut/2022/11/purple-haze-battle-over-wa-states-political-no-mans-lands> [<https://perma.cc/VR2Y-AHT6>] (discussing contested political districts which "often straddle fringes of overlapping ideologies").
20. See *infra* text accompanying notes 190-193.

I. METHODOLOGY

The research project from which we draw began in mid-2019 when Sherman and Schwartz teamed up to conduct multi-methods research on rising rural jail incarceration in Washington State. The project—which remains ongoing—engaged with stakeholders including sheriffs, jail staff, and social- and medical-service providers in six rural counties in eastern and central Washington, who participated in focus groups, interviews, and community meetings. The project also collected quantitative data on jail bookings and releases for the six counties, as well as in-depth qualitative interviews with seventy-one individuals who had been incarcerated in at least one of the six county jails.

Additionally, we collected secondary data on court processes, provision of indigent defense, county expenditures on criminal-legal-system functions, and other quantitative data. We drew on publicly available information about local-government actions and budgets, as well as media accounts. Finally, to deepen our understanding of the situation in Okanogan County, Pruitt spoke to several stakeholders there about challenges straining the criminal legal system.

We acknowledge our differing disciplinary vantage points, and we see this marriage of sociological, criminological, and legal perspectives as enriching this project. More details on research methods are in Appendix A.

II. THE STUDY REGION: ECONOMY AND DEMOGRAPHY

Our data come from six counties in predominantly rural eastern and central Washington: Asotin, Ferry, Grant, Kittitas, Okanogan, and Whitman. These counties tend to share a geographic and cultural isolation from Washington’s more urbanized “West Side.” That said, Kittitas County, which is contiguous to King County and the closest to the Seattle metro area, is gentrifying and to some degree straddles the two worlds.²¹

The study counties are poorer, on average, than the state as a whole. Whitman County is somewhat of an outlier, with a poverty rate that is higher than the other study counties, presumably due to a large college student population.²² Population densities in the study counties range from a low of 3.3 persons per square mile in Ferry County to a high of 37 persons per square mile in Grant

21. See O’Sullivan, *supra* note 19 (observing that Kittitas County, along with eastern King County, is part of Washington’s Eighth Congressional District, a swing district).

22. The poverty rate in Whitman County, Washington is 24.8%. *QuickFacts: Whitman County, Washington*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/whitman-countywashington/PST045224> [<https://perma.cc/BD5P-MV5B>]; see also *infra* Table 2a (providing county-level poverty data).

County.²³ Even though Grant County is the most populous of the study counties, hundreds of thousands of acres of its land area are remote and far removed from its larger population clusters.

The counties are all “rural” under the Washington State government’s definition,²⁴ and all but Asotin are nonmetropolitan under the classification scheme used by the U.S. Office of Management and Budget.²⁵ Tiny Asotin, with a population of just over 20,000, is nevertheless classified as metropolitan because it is economically embedded with Lewiston, Idaho, across the state line.²⁶ Grant, which has roughly 103,000 residents, is the most populous of the six, with more than twice the population of each Kittitas, Okanogan, and Whitman.²⁷ Ferry is the least populous of the counties, with about 7,000 residents.²⁸ Okanogan covers the greatest territory; at 5,266 square miles, it is twenty percent larger than the State of Connecticut.²⁹ Kittitas and Whitman, home to public universities,

-
23. *QuickFacts: Kittitas County, Washington; Whitman County, Washington; Okanogan County, Washington; Grant County, Washington; Ferry County, Washington; Asotin County, Washington: Population per square mile, 2020*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/geo/chart/kittitascountywashington,whitmancountywashington,okanogancounty-washington,grantcountywashington,ferrycountywashington,asotincountywashington/POP060220> [<https://perma.cc/S3AR-XTNS>].
24. *Population Density and Land Area Criteria Used for Rural Area Assistance and Other Programs*, WASH. STATE OFF. FIN. MGMT. (June 28, 2024), <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/population-density/population-density-and-land-area-criteria-used-rural-area-assistance-and-other-programs> [<https://perma.cc/6C89-WCFW>] (defining rural as a county with “population density less than 100 persons per square mile”).
25. *QuickFacts, supra* note 23; Austin Sanders & John Cromartie, *Metropolitan (Metro) Counties, Nonmetropolitan (Nonmetro) Counties, and Urban Areas, 2023*, U.S. DEP’T AGRIC. ECON. RSCH. SERV. (Mar. 26, 2024), <https://www.ers.usda.gov/data-products/chart-gallery/chart-detail?chartId=108693> [<https://perma.cc/9YKE-ET76>].
26. Sanders & Cromartie, *supra* note 25.
27. *QuickFacts: Kittitas County, Washington; Whitman County, Washington; Okanogan County, Washington; Grant County, Washington; Ferry County, Washington; Asotin County, Washington: Population Estimates, July 1, 2023*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/geo/chart/kittitascountywashington,whitmancountywashington,okanogancounty-washington,grantcountywashington,ferrycountywashington,asotincountywashington/POP010220> [<https://perma.cc/RZL2-6WNX>].
28. *Id.*
29. *QuickFacts: Kittitas County, Washington; Whitman County, Washington; Okanogan County, Washington; Grant County, Washington; Ferry County, Washington; Asotin County, Washington: Land Area in Square Miles, 2020*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/geo/chart/kittitascountywashington,whitmancountywashington,okanogancounty-washington,grantcountywashington,ferrycountywashington,asotincountywashington/LND110220> [<https://perma.cc/VD3T-VF9N>].

have the highest education levels.³⁰ U.S. Census Bureau population, economic and race/ethnicity data are in Tables 2a and 2b.

TABLE 2a. POPULATION AND ECONOMIC DATA FOR RURAL AND URBAN COUNTIES³¹

| | Population estimates, July 1, 2023 (V2023) | Poverty Rate (%) | Median Household Income (\$) | Education (Bachelor's degree or higher, persons age 25+) (%) |
|-------------------------|--|------------------|------------------------------|--|
| Rural Counties | | | | |
| Asotin County | 22,549 | 14.9 | 69,107 | 24.3 |
| Ferry County | 7,497 | 17.2 | 54,650 | 18.3 |
| Grant County | 102,678 | 15.2 | 71,115 | 18.2 |
| Kittitas County | 45,508 | 15.2 | 69,928 | 35.3 |
| Okanogan County | 43,712 | 16.7 | 60,293 | 24.0 |
| Whitman County | 48,012 | 24.8 | 52,893 | 50.2 |
| Urban Counties | | | | |
| Clark County | 521,150 | 8.6 | 90,115 | 32.2 |
| King County | 2,271,380 | 8.5 | 116,340 | 54.8 |
| Pierce County | 928,696 | 9.1 | 91,486 | 29.3 |
| Snohomish County | 844,761 | 8.5 | 104,083 | 35.4 |
| Spokane County | 551,455 | 12.2 | 70,394 | 31.9 |
| Thurston County | 299,003 | 8.7 | 88,895 | 36.4 |
| Washington State | 7,812,880 | 10.2 | 94,952 | 38.8 |
| United States | 334,914,895 | 11.5 | 75,149 | 34.3 |

30. See *WSU Pullman*, WASH. STATE UNIV. (2025), <https://pullman.wsu.edu> [<https://perma.cc/6MX3-PJTS>]; *CWU Ellensburg*, CENT. WASH. UNIV., <https://www.cwu.edu/about/campus-locations/ellensburg/index.php> [<https://perma.cc/A9D7-6ARJ>]. From 2019 to 2023, the percentage of the population over 25 with a bachelor's degree or higher was 35.3% in Kittitas County and 50.2% in Whitman County. *QuickFacts: Kittitas County, Washington; Whitman County, Washington; Okanogan County, Washington; Grant County, Washington; Ferry County, Washington; Asotin County, Washington: Bachelor's degree or higher, percent of persons age 25 years+, 2019-2023*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/geo/chart/kittitascountywashington,whitmancountywashington,okanogancountywashington,grantcountywashington,ferrycountywashington,asotincountywashington/EDU685222> [<https://perma.cc/L4PF-DLW6>]. The statewide percentage is about 38.8%. *QuickFacts: Washington: Bachelor's degree or higher, percent of persons age 25 years+, 2019-2023*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/geo/chart/WA/EDU685222?> [<https://perma.cc/76TE-F9YG>].

31. *QuickFacts: Whitman County, Washington; Okanogan County, Washington; Kittitas County, Washington; Grant County, Washington; Ferry County, Washington; Asotin County, Washington*, U.S. CENSUS BUREAU [hereinafter Census Bureau Population Data], <https://www.census.gov/quickfacts/fact/table/whitmancountywashington,okanogancountywashington,kittitascountywashington,grantcountywashington,ferrycountywashington,asotincountywashington/PST045223> [<https://perma.cc/V7UP-HEZB>]. In Table 2b, also based on Census Bureau data, we include only the most dominant races/ethnicities in the study counties and thus do not include data for Black and Asian residents.

TABLE 2b. RACE, HISPANIC, AND INDIGENOUS ORIGINS OF PEOPLE IN RURAL AND URBAN COUNTIES

| | White alone (%) | Black alone (%) | American Indian and Alaska Native alone (%) | Asian alone (%) | Hispanic or Latino (%) |
|-------------------------|-----------------|-----------------|---|-----------------|------------------------|
| Rural Counties | | | | | |
| Asotin County | 92.2 | 1.1 | 2.0 | 1.0 | 4.8 |
| Ferry County | 75.7 | 0.9 | 16.8 | 1.2 | 4.2 |
| Grant County | 90.3 | 2.2 | 2.9 | 1.4 | 44.2 |
| Kittitas County | 91.4 | 1.1 | 1.4 | 2.1 | 10.5 |
| Okanogan County | 81.3 | 1.4 | 12.4 | 1.2 | 21.2 |
| Whitman County | 83.4 | 2.5 | 1.1 | 7.9 | 8.0 |
| Urban Counties | | | | | |
| Clark County | 84.0 | 2.8 | 1.3 | 5.9 | 12.6 |
| King County | 62.7 | 7.4 | 1.1 | 22.2 | 11.1 |
| Pierce County | 71.9 | 8.2 | 1.9 | 7.8 | 13.1 |
| Snohomish County | 72.8 | 4.4 | 1.6 | 15.1 | 12.3 |
| Spokane County | 87.8 | 2.2 | 1.9 | 2.5 | 7.3 |
| Thurston County | 79.7 | 4.2 | 1.8 | 6.7 | 11.0 |
| Washington State | 76.3 | 4.7 | 2.0 | 10.8 | 14.6 |
| United States | 75.3 | 13.7 | 1.3 | 6.4 | 19.5 |

While the counties share similarities, they also represent at least three distinct clusters with varying demographic compositions and economic drivers. Asotin and Whitman counties are heavily dependent on mechanized agriculture, and their populations are overwhelmingly white.³² These counties are highly economically and socially embedded with Idaho, with whom they share a state line. Grant and Kittitas counties' labor-intensive agriculture draws larger Hispanic populations, though Kittitas's Hispanic population (10.5%) is far smaller than Grant's (44.2%).³³ Kittitas and Grant counties also have higher median household incomes (in excess of \$66,000) than the other study counties, but

32. *QuickFacts: Kittitas County, Washington; Whitman County, Washington; Okanogan County, Washington; Grant County, Washington; Ferry County, Washington; Asotin County, Washington: White alone, percent*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/geo/chart/kittitascountywashington,whitmancountywashington,okanogancountywashington,grantcountywashington,ferrycountywashington,asotincountywashington/RHI125223> [https://perma.cc/6NWA-H4K4].

33. *QuickFacts: Kittitas County, Washington; Whitman County, Washington; Okanogan County, Washington; Grant County, Washington; Ferry County, Washington; Asotin County, Washington: Hispanic or Latino, Percent*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/geo/chart/kittitascountywashington,whitmancountywashington,okanogancountywashington,grantcountywashington,ferrycountywashington,asotincountywashington/RHI725223> [https://perma.cc/65BT-AG44].

lower median household incomes than the state as whole (\$94,952).³⁴ Okanogan and Ferry counties have significant Native American populations and economies dependent on forestry and tourism.³⁵

III. LEGAL DESERTS IN THE STATE OF WASHINGTON

This Part details where attorneys are practicing in Washington State and—more importantly for our purposes—where they are in short supply. These data help us understand many rural counties’ struggle to provide indigent-defense services and to recruit prosecutors. We also survey the responses of various state institutions to the emerging crisis.

A. *The Numbers*

Attorney counts reveal that Washington, like most states, is suffering a shortage of lawyers in many of its rural reaches.³⁶ Legal deserts are typically associated with dwindling numbers of attorneys, which often goes hand in hand with population loss in a county or region.³⁷ The crisis facing rural Washington, however, goes beyond a mere lawyer shortage. Indeed, over the past twenty-five years, the number of active attorneys has *increased* substantially in three of the nonmetro

34. *QuickFacts Kittitas County, Washington; Grant County, Washington; Whitman County, Washington; Okanogan County, Washington; Ferry County, Washington; Asotin County, Washington: Median Households Income (In 2023 Dollars), 2019-2023*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/chart/kittitascountywashington,grantcountywashington,whitmancountywashington,okanogancountywashington,ferrycountywashington,asotincountywashington/INC110223> [https://perma.cc/5JYH-8C58]; *QuickFacts: Washington: Median Households Income (in 2023 dollars), 2019-2023*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/chart/WA/INC110222> [https://perma.cc/QM7J-FYTC].

35. See *QuickFacts: Kittitas County, Washington; Whitman County, Washington; Okanogan County, Washington; Grant County, Washington; Ferry County, Washington; Asotin County, Washington: American Indian and Alaska Native Alone, Percent*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/geo/chart/kittitascountywashington,whitmancountywashington,okanogancountywashington,grantcountywashington,ferrycountywashington,asotincountywashington/RH1325223> [https://perma.cc/CJ5U-4637]; see also *Forest Statistics for Ferry County*, WASH. FOREST PROT. ASS’N, <https://www.wfpa.org/climate-change-solutions/forest-statistics/#/ferry> [https://perma.cc/9S3N-HGP2]; OKANOGAN COUNTRY, <https://okanogancountry.com> [https://perma.cc/2RGJ-PNXS]. The Confederated Tribes of the Colville Reservation straddles the two counties. See CONFEDERATED TRIBES COLVILLE RSRV., <https://www.colvilletribes.com> [https://perma.cc/47LW-VAA5].

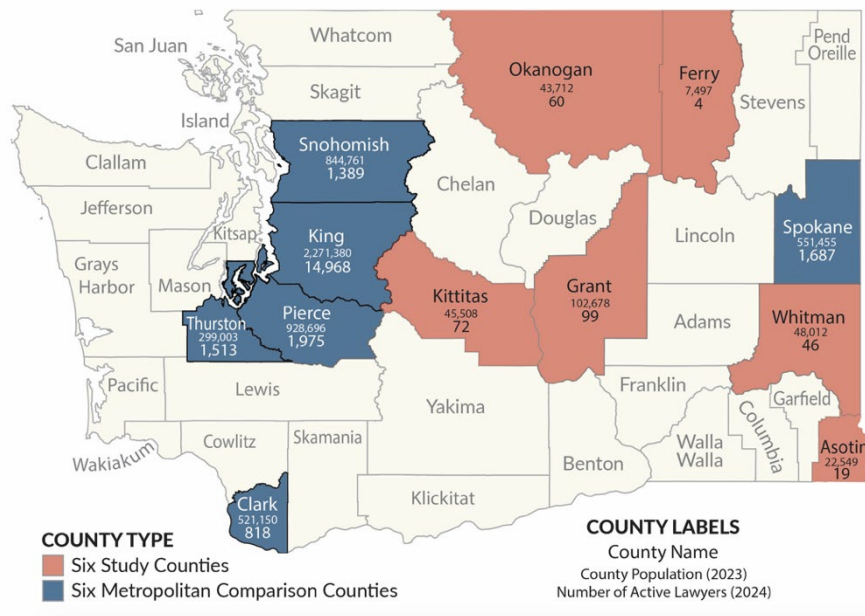
36. *WSBA Member Licensing Counts*, WASH. STATE BAR ASS’N (Jan. 6, 2025, 10:55 AM PST), https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20190801.pdf?sfvrsn=ae6c3ef1_238 [https://perma.cc/SQ7P-LYAH].

37. See HAKSGAARD, *supra* note 2, at 2, 4.

counties on which we focus: Grant, Kittitas, and Okanogan.³⁸ Meanwhile, population sizes also grew in these places.³⁹

Two of the six counties, however, have suffered a loss of attorneys over the past quarter century.⁴⁰ The number of active attorneys in Ferry County dropped from six to four.⁴¹ The number of attorneys in Whitman County also declined, from sixty-seven to forty-six, even as that county’s population increased by 25% over the same period.⁴²

FIGURE 1. NUMBER OF ACTIVE LAWYERS (2024) AND COUNTY POPULATION (2023) IN RURAL STUDY COUNTIES AND URBAN COMPARISON COUNTIES⁴³



38. *Membership Count by County*, WASH. STATE BAR ASS’N (1999) (on file with authors); see also Email from Bobby Henry, Assoc. Dir., Regul. Servs., Wash. State Bar Ass’n, to Lisa R. Pruitt & David B. Holt (Aug. 23, 2024, 9:51 AM) (on file with authors) (providing the 1999 active attorney counts).

39. See *infra* Table 3.

40. *Id.*

41. *Id.*

42. *Id.*

43. *WSBA Member Licensing Counts*, *supra* note 36; Census Bureau Population Data, *supra* note 31.

Beyond raw attorney counts, the ratio of attorneys to residents is also revealing. Urban counties tend to have a higher ratio compared to rural counties. In our study counties, the 2024 ratios of attorneys to residents range from a high of 1.58 attorneys per 1,000 people (Kittitas) to a low of 0.53 (Ferry).⁴⁴ In contrast, the ratio of attorneys to residents in King County, home to Seattle, is 6.59 attorneys for every 1,000 residents.⁴⁵ Ratios for the other five most populous counties, which range from 1.57 to 5.06 active attorneys per 1,000 residents, are shown in Table 3.

TABLE 3. ACTIVE ATTORNEYS PER 1,000 RESIDENTS, 1999 AND 2024⁴⁶

| County | 1999 | | | 2024 | | | Pct Change, 1999 to 2024 | | |
|------------------|---------------|------------------|-------------|---------------|------------------|-------------|--------------------------|--------------|---------------|
| | Attorneys (#) | Population | Ratio | Attorneys (#) | Population | Ratio | Attorneys (#) | Population | Ratio |
| Kittitas | 38 | 32,021 | 1.19 | 72 | 45,508 | 1.58 | 89.5% | 42.1% | 33.3% |
| Okanogan | 53 | 38,432 | 1.38 | 60 | 43,712 | 1.37 | 13.2% | 13.7% | -0.5% |
| Asotin | 18 | 21,206 | 0.85 | 19 | 22,549 | 0.84 | 5.6% | 6.3% | -0.7% |
| Grant | 82 | 72,019 | 1.14 | 99 | 102,678 | 0.96 | 20.7% | 42.6% | -15.3% |
| Ferry | 6 | 7,188 | 0.83 | 4 | 7,497 | 0.53 | -33.3% | 4.3% | -36.1% |
| Whitman | 67 | 38,386 | 1.75 | 46 | 48,012 | 0.96 | -31.3% | 25.1% | -45.1% |
| <i>Rural Sum</i> | <i>264</i> | <i>209,252</i> | <i>1.26</i> | <i>300</i> | <i>269,956</i> | <i>1.11</i> | <i>13.6%</i> | <i>29.0%</i> | <i>-11.9%</i> |
| Snohomish | 835 | 596,598 | 1.40 | 1,389 | 844,761 | 1.64 | 66.3% | 41.6% | 17.5% |
| Clark | 458 | 336,268 | 1.36 | 818 | 521,150 | 1.57 | 78.6% | 55.0% | 15.2% |
| Thurston | 996 | 205,459 | 4.85 | 1,513 | 299,003 | 5.06 | 51.9% | 45.5% | 4.4% |
| King | 10,575 | 1,664,846 | 6.35 | 14,968 | 2,271,380 | 6.59 | 41.5% | 36.4% | 3.7% |
| Spokane | 1,323 | 409,736 | 3.23 | 1,687 | 551,455 | 3.06 | 27.5% | 34.6% | -5.3% |
| Pierce | 1,569 | 688,807 | 2.28 | 1,975 | 928,696 | 2.13 | 25.9% | 34.8% | -6.6% |
| <i>Urban Sum</i> | <i>15,756</i> | <i>3,901,714</i> | <i>4.04</i> | <i>22,350</i> | <i>5,416,445</i> | <i>4.13</i> | <i>41.9%</i> | <i>38.8%</i> | <i>2.2%</i> |
| <i>w/o King</i> | <i>5,181</i> | <i>2,236,868</i> | <i>2.32</i> | <i>7,382</i> | <i>3,145,065</i> | <i>2.35</i> | <i>42.5%</i> | <i>40.6%</i> | <i>1.3%</i> |

The ratio of attorneys to population has increased in four of six urban counties since 1999, the earliest prior year for which the number of active attorneys

44. *Id.*

45. *Id.*

46. The 2024 and 1999 active-attorney population statistics were obtained from the Washington State Bar Association. See *WSBA Member Licensing Counts*, *supra* note 36 (2024 data); *Membership Count by County*, *supra* note 38 (1999 data). County population statistics were obtained from the U.S. Census Bureau. See *Census Bureau Population Data*, *supra* note 31 (2024 data); *State Population Estimates and Demographic Components of Population Change: July 1, 1998 to July 1, 1999*, U.S. CENSUS BUREAU, <https://www2.census.gov/programs-surveys/popest/tables/1990-2000/state/totals/st-99-01.txt> [<https://perma.cc/U6YS-BCKM>] (2019 data). Data for other counties is contained in Appendix B.

per county is available.⁴⁷ That year, the ratio was 3.58 attorneys per every 1,000 residents nationally⁴⁸ and 3.20 per 1,000 residents statewide.⁴⁹ King County's ratio in 1999 was already a robust 6.35, before rising to 6.59 by 2024.⁵⁰ In contrast, growth in the number of active attorneys in metropolitan Spokane County, in eastern Washington, did not keep pace with population growth; consequently, the ratio of attorneys per 1,000 resident fell there by 5%, from 3.23 in 1999 to 3.06 in 2024.⁵¹

In the rural counties on which we focus, attorney ratios have also typically worsened in the last quarter century. Then, as now, these ratios were well below the state averages and significantly below those of their urban counterparts.⁵² On average, rural counties in 2024 had one-quarter as many attorneys per 1,000 residents (1.11) compared to urban counties in general (4.13) and one-half as many attorneys as urban counties when excluding King County (2.35).⁵³

In 1999, the poorest ratio was in Ferry County, where there were 0.83 attorneys per 1,000 residents; the ratio eroded to 0.53 by 2024, a decline of over 36%.⁵⁴ The highest 1999 ratio among the study counties was in Whitman County, at 1.75; its population has since risen significantly while the number of active attorneys there has declined considerably, leading to a ratio of 0.96 in 2024—a 45% loss since 1999.⁵⁵ Except for Kittitas County, where the number of active attorneys nearly doubled and ratios improved by 33%, the already-low ratios in the other five study counties declined further. With urban ratios of attorneys improving during the same period, an even wider rural-urban gap in legal resources emerged.

47. See *supra* Table 3; see also *ABA National Lawyer Population Survey: Historical Trend in Total National Lawyer Population, 1878-2022*, AM. BAR ASS'N 1 (2022), https://www.americanbar.org/content/dam/aba/administrative/market_research/total-national-lawyer-population-1878-2022.pdf [<https://perma.cc/JQ73-J9M6>] (showing a national trend of increasing resident active attorney population since 1999).

48. See *ABA National Lawyer Population Survey: Historical Trend in Total National Lawyer Population 1878-2022*, *supra* note 47, at 1.

49. See *supra* Table 3.

50. *Id.*

51. *Id.*

52. The state average in 1999 was 3.2 per 1000, and the state average in 2024 has risen to 3.38 per 1000 residents.

53. See *supra* Table 3.

54. *Id.*

55. *Id.*

B. Policy Responses

Amidst a burgeoning national awareness of the legal-deserts phenomenon,⁵⁶ several Washington institutions and media outlets have turned their attention to the problem.⁵⁷ The media has focused particularly on the state's criminal legal system,⁵⁸ and that system has become the subject of both litigation and legislation. Meanwhile, amidst struggles to finance and staff indigent defense in particular, the Washington State Bar Association (WSBA) proposed dramatically

-
56. See, e.g., Pruitt et al., *supra* note 1, at 19-20; *New ABA Profile of the Legal Profession Report Shines Light on Legal Deserts, Law School Debt*, AM. BAR ASS'N (July 22, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/07/new-aba-profile-of-the-legal-profession-report-shines-light-on-1> [<https://perma.cc/WY6S-XD8J>].
57. See Daniel D. Clark, *President's Corner: The Rural Attorney Shortage Is Turning into a Crisis in Washington State*, WASH. STATE BAR NEWS (June 12, 2023), <https://wabarnews.org/2023/06/12/presidents-corner-the-rural-attorney-shortage-is-turning-into-a-crisis-in-washington-state> [<https://perma.cc/BN7C-LZ64>]; Emma Epperly, *State Bar Looks for Solutions as Legal Deserts Worsen in Rural Washington*, SPOKESMAN-REV. (June 21, 2024, 10:53 AM), <https://www.spokesman.com/stories/2024/jun/19/state-bar-looks-for-solutions-as-legal-deserts-wor> [<https://perma.cc/TCF5-ZWRT>].
58. See Daniel Beekman, *WA's Public Defender System Is Breaking Down, Communities Reeling*, SEATTLE TIMES (Feb. 25, 2024, 6:00 AM) [hereinafter Beekman, *System Breaking Down*], <https://www.seattletimes.com/seattle-news/politics/wa-public-defender-system-is-breaking-down-communities-reeling> [<https://perma.cc/9CM8-J4E2>]; Marcy Stamper, *Public Defenders Struggle with Big Caseloads*, METHOW VALLEY NEWS (Feb. 29, 2024), <https://methowvalleynews.com/2024/02/29/public-defenders-struggle-with-big-caseloads> [<https://perma.cc/YFF7-F6A9>]; Daniel Beekman, *WA to Train Public Defenders, Prosecutors for Rural, Underserved Areas*, SEATTLE TIMES (Mar. 6, 2024, 6:00 AM) [hereinafter Beekman, *WA to Train Public Defenders*], <https://www.seattletimes.com/seattle-news/politics/wa-to-train-public-defenders-prosecutors-for-rural-underserved-areas> [<https://perma.cc/H4VW-RYP6>]; Brittany Toolis, *'Rights are Being Violated': WA Public Defender Shortage Leads to Alleged Gap in Representation*, KIRO 7 NEWS (Jan. 25, 2024, 7:26 PM PST), <https://www.kiro7.com/news/local/rights-are-being-violated-wa-public-defender-shortage-leads-alleged-gap-representation/7REDLOCZCBDAZKLQPKVMCICLWI> [<https://perma.cc/ACD5-NZNZ>] (reporting on the funding of public defenders); Nick Gibson, *More Work for Less Pay: Spokane County Prosecutors, Public Defender's Office Struggling to Recruit, Retain Attorneys*, SPOKESMAN-REV (Mar. 21, 2024, 10:47 AM), <https://www.spokesman.com/stories/2024/mar/21/more-work-for-less-pay-spokane-county-prosecutors-> [<https://perma.cc/4VHZ-NVS9>]; Donald W. Meyers, *Two-Month Wait for Public Defenders as Yakima County Attorney Shortage Grows Worse*, YAKIMA HERALD-REPUBLIC (Apr. 5, 2024), https://www.yakimaherald.com/news/local/crime_and_courts/two-month-wait-for-public-defenders-as-yakima-county-attorney-shortage-grows-worse/article_ea9c6860-f2b3-11ee-af01-4364995330f9.html [<https://perma.cc/XTK6-WW8X>] (documenting the public defender shortage in Yakima County, Washington); Letter from Grays Harbor Cnty. Dep't of Pub. Def. to Wash. State Sup. Ct. 5 (Aug. 20, 2024) [hereinafter Grays Harbor Letter] (on file with authors) (incorporating a letter decision from Yakima County Presiding Judge Richard Bartheld discussing the impact of attorney shortage in Yakima County).

lower caseload limits for indigent-defense attorneys, a move that would increase the demand for such attorneys roughly threefold over just three years.

1. *Broad Responses to the Attorney Shortage*

Writing in a 2023 column in the *Washington Bar News*, then-WSBA president Dan Clark, a Yakima County deputy prosecutor, provided an overview of the state's attorney shortage and some early responses to it.⁵⁹ Clark observed that ten of the state's thirty-nine counties had no more than thirty residents practicing law.⁶⁰ He opined that rural areas are not attractive to most law graduates because of the relative lack of "restaurants, entertainment, and social opportunities,"⁶¹ suggestions consistent with the limited empirical data available on why young attorneys do not choose rural practice.⁶²

Clark also addressed the pragmatic concern of student-loan debt,⁶³ paired with the fact that "lower salaries in rural areas – particularly for governmental attorneys" – can make rural job opportunities less attractive to recent graduates.⁶⁴ In fact, law-school tuition and attendant student-loan debt have risen

59. Clark, *supra* note 57.

60. *Id.*

61. *Id.*

62. Lisa R. Pruitt, J. Cliff McKinney & Bart Calhoun, *Justice in the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence-Based Solutions to Alleviate It*, 37 U. ARK. LITTLE ROCK L. REV. 573, 612 (2015) ("[C]ompared to their more urban counterparts, those living in the [r]ural [c]ounties have less access to entertainment, dining, shopping, cultural, and social opportunities associated with larger population centers. . . . [T]his consideration was important to many of the Arkansas attorneys and law students we surveyed."); *see also* Chambliss, *supra* note 2, at 54 (detailing the experiences of rural attorneys in South Carolina).

63. The average graduate loan disbursement for 2022 graduates from Washington's law schools is between \$110,000 and \$130,000. *See Debt by Law School for 2022 Graduates*, LAWHUB (2022), <https://www.lawhub.org/trends/debt-per-law-school> [<https://perma.cc/4XAZ-2N8U>] (showing that average loan debt for Seattle University was \$130,581; for the University of Washington, \$114,464; and for Gonzaga University, \$111,448).

64. Clark, *supra* note 57; *see also* Grays Harbor Letter, *supra* note 58 (documenting the county's indigent-defense crisis; *cf.* text accompanying *infra* notes 213-217 (documenting the higher salaries that some rural counties pay to prosecuting attorneys)). Franklin and Benton counties, which share a judicial district in southeast Washington in an area known as the tri-cities, have also struggled to staff their indigent-defense obligation. *See* Cameron Probert, *Accused Rapist, Sex Offender and Others Released Because of Benton Attorney Shortage*, TRI-CITY HERALD (June 7, 2024, 5:22 PM), <https://www.tri-cityherald.com/news/local/crime/article289079719.html> [<https://perma.cc/V2C9-QWB5>]; Cameron Probert, *Longtime Tri-Cities Defense Leader Leaving. WA Courts Can't Handle What's Coming, He Says*, TRI-CITY HERALD (Aug. 12, 2024, 10:59 AM), <https://www.tri-cityherald.com/news/politics-government/article290837314.html> [<https://perma.cc/PCE2-HR5G>]; Cameron Probert, *No End in Sight for Benton County*

quickly in the United States in recent decades.⁶⁵ The average student-loan debt for a 2022 graduate from the three Washington law schools exceeds \$110,000, with Seattle University graduates carrying the greatest average debt at \$130,000.⁶⁶

A few WSBA initiatives have sought to increase the number of lawyers in the state's rural reaches. These include new, nontraditional ways to become a licensed attorney.⁶⁷ Another program, a collaboration among the state's three law schools, aims to get Black, Indigenous, and Latino students into the law-school pipeline.⁶⁸

Meanwhile, the shortage of indigent-defense attorneys and prosecutors has drawn particular attention. A January 2024 survey of the county-level entities providing indigent defense showed that, cumulatively, the responding counties (thirty-one of thirty-nine counties responded) had 138 vacancies among a total of 894 attorney positions, a 15% vacancy rate.⁶⁹ Some of the most dramatic

Defense Attorney Shortage. 6 Suspects Already Freed, TRI-CITY HERALD (June 11, 2024), <https://www.tri-cityherald.com/news/local/crime/article289156234.html> [<https://perma.cc/3KW9-GGPT>].

65. *Student Debt, COVID-19 Relief, and Loan Forgiveness: Perspectives from Today's Young Lawyers*, AM. BAR ASS'N 2-3 (2024), https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2024-student-loan-survey.pdf [<https://perma.cc/9H8J-G834>].
66. See LAWHUB, *supra* note 63.
67. In early 2024, the Washington Supreme Court adopted several ways for attorneys to become licensed without taking the bar exam. Karen Sloan, *Washington Adopts New Lawyer Licensing Paths as Other States Mull Bar Exam Bypasses*, REUTERS (Mar. 18, 2024, 3:14 PM EDT), <https://www.reuters.com/legal/government/washington-adopts-new-lawyer-licensing-paths-other-states-mull-bar-exam-bypasses-2024-03-18> [<https://perma.cc/7945-66NT>]. One is an apprenticeship program. Another would allow law students to accumulate skills coursework and hands-on legal work before graduation in lieu of sitting for the bar exam. *Id.*; see Emma Epperly, *State Bar Looks for Solutions as Legal Deserts Worsen in Rural Washington*, SPOKESMAN-REVIEW (June 19, 2024, 10:53 AM), <https://www.spokesman.com/stories/2024/jun/19/state-bar-looks-for-solutions-as-legal-deserts-wor> [<https://perma.cc/33DA-HKTD>]. Clark advocates expansion of the Admission and Practice Rule 6 law clerk program which allows people with a B.A. degree to partner with a qualified attorney, law clerk tutor, or assistant tutor for four years at a cost of about \$8,100 to qualify to sit for the bar exam. He asserts that participants in this program are “more likely to stay in the same small town or rural area where they’ve worked and have families.” Clark, *supra* note 57.
68. Clark, *supra* note 57 (citing *LSAC PLUS Program*, SEATTLE UNIV. SCH. L., <https://law.seattleu.edu/student-life/community/diversity-equity-inclusion/lisac-plus-program> [<https://perma.cc/9D9L-WD6P>]).
69. *Attorney Recruitment and Retention Challenges*, WASH. STATE OFF. PUB. DEF. 1-3 (Jan. 9, 2024), https://s3.documentcloud.org/documents/24432620/opd_2023survey_attnyshortage_summary.pdf [<https://perma.cc/48NM-PP5W>]. The number of counties reporting “challenges in recruiting and/or retaining a sufficient pool of defense attorneys” rose from thirty-one counties in 2021 to thirty-four counties in 2022 and 2023. National data on vacancies are not

deficits in Washington are in the counties on which we focus⁷⁰: Asotin (67% vacancy rate), Okanogan (50%), Kittitas (27%), and Stevens (33%), which until recently had an agreement also to provide indigent-defense services in Ferry County.⁷¹ Vacancy rates were higher for contract positions (25%) than for institutional public-defense offices (10%), perhaps because the former do not come with benefits and do not make the attorneys eligible for public-service loan forgiveness.⁷² The greatest shortages were among attorneys qualified to handle adult felony cases.⁷³ Survey results suggest that rural counties frequently lack a large enough local bar to cover indigent-defense needs, leaving them to recruit attorneys from other counties.⁷⁴ Poor compensation and inadequate housing markets that inhibit attorneys from relocating were among the reasons cited for the recruitment challenge.⁷⁵

Importantly, the attorney shortage and high turnover among prosecutors and public defenders affects both metro *and* nonmetro Washington counties. Metro counties east of the Cascades have drawn the lion's share of statewide media attention. Yakima County in south central Washington, for example, has attracted particular scrutiny because of three- to six-week waits for counsel to be

available, but anecdotes from a few states suggest that Washington is not alone in its struggle to staff public defenders. Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee & Stephen F. Hanlon, *National Public Defense Workload Study*, RAND CORP. 5 (2023), https://www.rand.org/pubs/research_reports/RRA2559-1.html [<https://perma.cc/L386-UVAH>].

70. Shortages in several nonmetro counties on the westside like Grays Harbor and Mason were also reported. See *Attorney Recruitment and Retention Challenges*, *supra* note 69, at 1.
71. Interlocal Agreement Between Stevens County and Ferry County, C-108-2023 (July 3, 2023) (on file with authors).
72. *Attorney Recruitment and Retention Challenges*, *supra* note 69, at 1.
73. *Id.*
74. *Id.* at 2. The report shows 4 vacancies among the 6 positions in Asotin County; 2 vacancies among 11 staff positions and no vacancies among the contract positions in Grant County; 2 vacancies among 7 staff positions and 2 vacancies among 8 contract positions in Kittitas County; 4 vacancies among 8 contract positions in Okanogan County; and 4 vacancies among 12 contract positions in Stevens and Ferry counties. *Id.* at 3.
75. *Id.* at 2; see also Clark, *supra* note 57 (discussing relative compensations); Gibson, *supra* note 58 (discussing compensation in Spokane County); Letter from Gabriel E. Acosta, Prosecuting Att'y, Walla Walla Cnty., April B. King, Chief Crim. DPA, Walla Walla Cnty., Michelle M. Mulhern, Deputy Prosecutor, Walla Walla Cnty. & Kelly A. Buerstatte, Deputy Prosecutor, Walla Walla Cnty., to Wash. State Sup. Ct. 1 (Sept. 23, 2024), https://www.courts.wa.gov/court_Rules/proposed/2024Jun/1568%20CrR%203.1%20STDS%20CrRLJ%203.1%20STDS%20JuCR%209.2%20STDS/Gabriel%20Acosta,%20April%20King,%20Michelle%20Mulhern,%20Kelly%20Buerstatte%20-%20CrR%203.1,%20CrRLJ%203.1,%20JuCR%209.2%20STDS.pdf [<https://perma.cc/N2SW-PKPP>] (noting that home prices in Walla Walla County had risen, over 30 years, from \$70,000 to \$90,000 to \$500,000 to \$700,000); Zoom Interview with Anna Burica, Att'y, Burica L. (June 12, 2024) (on file with authors) (noting the housing challenges in Okanogan County).

assigned.⁷⁶ In an effort to eliminate the backlog, the county in 2024 increased salaries for deputy prosecutors and defense counsel by 22.4%, on top of an increase of 15% in November 2022.⁷⁷ This brought full-time compensation for contract attorneys qualified to handle Class A felonies to as much as \$190,000.⁷⁸ The county also offers signing bonuses of \$15,000 for both employees and contract defenders.⁷⁹ Yet, despite the enhanced compensation on offer, as of August 2024 the “number of applicants for defense counsel ha[d] not materially increased.”⁸⁰

With metro counties offering increasingly higher salaries, nonmetro counties find themselves competing for a shrinking pool of qualified attorneys. As the prosecutor in nonmetro Jefferson County wrote to the Washington Supreme Court in July 2024, “[S]mall, rural and remote communities like mine . . . will pay a disproportionate financial and social price as the more well-heeled communities in the state buy up all of the legal representation that is left.”⁸¹ This

-
76. Beekman, *System Breaking Down*, *supra* note 58 (quoting Paul Kelley, Yakima County’s Director of the Department of Assigned Counsel). The American Civil Liberties Union (ACLU) is currently pursuing a lawsuit on behalf of a class of Yakima County indigent defendants for delays in receiving appointed counsel. See Application for Writ of Habeas Corpus Pursuant to RCW 7.36, *Al-Tharwa v. Yakima County*, No. 24-2-0033119 (Wash. Super. Ct. Kittitas Cnty. Sept. 30, 2024).
77. Grays Harbor Letter, *supra* note 58, at 4-5 (incorporating a letter decision from Judge Bartheld discussing the attorney shortage).
78. *Id.* at 5.
79. *Id.* In November 2022, Yakima County had authorized signing bonuses of \$12,000 and retention bonuses for existing deputy prosecutors and defense counsel of \$10,000. *Id.* at 4. “Despite this, few applied or were hired for open positions in either office. The retention bonus did not have the desired effect.” *Id.*
80. *Id.* at 5. Meanwhile, the struggle to recruit and retain attorneys in metropolitan Spokane County has been aggravated by salaries much lower than those in Yakima and those in the nonmetro contiguous counties to Spokane County. Gibson, *supra* note 58. In mid-2024, Spokane County raised the salaries it pays to both deputy prosecutors and indigent-defense counsel, no longer starting anyone at Step 1 of the pay scale and starting all new hires at Step 6 or higher. Email from Heather Kvokov, Hum. Res. Generalist, Spokane Cnty. Hum. Res., to David B. Holt, Senior Rsch. Libr., U.C. Davis Sch. L. (Oct. 8, 2024) (on file with authors). The starting salary for a public defender is about \$72,436, while the starting salary for a prosecutor is \$73,139. Email from Heather Kvokov, *supra*. The slight difference in pay is because the public defender office is unionized. Email from Heather Kvokov, *supra*. In King County, the starting salary for public defenders is \$97,888.39 because defense counsel starts all new hires at Step 3. Email from Jeannette Quintero, Hum. Res. Senior Analyst, King Cnty., to David B. Holt, Senior Rsch. Libr., U.C. Davis Sch. L. (Nov. 21, 2024) (on file with authors); see also *Compensation and Classification*, KING CNTY., <https://kingcounty.gov/en/legacy/audience/employees/pay-benefits/compensation-classification> [<https://perma.cc/92PW-HXSS>] (listing current pay rates).
81. Letter from James M. Kennedy, Prosecuting Att’y, Jefferson Cnty., to Clerk, Wash. State Sup. Ct. (July 18, 2024) (on file with authors).

raises the question whether the three law schools in Washington, in addition to those in the wider region, are educating a sufficient number of lawyers.⁸²

In South Dakota, where the rural lawyer shortage has been closely tracked for more than a decade, employers in Sioux Falls and Rapid City are demanding an increasing number of law graduates, leaving fewer and fewer to take up rural practice, even when they hail from rural places and might be inclined to do so.⁸³ A similar phenomenon may be contributing to the problem in Washington State, where the combined total student enrollment at the three law schools was 1,768 in 2023, down from a high of 2,248 in 2005. That 2023 figure is lower than for half the years since 1970.⁸⁴ It seems likely that the demand in the Seattle area has grown during that time, as the population of King County alone has increased by 43% and the region's status as a high-tech hub has grown.⁸⁵

2. *Litigation*

The Washington Office of Public Defense (OPD) and other institutions have mounted additional responses to the state's indigent-defense crisis, with particular attention to the rural lawyer shortage.⁸⁶ In 2023, the Director of OPD asked

82. See *infra* note 84 and accompanying text (discussing trends in the number of enrollees at the State of Washington's three law schools).

83. HAKSGAARD, *supra* note 2, at 8-9, 50.

84. UC Davis Law Library, Enrollment Data in Washington Law Schools (2024) (on file with authors) (generating data by referencing reports compiled in *ABA Required Disclosures*, AM. BAR ASS'N, <https://www.abarequireddisclosures.org/requiredDisclosure> [<https://perma.cc/R6EW-QET7>]; and Am. Bar Ass'n, *Official Guide to ABA Approved Law Schools*, HEINONLINE, <https://heinonline.org/HOL/Index?index=lbr/offgappl&collection=lbr> [<https://perma.cc/A8EJ-T9GT>]). The data are also available at the *Yale Law Journal's* Dataverse page: <https://dataverse.harvard.edu/dataverse/ylj>.

85. Mike Lewis, *Census Data Shows Seattle's Population Surge over Last Decade, Fueled in Part by Tech Job Growth*, GEEKWIRE (Aug. 13, 2021, 8:09 AM), <https://www.geekwire.com/2021/census-data-shows-seattles-population-surge-last-decade-fueled-part-tech-job-growth> [<https://perma.cc/59TD-FZVT>] (“Overall, the Seattle region added more than 48,000 tech jobs during the past five years . . . , an increase of more than 35%—a rate faster . . . than any other large U.S. tech market”); see also Julie Weed, *As Big Tech Grows in the Pandemic, Seattle Grows With It*, N.Y. TIMES (Oct. 12, 2021), <https://www.nytimes.com/2021/10/12/business/seattle-real-estate-coronavirus.html> [<https://perma.cc/UJ33-4FRH>] (“The Seattle region became the top market in the United States in 2020 for large office spaces leased by tech firms, according to CBRE, surpassing the San Francisco Bay Area for the first time since 2013, as well as tech hubs like Atlanta, New York, Washington and Austin, Texas.”).

86. See Beekman, *System Breaking Down*, *supra* note 58; see also Donald W. Meyers, *Two-Month Wait for Public Defenders as Yakima County Attorney Shortage Grows Worse*, YAKIMA HERALD-REPUBLIC 1-2 (Apr. 5, 2024), <https://www.courts.wa.gov/content/publicupload/eclips/2024%2004%2005%20Two%20month%20wait%20for%20public%20defenders%20as%20Y>

the Washington Supreme Court for a ninety-day moratorium on assigning attorneys to felony defendants who were not in custody.⁸⁷ The stated goal was to clear backlogs of jailed clients, but the court denied the request.⁸⁸

Around the same time, several individual counties and the Washington State Association of Counties sued the State of Washington, alleging that the state could not shift to counties its responsibility for “providing a constitutionally adequate and uniform system of indigent defense.”⁸⁹ The plaintiffs argued that the “resources available for trial court indigent defense functions, including representation and investigation, vary across county lines due to disparities in counties’ ability to raise funds through taxation.”⁹⁰ The court did not reach the case’s merits, dismissing it in March 2024 based on a determination that the plaintiffs lacked standing.⁹¹

3. Legislation

Meanwhile, the Washington legislature responded to the emerging crisis in early 2024 by dedicating \$1.6 million to internship programs for “aspiring public defenders and prosecutors in rural and underserved areas.”⁹² Called the “law

akima%20County%20attorney%20shortage%20grows%20worse.pdf [https://perma.cc/UEB8-GZYS] (documenting the public defender shortage in Yakima County); Grays Harbor Letter, *supra* note 58, at 5 (detailing Yakima County’s struggle to recruit deputy prosecutors and public defenders, as well as consequent delays in the legal system).

87. Memorandum from Larry Jefferson, Dir., Off. of Pub. Def., to Justices, Wash. State Sup. Ct. (Nov. 27, 2023), <https://www.documentcloud.org/documents/24432621-jeffersonworkloadmemo> [https://perma.cc/QP7P-GJ3C].

88. *See id.* at 5; Beekman, *System Breaking Down*, *supra* note 58.

89. Complaint at 3, Wash. State Ass’n of Cntys. v. State, No. 23-2-02911-34 (Wash. Super. Ct. Sept. 8, 2023).

90. *Id.* at 2.

91. Wash. State Ass’n of Cntys. v. State, No. 232029116 (Wash. Super. Ct. March 22, 2024); *see also Judge Dismisses Indigent Defense Lawsuit*, WASH. STATE ASS’N CNTYS. (Mar. 28, 2024), <https://members.wsac.org/news/advocacy/53/53-Judge-Dismisses-Indigent-Defense-Lawsuit> [https://perma.cc/R49T-64EC] (quoting the court as saying “[t]he counties cannot assert claims premised on the right to counsel as those rights are held by individual indigent criminal defendants, not counties”).

92. Beekman, *WA to Train Public Defenders*, *supra* note 58 (reporting that the “crisis exists because the COVID pandemic created backlogs, fewer people are going to law school, young attorneys are choosing other jobs, attorneys certified for high-level felony cases are burning out and policing changes are making cases more time-consuming, among other reasons”); *see* S.B. 5780, 68th Leg., Reg. Sess. (Wash. 2024); *see also* S.B. 5780–2023-24, WASH. STATE LEGISLATURE, <https://app.leg.wa.gov/bills/summary?BillNumber=5780&Year=2023&Initiative=false#:~:text=Revised%20for%202nd%20Substitute%3A%20Encouraging,training%20opportunities%20for%20public%20defense> [https://perma.cc/J6UZ-BZ6Y] (providing bill history).

student rural defense program,” the law – S.B. 5780 – further directs state agencies to “provide training to early-career public defenders and prosecutors.”⁹³ Significantly, the law does not raise wages for attorneys in either role.⁹⁴ Further, while previous drafts of S.B. 5780 included a loan-repayment program, offering up to \$120,000 for early-career public defenders and prosecutors, the provision was removed during committee markup.⁹⁵ Removal of the loan-repayment program lowered the annual cost from \$2 million to about \$1.6 million.⁹⁶ A separate bill to dramatically increase state funding for indigent-defense services, which currently hovers at about three percent of total expenditures on indigent defense,⁹⁷ also made no progress in the 2024 legislative session.⁹⁸ The two entities charged with the implementation of S.B. 5780’s training and retention initiatives, OPD and the Washington Association of Prosecuting Attorneys (WAPA), have begun to implement the surviving programs.⁹⁹

WAPA, the other institutional actor upon which S.B. 5780 relies, has been delayed in launching its programs, in part because of a struggle to recruit attorneys to run them.¹⁰⁰ Prosecutors are the hiring pool for the positions, which

93. Beekman, *WA to Train Public Defenders*, *supra* note 58.

94. *Id.*

95. *Id.*

96. *Id.* Loan repayment assistance may be seen as unnecessary given the existence of the federal public-service loan-forgiveness program. See 20 U.S.C. § 1087e(m) (2018). However, the latter forgives loans only after a decade of qualifying employment, and contract indigent-defense work does not qualify. See *id.*

97. See *infra* Section VI.A (detailing the funding of indigent defense in Washington’s counties).

98. Beekman, *WA to Train Public Defenders*, *supra* note 58. This bill is S.B. 5773. S.B. 5773, 68th Leg., Reg. Sess. (Wash. 2024). In January 2025, a bipartisan group of Washington State Senators introduced a new bill, S.B. 5404, proposing the state pay at least half of indigent defense costs. S.B. 5404, 69th Leg., Reg. Sess. (Wash. 2025); see also Daniel Beekman, *Washington Counties Want Big Money to Address Public Defender Crisis*, SEATTLE TIMES (Jan. 27, 2025), <https://www.seattletimes.com/seattle-news/politics/wa-counties-want-big-money-to-address-public-defender-crisis> [<https://perma.cc/ADS2-WAP4>] (explaining the bill’s legislative history).

99. Email from Katrin Johnson, Deputy Dir. for Operations, Wash. State Off. of Pub. Def., to David B. Holt, Senior Rsch. L. Libr., U.C. Davis Mabie L. Libr. (July 30, 2024, 3:56 PM) (on file with authors). As of February 2025, the Washington Association of Prosecuting Attorneys (WAPA) employs three lawyers and two support staff with an additional attorney FTE open. Email from Jason Walker, Wash. Ass’n of Prosecuting Att’ys, to Lisa R. Pruitt (Mar. 6, 2025, 9:46 AM) (on file with authors). WAPA has historically employed only two attorneys, but recent grant funding has permitted it to add two attorney positions. *Id.*

100. See Email from Jason Walker, Wash. Ass’n of Prosecuting Att’ys, to Lisa R. Pruitt (Aug. 6, 2024, 9:19 AM) [hereinafter Email from Jason Walker, Aug. 6, 2024] (on file with authors). WAPA is a much smaller entity than the Washington Office of Public Defense (OPD). OPD has a staff of 66, including about 27 attorneys. Email from Katrin Johnson, Wash. Off. of Pub.

creates a challenge when the state already faces a shortage of prosecutors.¹⁰¹ WAPA was running a trial-skills training program even before S.B. 5780 passed, and it will now use funds allocated by that law to finance the program.¹⁰²

4. *Lower Caseload Limits for Indigent-Defense Attorneys*

Amid this emerging staffing crisis, WSBA in early 2024 proposed new caseload limits to “provide public defenders with workable caseloads that allow them to effectively represent the accused.”¹⁰³ The standards would be implemented in three phases, with the goal of ultimately reducing public-defender caseloads to one-third of the current levels. According to the standards, by mid-2027, the current limit—no more than 150 felonies *or* 300 to 400 misdemeanors annually—would be reduced to 47 felony case credits *or* 120 misdemeanor case credits.¹⁰⁴ Thus, within a span of just three years, indigent-defense attorneys would be limited to handling a fraction of their current caseloads.¹⁰⁵

WSBA characterizes the new standards as guidelines for cities and counties, which are required by state law to adopt standards for delivering indigent-

Def., to Lisa R. Pruitt (Mar. 7, 2025, 8:21 AM) (on file with authors); WASH. STATE OFF. OF PUB. DEF., ORGANIZATIONAL CHART, JAN. 2025 (on file with authors).

101. Email from Jason Walker, Aug. 6, 2024, *supra* note 100.

102. *Id.*

103. Media Release, Wash. State Bar Ass’n, State Bar Adopts New Public Defense Standards (Mar. 15, 2024), <https://www.wsba.org/news-events/media-center/media-releases/state-bar-adopts-new-public-defense-standards> [https://perma.cc/36GV-UL9P]. The new standards also recommend that defense agencies provide public defenders with a specified ratio of support staff. *Id.* The new standards are informed by an influential 2023 study. *Id.* For the study’s results, see generally Pace et al., *supra* note 69. Prosecutor caseloads have also been a topic of concern in relation to attorney burnout. See Clark, *supra* note 57 (noting the workloads of deputy prosecutors in Yakima County stood between 90 to 200 felony cases, with a 2023 average of 124 cases per felony prosecutor); Zoom Interview by Lisa R. Pruitt with Andrew Patrick, Ferry Cnty. Indigent Def. Att’y (Aug. 9, 2024) [hereinafter Andrew Patrick Interview] (discussing his prior caseload as a deputy prosecutor in Stevens County, where he and one other deputy handled 700-800 cases a year, compared to the roughly 100 cases he is expected to defend in 2024 year as the sole indigent-defense attorney in Ferry County).

104. *Standards for Indigent Defense Services*, WASH. STATE BAR ASS’N 11-12 (Mar. 8, 2024), <https://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> [https://perma.cc/K6ZL-X3BH].

105. For public defenders who accept appointments to both misdemeanor and felony cases, the standard would be proportionately applied to determine a maximum full caseload. See *id.* at 7. A varying number of case credits is attributed to each representation. See *id.* at 10 (describing the case credits per category of appointment).

defense services.¹⁰⁶ Proponents see the greatly reduced caseload limits as necessary to curb attorney burnout and improve recruitment and retention.¹⁰⁷ They would, of course, also be good for clients, who would benefit from more engaged, less harried counsel. At the same time, however, these tighter caseload restrictions would demand hundreds more qualified attorneys, even as the number of attorneys prepared and willing to do this work is dwindling. Implementing the lower caseload caps would be especially challenging for sparsely populated counties.

The caseload caps do not become binding unless the Washington Supreme Court adopts them or the legislature imposes them by statute,¹⁰⁸ an outcome that looks increasingly unlikely. The Washington Supreme Court published the new standards for comment in mid-2024.¹⁰⁹ As of October 2024, many stakeholders have weighed in to oppose them, with some noting the attorney shortage

106. See WASH. REV. CODE § 10.101.030 (West 2024); *Standards for Indigent Defense Services*, *supra* note 104, at 1; Email from Brenden Higashi, Senior Rsch. Assoc., Wash. State Ctr. for Ct. Rsch., to Lisa R. Pruitt (July 10, 2024, 9:18 AM PDT) (on file with authors).

107. See Beekman, *System Breaking Down*, *supra* note 58; see also ROBERT L. NELSON, RONIT DINOVITZER, BRYANT G. GARTH, JOYCE S. STERLING, DAVID B. WILKINS, MEGHAN DAWE & ETHAN MICHELSON, *THE MAKING OF LAWYERS' CAREERS: INEQUALITY AND OPPORTUNITY IN THE AMERICAN LEGAL PROFESSION* 238-39 (2023) (stating that many state-level public defenders and prosecutors enjoy their work but will move into private practice due to a “combination of burnout and the lure of more pay and control”).

108. See *Council on Public Defense Proposed Revised Standards for Indigent Defense and Caseload Limits*, ASS'N WASH. CITIES (Mar. 19, 2024), <https://wacities.org/advocacy/news/advocacy-news/2024/08/09/council-on-public-defense-proposed-revised-standards-for-indigent-defense-and-caseload-limits> [<https://perma.cc/9RCW-C9EZ>] (“The standards adopted by the WSBA Board of Governors are not binding; however, revisions to the caseload standards will be binding if adopted by the Washington Supreme Court or imposed in statute by the Legislature.” (emphasis omitted)); see also *Standards for Indigent Defense Services*, *supra* note 104, at 1 (“The *WSBA Standards* are consistent with, but more comprehensive than, the Washington Supreme Court’s *Standards for Indigent Defense* that are included in the Washington State Court Rules” (footnote omitted)).

The King County Department of Public Defense has committed to adopting the lower caseload caps that WSBA has proposed, regardless of whether the Washington Supreme Court adopts them. Beekman, *Washington Counties Want Big Money to Address Public Defender Crisis*, *supra* note 98 (noting that King County has adopted the recommended limits and are using them as a “recruiting tool”); Email from Matt Sanders, Interim Dir., King Cnty. Dep’t of Pub. Def., to Lisa R. Pruitt (Mar. 10, 2025, 8:57 PM PT) (on file with authors).

109. Email from Brenden Higashi, Senior Rsch. Assoc., Wash. State Ctr. for Ct. Rsch., to Lisa R. Pruitt (July 10, 2024) (on file with authors); In re Suggested Amends. to Standards for Indigent Def. CrR 3.1, No. 25700-A-1568, 2024 Wash. LEXIS 306, at *1 (June 7, 2024); see also *Suggested Amendments to Standards for Indigent Defense Services Revised CrR 3.1*, WASH. CTS, https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=6163 [<https://perma.cc/A2Y5-69NU>] (making suggested revised standards available for comment).

and issues like rising housing costs, even in rural areas, which inhibit lawyers from taking up rural jobs.¹¹⁰

IV. DELIVERY OF INDIGENT DEFENSE IN THE STUDY REGION

The vast majority of criminal defendants in Washington—roughly 80 to 90%—are appointed counsel due to inability to pay. Washington’s thirty-nine counties use four different models to deliver this constitutionally mandated service.¹¹¹ The more populous counties have typical, institutional public-defender offices. Among the study counties, Grant and Kittitas are in this category. Some counties use specialized contract oversight by employing an attorney to manage all indigent-defense services.¹¹² Others deliver indigent defense via contracts with large nonprofits that function much like institutional public-defense offices.¹¹³ The final group of counties manage indigent defense through an employee who has other responsibilities.¹¹⁴

Asotin, Ferry, Okanogan, and Whitman are in this last category. Even among these four counties, the precise arrangements vary from county to county, as detailed below.¹¹⁵ Importantly, because these contract attorneys are not classified as employees, they do not receive health insurance or any other benefits

110. See Email from Katrin Johnson, Wash. Off. of Pub. Def., to Lisa R. Pruitt (Sept. 23, 2024, 5:38 PST); see also *Comments for CrR3.1/CrRLJ3.1/JuCR9.2 STDS—Standards for Indigent Defense*, WASH. CTS., https://www.courts.wa.gov/court_rules/?fa=court_rules.commentDisplay&ruleId=6163 [<https://perma.cc/X9QH-QHZN>] (listing comments).

111. *The Price of Justice: Legal Financial Obligations in Washington State*, WASH. STATE SUP. CT. MINORITY & JUST. COMM’N 5 (2022), https://www.courts.wa.gov/subsite/mjc/docs/MJC_LFO_Price_of_Justice_Report_Final.pdf [<https://perma.cc/XWT6-8PGY>].

112. WASH. STATE OFF. OF PUB. DEF., COUNTY PUBLIC DEFENSE ADMINISTRATION MODELS IN WASHINGTON (2024) (on file with authors).

113. *Id.*

114. *Id.*

115. The practices also vary. For example, all study counties except Asotin supply counsel at initial appearance. Whitman County supplies defendants, including juveniles, only with contact information for an attorney at the initial hearing. See 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Asotin County, Washington 13 (July 27, 2023) (on file with authors); 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Ferry County, Washington 13 (Aug. 16, 2023) (on file with authors); 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Okanogan County, Washington 13 (Aug. 21, 2023) (on file with authors); 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Whitman County, Washington 14 (Sept. 30, 2023) (on file with authors). *But see infra* notes 226–28 and accompanying text (detailing changes in the Okanogan County indigent-defense delivery structure as this Essay was in production).

associated with employment. In addition, as independent contractors, only some qualify for public-service loan forgiveness.¹¹⁶

The details of these counties' recent history and current practice of delivering indigent defense reveal a great deal of precarity, much of it associated with the dearth of attorneys available to do both indigent-defense and prosecution work. Indeed, a feedback loop of sorts exists between the two roles, as both are performed by attorneys with criminal-law expertise. Thus, when one county gains an indigent-defense attorney, a neighboring county may well lose a deputy prosecutor. Judges are also in the mix, such that one county gaining a judge often means that county or a neighboring one is likely to lose an indigent-defense attorney or prosecutor.¹¹⁷

A brief sketch of each county follows, drawing on publicly available data. Again, we offer no thorough legal analysis, but we note some red flags evident from the review. These include the relative inexperience of some attorneys, the lack of meaningful oversight in some counties, and the proliferation of remote appearances by defense counsel. Among other issues, the latter phenomenon may result in a lack of cultural competence, and thus lower quality legal representation, as attorneys from the urban West Side may not be well informed about rural realities east of the Cascades.¹¹⁸

A. *Ferry and Asotin Counties*

Ferry County, with just about 7,500 residents spread across an area larger than Delaware, has the simplest system among the study counties. As of early 2024, the county had a contract with a single firm – Orin Law Offices LLC, which is based in neighboring Stevens County – to handle all of the county's public-defense work. In 2024, the firm handled “225 misdemeanor and felony cases” and was paid \$201,000.¹¹⁹ The court passes all matters directly to the firm, staffed

116. To qualify for the Public Service Loan Forgiveness, an employee would need to work at least thirty hours per week. Fed. Student Aid, *What Is Considered Full-Time Employment for the Purposes of Public Service Loan Forgiveness (PSLF)?* U.S. DEP'T EDUC., <https://studentaid.gov/help-center/answers/article/what-is-considered-full-time-employment-for-pslf> [<https://perma.cc/H5XU-9LKK>].

117. See *infra* text accompanying notes 123-125.

118. See Statz et al., *supra* note 2, at 371 (discussing the importance of having a “deep knowledge of local context” to effectively serve rural communities).

119. Two attorneys founded Orin Law Offices LLC in 2024. Andrew Patrick Interview, *supra* note 103 (detailing the interview with the attorney contracted to provide indigent defense for Ferry County). One of these attorneys is a 2020 law graduate who worked for the Stevens County Prosecutor's Office for four years before co-founding the firm. *Id.* (noting that he started work there as a Rule 9 student and handles the misdemeanor caseload). The other attorney, who

by its two attorney principals.¹²⁰ Orin Law vets cases for conflicts and refers them to other firms when necessary.¹²¹ Pursuant to the contract, the attorneys must ask the county to finance experts and investigators when clients need them.¹²²

Ferry County, whose indigent defense is overseen directly by the elected county commissioners,¹²³ has long contracted with a single firm to handle its public-defense work. Orin Law Offices LLC is simply the most recent firm to hold the contract. When the attorney with the previous Ferry County contract retired in mid-2023,¹²⁴ the county temporarily entered into an agreement with neighboring Stevens County, whereby the latter would “provide legal services to indigent criminal defendants” for six months.¹²⁵ For these services, Ferry County agreed to pay \$90,000 to Stevens County, “regardless of the number of defendants represented” by the Stevens County Office of Public Defense.¹²⁶

These recent changes in Ferry County’s public-defense delivery illustrate the fragility of systems in low-population counties with few attorneys and no

handles felonies in the Superior Court, was admitted in 2005. Before founding Orin Law, the other attorney, Travis Phelps, had a long career as a deputy prosecutor and public defender in Spokane County and Stevens County. *Id.*; *Legal Profile: Travis W. Phelps*, MYWSBA, https://www.mywsba.org/PersonifyEbusiness/Default.aspx?TabID=1538&Usr_ID=000000035994 [<https://perma.cc/M3QE-CLSY>]. Patrick, the 2020 law graduate, a military veteran who earned his law degree at the age of 40, left the Stevens County Prosecutor’s Office in part because he was being asked to take a \$500/month pay cut when ARPA funds, which had supplemented deputy prosecutors’ salaries, ran out. Andrew Patrick Interview, *supra* note 103 (detailing the interview with the attorney who was contracted to provide indigent defense for Ferry County). Patrick had begun working with the Stevens County Prosecutor as a Rule 9 student, earning \$55,000 a year. He earned \$65,000 once licensed and was earning \$78,000 when he left the office in early 2024. Both Patrick and Phelps live in Stevens County, about a 75-minute drive from the Ferry County courthouse in Republic.

120. Email from Holly Haddenham, Adm’r, Ferry Cnty. Dist. Ct., to Emma Deneau, Rsch. Assistant (Aug. 2, 2024, 9:29 AM) (on file with authors).
121. Andrew Patrick Interview, *supra* note 103 (detailing the interview with the attorney who was contracted to provide indigent defense for Ferry County).
122. Contract for Legal Services for Indigent Persons in Ferry County Between Ferry County, Washington and Orin Law Offices LLC (Mar. 11, 2024) (on file with authors). This can create conflicts of interest as attorneys may be reluctant to seek funds from the court, lest the attorneys lose favor with the court and, with it, their contract. See Lisa Pruitt & Beth Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219, 294-96 (2010) (citing *United States v. Hearst*, 638 F.2d 1190 (1981)).
123. 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Ferry County, Washington 18 (Aug. 16, 2023) (on file with authors).
124. Andrew Patrick Interview, *supra* note 103.
125. Interlocal Agreement Between Stevens County and Ferry County, *supra* note 71, at 1.
126. *Id.* Ferry County also agreed to “pay any additional costs for services ordered by the Court to assist in defense of the defendant’s case.” *Id.*

institutional public-defense office. Recall that Ferry County is home to only four active attorneys.¹²⁷ The county’s annual report to OPD states that the county seat, Republic, “is geographically distant and difficult to get to, typically requiring travel over at least one mountain pass, which tends to keep our local pool of available attorneys very small.”¹²⁸

Asotin County’s system, which is administered by the County Clerk and the Court Administrator, is similar to Ferry’s.¹²⁹ The county currently contracts with only one attorney, a 2022 law school graduate.¹³⁰ That attorney is associated with a Lewiston, Idaho law firm but lives in neighboring Whitman County.¹³¹ Asotin County pays the attorney \$66,000 a year to handle up to forty felony equivalents, excluding only the most serious felonies.¹³²

A salary of \$66,000 to handle up to forty felony-equivalent cases is a volume discount of sorts because the court assigns all other cases to attorneys on a rotating basis, and those attorneys are paid \$150 per hour.¹³³ In its annual report and application for OPD funds, Asotin County reported having spent more in the prior year on “off contract appointed cases compared to contracts.”¹³⁴ The report also noted that “[d]ue to the location and funding difficulties,” the county struggled to recruit attorneys “for contracted services” and had “spent more funds on

127. See *supra* Table 3.

128. See 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Ferry County, Washington 18 (Aug. 16, 2023) (on file with authors); see also *infra* notes 221–228 and accompanying text (describing how each move by an attorney in Ferry, Okanogan or Stevens County tends to lead to a shuffle among legal personnel in the neighboring counties).

129. 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Asotin County, Washington 16 (July 27, 2023) [hereinafter Asotin County Application] (on file with authors).

130. *Attorney Roster Search: Randy Kyle Reed*, IDAHO STATE BAR, <https://isb.idaho.gov/licensing-mcle/attorney-roster-search> [https://perma.cc/G76L-4ZKP]. He was admitted to the Idaho Bar in 2022 and to the Washington Bar in 2023.

131. *Legal Profile: Randy Kyle Reed*, MYWSBA, https://www.mywsba.org/PersonifyEbusiness/LegalDirectory/LegalProfile.aspx?Usr_ID=00000060546 [https://perma.cc/5E7D-ERFM]; *Randy K. Reed*, JONES, BROWER & CALLERY, PLLC, <https://www.jonesbrowercallery.com/copy-of-zachary-a-battles> [https://perma.cc/W2WH-9M32].

132. Professional Services Contract and Retainer as Counsel for Indigent Persons Between Asotin County, Washington and Randy K. Reed (Jan. 29, 2024) (on file with authors).

133. Email from Stacy Grijalva, Asotin Cnty. Dist. Ct. Adm’r, to Emma Deneau, Rsch. Assistant (Aug. 8, 2024) (on file with authors) (noting that attorneys who do not have a contract with the county to take a specified number of cases for a specified fee are paid \$150 an hour); cf. Beekman, *System Breaking Down*, *supra* note 58 (reporting that, as of January 2024, the county had only one attorney under contract handling felonies and that the attorney was based in Spokane, 100 miles away; other attorneys who provide defense services are paid \$150 an hour).

134. See Asotin County Application, *supra* note 129, at 9.

advertising . . . in hopes of attracting individuals.”¹³⁵ In 2021, Asotin County’s struggle to staff indigent defense resulted in an individual challenging his conviction when it was revealed that his appointed counsel, while licensed to practice law in Idaho, was not licensed in Washington.¹³⁶

B. *Whitman and Okanogan Counties*

Whitman County’s contract system is somewhat larger and more complex than that of its neighbor to the south. Since January 2020, the county has had a sole contract with three attorneys at a total annual value of \$400,000.¹³⁷ The county pays the attorneys varying amounts for handling particular types of cases, and a provision was made for diverting cases when conflicts arise.¹³⁸ The contract stipulates no numerical caseload limit.¹³⁹ Another concern is that no county employee is “charged with supervising the work of the contract attorneys,” something the county plans to “review[] . . . in the near future.”¹⁴⁰

Okanogan County contracts with a single law firm, Burica Law PLLC, to manage the county’s public-defense work.¹⁴¹ That management includes recruiting and contracting with other attorneys to provide indigent defense, as well as record keeping and reporting.¹⁴² Further details of Okanogan County’s system are provided in Part V.

135. *Id.*

136. *In re Ayerst*, 486 P.3d 943, 945-47 (Wash. Ct. App. 2021).

137. Contract for Legal Services for Indigent Persons in Whitman County Courts Between Whitman County, Washington and Martonick Law Offices, Roger Sandberg, and Sandra Lockett ¶ 9 (Dec. 4, 2019) (on file with authors). An addendum to the contract states that it runs from January 1, 2020, until the end of 2024. Sandberg has since been elected to the Whitman County Superior Court and began serving in that role in January 2025. Teresa Simpson, *Roger Sandberg Sworn in as Superior Court Judge*, WHITMAN CNTY. GAZETTE (Jan. 9, 2025), <https://www.wcgazette.com/story/2025/01/09/news/roger-sandberg-sworn-in-as-superior-court-judge/42987.html> [<https://perma.cc/32MF-FVDK>].

138. Contract for Legal Services for Indigent Persons in Whitman County, *supra* note 137, at 7, 9.

139. *Id.*; *cf.* 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Whitman County, Washington 15 (Aug. 10, 2023) [hereinafter Whitman County Application] (on file with authors) (indicating that contracts do specify case load limits).

140. Whitman County Application, *supra* note 139, at 19.

141. Zoom Interview by Lisa R. Pruitt with Anna Burica, Burica L. PLLC (June 12, 2024) [hereinafter Anna Burica Interview] (on file with authors). The Okanogan County Indigent Defense Website has no content. See *Indigency Defense Information*, OKANOGAN CNTY., https://www.okanogancounty.org/government/judicial_courts/indigency_defense_information.php [<https://perma.cc/U3CE-R4DF>].

142. See Anna Burica Interview, *supra* note 141; *Record of the Proceedings*, OKANOGAN CNTY. BD. OF COMM’RS, (Mar. 19, 2024), <https://cms9files.revize.com/okanoganwa/March%2019,%202024.pdf> [<https://perma.cc/Q3UW-CZZK>].

C. *Kittitas and Grant Counties*

The two remaining counties have institutional, in-house public-defense offices. The Kittitas County Department of Public Defense, established in 2022, employs four attorneys, one of whom directs the department.¹⁴³ The employed attorneys represent clients in addition to managing the remaining work, done by three contract attorneys.¹⁴⁴ As of January 2025, the county was recruiting another in-house attorney.¹⁴⁵

The three Kittitas County contracts are more detailed in terms of both caseload and compensation schemes than the contracts of attorneys in the less populous counties we studied.¹⁴⁶ The Kittitas contracts also vary considerably from attorney to attorney, but all except one include the sort of “volume discount” seen in the Asotin and Whitman contracts.¹⁴⁷ One contract, for example, specifies an additional per diem for jury trials, and all specify caseload caps.¹⁴⁸ Only one sets compensation on a per-case basis – for example, \$350 per gross misdemeanor.¹⁴⁹

Kittitas’ move to an institutional public defender was probably influenced by past instability associated with a case-by-case assignment method,¹⁵⁰ as well as high-profile litigation challenging the constitutionality of neighboring Grant

143. Email from Eileen Murphy, Dir., Kittitas Cnty. Dep’t of Pub. Def., to Katrin Johnson, Deputy Dir. of Operations for Wash. State Off. of Pub. Def. (Jan. 27, 2025, 8:38 AM) (on file with authors); see also KITTITAS CNTY., WASH., ORDINANCE 2022-010, § 2.09.010 (2022) (creating a “Director of the Department of Public Defense,” appointed by the County Commissioners).

144. Email from Eileen Murphy to Katrin Johnson, *supra* note 143; see also *Department of Public Defense*, KITTITAS CNTY., <https://www.co.kittitas.wa.us/public-defense/default.aspx> [<https://perma.cc/RXQ9-2FYJ>] (listing Eileen Murphy as the director).

145. Email from Eileen Murphy to Katrin Johnson, *supra* note 143.

146. Brian Kelly, *Commissioners Approve New Contracts for Public Defenders*, DAILY REC. (Jan. 10, 2025), https://www.dailyrecordnews.com/ellensburg/commissioners-approve-new-contracts-for-public-defenders/article_d28da8ae-9455-11ee-9398-4708d1e590fb.html [<https://perma.cc/KA66-KCW7>].

147. *Id.*

148. *Id.*

149. *Id.* (reporting that attorneys are also paid \$350 for each Monday morning arraignment calendar).

150. That the Kittitas County indigent-defense function has been so noncontroversial and apparently well staffed in recent years is noteworthy given that it was “on the cusp” of crisis just a few years ago. See Joanna Markell, *Court System Makes Changes to Address Defense Attorney Shortage*, DAILY REC. (Dec. 27, 2017), https://www.dailyrecordnews.com/news/court-system-makes-changes-to-address-defense-attorney-shortage/article_a4docee5-e547-5ddc-8f2e-00b81e4603e0.html [<https://perma.cc/PB2U-KXCG>].

County's delivery system.¹⁵¹ That 2004 case, brought by the American Civil Liberties Union (ACLU) and Columbia Legal Services on behalf of three felony defendants, settled in 2005, with the court finding that the county's system interfered with the defendants' right to effective assistance of counsel.¹⁵² The plaintiffs' motions for partial summary judgment were granted in part because the court "found that class members have a well-grounded fear of immediate invasion of their rights to effective assistance of counsel."¹⁵³ As part of a settlement, the parties agreed, among other things, to a six-year court monitor who would provide a quarterly report regarding Grant County's compliance with the legal standard adopted by WSBA and endorsed by the Washington legislature.¹⁵⁴

In response to the litigation, Grant County eventually established a Department of Public Defense,¹⁵⁵ and it now has the largest and most institutionalized indigent-defense delivery system among the study counties. Its website explains that the entity "operate[s] as if . . . an independent law firm."¹⁵⁶ The office consists of seven staff attorneys and one felony supervising attorney, as well as ten contract attorneys.¹⁵⁷

151. *Id.*

152. *Best v. Grant Cnty.*, No. 04-2-00189-0, slip op. at 2 (Wash. Super. Ct. Nov. 2, 2005) (settlement agreement), https://opd.wa.gov/sites/default/files/2023-08/0402-2005_GrantCountySettlement.pdf [<https://perma.cc/FJ8P-5AZN>]. *Id.* at 12-17. According to an ACLU press release, the judge wrote that "it was 'virtually uncontested' that the Grant County public defense system in place before April 2004 'suffered from systemic deficiencies,' such as public defenders with excessive caseloads or little meaningful supervision." Press Release, ACLU, Washington Judge Finds Grant County's Public Defense System Deficient (Oct. 20, 2005, 12:00 AM), <https://www.aclu.org/press-releases/washington-judge-finds-grant-countys-public-defense-system-deficient> [<https://perma.cc/LF5L-LKD8>]. "The system also allowed county prosecutors to interfere with the selection of defense attorneys and with the funds for defense experts and investigators." Press Release, *supra*.

153. *Best v. Grant Cnty.*, slip op. at 2.

154. *See id.* (discussing the terms of the settlement).

155. *Public Defense*, GRANT CNTY., <https://www.grantcountywa.gov/848/Public-Defense> [<https://perma.cc/ECG9-Z4DM>].

156. *Public Defense*, *supra* note 155.

157. *Public Defense Staff Directory*, GRANT CNTY., <https://www.grantcountywa.gov/Directory.aspx?did=111> [<https://perma.cc/K22E-TJEA>] (listing seven staff attorneys, one felony supervising attorney, an investigator, a director, and an administrator). Among the ten contract attorneys, one has an address in greater Seattle, and one has an address in Spokane. *See Contract Attorneys*, GRANT CNTY., <https://www.grantcountywa.gov/852/Contract-Attorneys> [<https://perma.cc/G3U3-MBRQ>].

V. OKANOGAN COUNTY AS A CASE STUDY

This Part takes a closer look at one county's efforts to keep its prosecutor's office and indigent-defense function staffed. It details the consequences of the rural lawyer shortage, including the considerable stress put on local coffers because of state structures that assign primary responsibility for these legal-system functions to county government. This Part also reveals how local stakeholders are grappling with proposed lower caseload caps for indigent-defense attorneys. In particular, one local stakeholder has expressed concerns about the potential over-policing of minor crimes and other effects on local prosecutors. We also encountered concerns about system-involved individuals' preference for local counsel—as opposed to remote counsel—and the county's inability to meet that preference.

As noted above, Okanogan County contracts with a single law firm, Burica Law PLLC, to provide indigent-defense services. Burica Law's principal is solo practitioner Anna Burica, a 2015 law graduate who moved to Okanogan County in 2018 to do land-conservation work.¹⁵⁸ When the grant funding for the conservation work ended, Burica began doing contract indigent-defense work for the county, and she eventually took on the management of the work.¹⁵⁹

The average attorney in Okanogan County who carries a full caseload handles about thirteen felonies or thirty-three misdemeanors in a given month.¹⁶⁰ Burica contracts with ten other attorneys to represent these clients.¹⁶¹ Burica's base contract with Okanogan County is worth slightly over \$1 million, and it requires her firm to pay investigators, office staff, and the other defense attorneys.¹⁶² After entering into that contract, the Board of Commissioners agreed to pay Burica Law additional funds “for the purpose of recruiting and retaining

¹⁵⁸. Anna Burica Interview, *supra* note 141. Burica grew up in McCall, Idaho. *Id.*

¹⁵⁹. *Id.*; Amendment to Contract for the Provision of Legal Services Between Okanogan County, Washington and Burica Law, PLLC (Nov. 7, 2023) (on file with authors).

¹⁶⁰. See Marcy Stamper, *Public Defenders Struggle with Big Caseloads*, METHOW VALLEY NEWS (Feb. 29, 2024), <https://methowvalleynews.com/2024/02/29/public-defenders-struggle-with-big-caseloads> [<https://perma.cc/8XXM-VQL8>]; Email from Anna Burica, Burica L. PLLC, to Lisa R. Pruitt (Aug. 16, 2024, 2:56 PM PT) (on file with authors).

¹⁶¹. Anna Burica Interview, *supra* note 141.

¹⁶². Contract for the Provision of Legal Services Between Okanogan County, Washington and Burica|Haas, PLLC 10 (July 5, 2022) (on file with authors). The details of this budget are revealed in the annual application Burica submits on behalf of Okanogan County for a portion of state indigent-defense funds. It shows \$106,305.75 spent on investigators, \$11,087.50 spent on experts, and \$50 spent on interpreter services for attorney-client meetings. 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Okanogan County, Washington 6 (Aug. 21, 2023) (on file with authors).

staff.”¹⁶³ As of December 2023, the total amount Okanogan County was committed to paying the Burica firm for 2024 was \$1.34 million,¹⁶⁴ and the Board of Commissioners expressed an interest in bringing “their public defense office in house,” noting other counties had done so.¹⁶⁵

The \$1.34 million quickly proved inadequate, and in March 2024, the Okanogan County commissioners approved Burica’s request for an additional \$139,500 for the remaining nine months of the calendar year.¹⁶⁶ The record of the proceedings reveals the stress it placed on the county’s budget. The commissioners stated that they could only afford

up to X amount of dollars, and if the state doesn’t assist then the system is going to get more gummed up and it’s going to create major issues for the County, and people in jail will just have to be let go because they won’t get a court date because of the lack of public defense. Commissioners discussed the fact that these changes will cause the county to have to cut funding from other sections of the county budget and focus it to public defense, which will not work long term, and the state has to start helping more.¹⁶⁷

Some of the rising costs stem from Burica’s struggle to recruit and retain attorneys to meet the need in Okanogan County. She advertised the contract

163. Agreement for Additional Funding for Public Defense Services, Board of County Commissioners, Okanogan County (Dec. 5, 2023) (on file with authors).

164. This is up from a budget of \$1.22 million in 2022. 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Okanogan County, Washington 1 (Aug. 25, 2023) (on file with authors).

165. Record of Proceedings, Bd. of Cnty. Comm’rs, Okanogan Cnty. 1 (Dec. 11, 2023) (on file with authors). In November 2023, the Okanogan County Board of Commissioners accepted a Washington Office of Public Defense Grant for \$48,919. Record of the Proceedings, Bd. of Cnty. Comm’rs, Okanogan Cnty. 7 (Nov. 7, 2023) (on file with authors). The grant is for the calendar year 2024 and represents the annual state contribution to the county’s public-defense effort. It is distributed pursuant to a statutory formula under Chapter 10.101 RCW. The funds must be used “to improve the quality of legal representation directly received by indigent defendants.” *County/City Use of State Public Defense Funding*, WASH. STATE OFFICE OF PUB. DEF. (2020), https://opd.wa.gov/sites/default/files/2023-08/00797-10.101_PermittedUses2020.pdf [<https://perma.cc/PR2X-8H3H>]. The funds cannot be used, for example, for indigency screening costs, purely administrative functions, technology systems or administrative equipment for county administrative staff, court staff, or judicial officers. *See id.* Funds also cannot be used for county attorney time. *See id.*

166. Record of the Proceedings, Bd. of Cnty. Comm’rs, Okanogan Cnty. 1 (Mar. 19, 2024) (on file with authors) (specifying that payments of \$15,500/month would be made).

167. *Id.* at 1-2. Burica is also aware of the “robbing Peter to pay Paul” phenomenon when she asks for additional funds. Anna Burica Interview, *supra* note 141.

indigent-defense work on offer there with the National Legal Aid and Defender Association (NLADA) in 2023 with these details:

Must commit to traveling to Okanogan at least two days per week for court. Contractors provide their own malpractice coverage. Low-cost office use and legal assistant available. Four Defense investigators are under contract for use at will by defense attorneys at no cost to contract counsel. All interpreter services are provided by the County at no cost to defense counsel.¹⁶⁸

The notice's specification that attorneys must travel to Okanogan twice a week for court anticipates that attorneys living outside Okanogan County will apply and that they will continue to reside outside the county. This is a logical assumption, given that only three of the ten attorneys providing public defense in Okanogan County live in the county.¹⁶⁹ Two others live in neighboring Wenatchee (Chelan County),¹⁷⁰ a ninety-minute drive away, and one lives in Douglas County, contiguous to both Chelan and Okanogan.¹⁷¹ Another lives in Spokane, which is about a three-hour drive from Okanogan, and three live on the West Side, one in Seattle and two on the Olympic Peninsula.¹⁷² Those living on the West Side are more than three hours away in summer and up to five hours away in winter, when a mountain pass is closed.¹⁷³

According to Burica, "Judges allow [these attorneys] to appear in court via video, reluctantly."¹⁷⁴ In a 2024 interview with the *Seattle Times*, Okanogan Superior Court Judge Robert Grim echoed that regret: "You want that face-to-face contact before making a big decision, and a lot of people just don't get that opportunity."¹⁷⁵

168. *Contract Indigent Defense Attorney*, NAT'L LEGAL AID & DEF. ASS'N, <https://www.nlada.org/node/60561> [<https://perma.cc/6BTE-QKR2>]. An ad Burica placed with the Washington Defender's Association uses very similar language. *Burica Law, PLLC Seeks Contract Indigent Defense Attorney*, WASH. DEF. ASS'N (Oct. 25, 2023), <https://web.archive.org/web/20240414163513/https://defensenet.org/burica-law-llc-seeks-contract-indigent-defense-attorney> [<https://perma.cc/J9FG-WGBX>].

169. Anna Burica Interview, *supra* note 141.

170. *Id.*

171. Zoom Interview by Lisa R. Pruitt with Ryan Feeney, Cont. Pub. Def., Okanogan Cnty. (July 19, 2024) [hereinafter Ryan Feeney Interview].

172. *Id.*

173. Anna Burica Interview, *supra* note 141; see also Beekman, *System Breaking Down*, *supra* note 58 (reporting that Okanogan County then had contracts with 11 attorneys, of whom only two lived in Okanogan County).

174. Beekman, *System Breaking Down*, *supra* note 58.

175. *Id.*

As for the frequency and impact of these remote appearances, Burica says the contract attorneys are expected to be in court for trial and “bigger motions,” although which motions require in-person appearances is to some degree up to attorneys’ own discretion.¹⁷⁶ “Settlements are in person and obviously trial[s] are in person.”¹⁷⁷ Attorneys are also expected to be present for pleas in superior court, where felonies are heard, but not in district court, where misdemeanors are heard.¹⁷⁸ Attorneys are also expected to be present for arraignments,¹⁷⁹ which are held weekly in Okanogan County.¹⁸⁰ Burica encourages the contract lawyers to “regularly . . . visit, to meet with their clients,” but those attorneys, she adds, “manage their schedule[s].”¹⁸¹ Burica explained that it “boils down to your professional discretion as an attorney. But is it important that you have counsel sitting next to your client in that courtroom? Like, if my client has to testify, I want to be in the room with them.”¹⁸²

Burica reported that some clients have complained about having appointed as counsel a defense attorney who is only available remotely. She explained:

They want an in-person attorney, they want a local attorney. And I understand that. But I do believe that having someone is better than, hey . . . there’s only three of us here in person, so your options are buckle up and wait for an attorney or deal with a person who’s remote, because turns out, we need to sleep. And so we can’t take everyone.¹⁸³

Asked if the judges are concerned about attorneys appearing remotely, Burica responded:

Superior court is being very accommodating. They understand. I think all of the judges understand that this is the world we live in, and that basically we’re going to have to get used to it, that . . . getting people to move out here is very difficult.¹⁸⁴

176. Anna Burica Interview, *supra* note 141. Washington State also allows pre-approved parties to attend their hearings remotely. See *infra* note 173.

177. Anna Burica Interview, *supra* note 141.

178. *Id.*

179. *Id.*

180. *Id.*; Ryan Feeney Interview, *supra* note 171.

181. Anna Burica Interview, *supra* note 141.

182. *Id.*

183. *Id.*

184. *Id.*

The court exercises discretion over whether out-of-custody defendants are permitted to appear remotely.¹⁸⁵ Okanogan County’s district court judges have expressed a strong preference that defendants appear in person, especially when they enter pleas.¹⁸⁶ Nevertheless, one Okanogan County District Court judge led the push for a change in the Washington State District Court’s procedures to permit attorneys to appear on behalf of their clients in limited circumstances, with the client’s consent.¹⁸⁷

When asked about recruiting defense attorneys to work in Okanogan County, Burica explained:

Even if we had all the money, there aren’t enough defense attorneys and getting them [is hard]. You know, if I have a choice between Bellingham and Okanogan, 90% of the people are going to choose Bellingham. So it’s really hard . . . to find people who want to live in rural Washington. I mean, rural anywhere. But it takes a certain type of person to live, I think, in a rural community.¹⁸⁸

In the recruitment notice she placed with both NLADA and WSBA, Burica nevertheless touted the community’s beauty. In a sense, she also touted Okanogan’s poverty, linking the latter to the social-justice motivations of some lawyers: “Great opportunity to live and work in a beautiful rural setting and serve a poverty-stricken diverse population. Spanish speaking attorneys encouraged to apply!”¹⁸⁹ The best-compensated attorney among the full-time attorneys who

185. *District Court*, OKANOGAN CNTY., WASH., https://www.okanogancounty.org/government/district_court_ [<https://perma.cc/BA4Z-7VWA>] (“If you have a hearing, you must be pre-approved by the Court to appear remotely. If you have not been pre-approved, you must appear in person at the courthouse in Okanogan.”).

186. Telephone Interview by Lisa R. Pruitt with Teddy Chow, Deputy Prosecuting Att’y, Okanogan Cnty. (June 27, 2024) (on file with authors).

187. Rule 3.4, which became effective July 9, 2024, was introduced in 2022, by Judge Charles Short (Okanogan) on behalf of the District and Municipal Courts Judges’ Association. 22-07 Wash. Reg. 22 (Mar. 31, 2022); WASH. CRIM. RULES CT. LTD. JURISDICTION 3.4 (including guidelines for the use of remote technology for court appearances). Remote observation of court in the six counties as part of the Schwartz and Sherman study reveals that individuals sometimes must nevertheless appear because they have not yet been appointed a public defender—and thus do not have a lawyer to appear in their stead.

188. Anna Burica Interview, *supra* note 141.

189. See WASH. DEF. ASS’N, *supra* note 168. For comparison’s sake, the Kittitas County Department of Public Defense advertised to hire new public defenders in 2024 with this description:

Situated in central Washington between the foothills of the stunning Cascade Mountains and the mighty Columbia River, Kittitas County residents enjoy limitless activities and recreation opportunities year-round. With over 200 days of

contract with Burica to provide indigent defense in Okanogan County is paid \$8,500 per month (\$102,000 per year) and lives in Okanogan County.¹⁹⁰ Several other contract attorneys are part-time; most certify that they devote 95% to 99% of their practices to indigent defense.¹⁹¹

Burica also linked the challenges she faces in recruiting attorneys to the dearth of housing in Okanogan County:

The housing situation is very difficult. So even if I can find someone who wants to live out here, finding somewhere for them to live is . . . there aren't a lot of options. And you have to pay [for] that, or you have to pay enough for them to be able to buy a home.¹⁹²

Burica has partially solved the short-term housing problem by renting an apartment, at her firm's expense, where any contract attorney can stay when in town for court appearances or to meet with clients.¹⁹³

The lower caseload limits proposed by WSBA have naturally attracted the attention of Okanogan County stakeholders. The county commissioners discussed the proposed lower caps on public-defender caseloads and the "huge

sunshine each year, residents and visitors can enjoy activities including hiking, camping, numerous golf courses, fishing and boating, horseback riding, cross country skiing, snowboarding, snow shoeing, snowmobiling, climbing, and backpacking.

Residents here enjoy the small-town feel with easy access to Seattle, just a two hour drive from Ellensburg, the largest city in Kittitas County. Ellensburg is well known for its friendly residents and rural life-style, along with summer music festivals, seasonal Farmer's Market, and the annual Kittitas County Fair and Ellensburg Rodeo.

Dep't of Pub. Def., *Public Defense Attorney*, KITTITAS CNTY., WASH., <https://www.co.kittitas.wa.us/uploads/hr/job-descriptions/1836/kc-PUBLI.pdf> [<https://perma.cc/4EG7-G2N8>]. Kittitas was also able to tout the jobs as a "benefit and retirement-eligible position." Dep't of Pub. Def., *supra*.

190. Professional Services Agreement for Legal Representation of Indigent Persons in Okanogan County Between Burica | Haas, PLLC, and Randy Thies 4 (Apr. 4, 2022) (on file with authors). When Burica resigned her position in November 2024, Okanogan County established a Department of Indigent Defense and hired Thies to direct it. See *infra* notes 226-228 and accompanying text.

191. 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Okanogan County, Washington 12 (Oct. 21, 2023) (on file with authors).

192. Anna Burica Interview, *supra* note 141.

193. *Id.* Burica says she considers the rent for the apartment "overhead." She does not charge the subcontracting attorneys to stay in the apartment, but she does expect them to clean it when they leave. Email from Anna Burica to Lisa R. Pruitt (Jan. 20, 2025, 6:00 PM) (on file with authors).

burden” it will put on counties across the state.¹⁹⁴ These local elected officials spoke of the need “to hold the state more accountable” and planned to get legal advice on how to do so.¹⁹⁵

Ryan Feeney, a part-time contract lawyer from Douglas County who provides indigent defense for individuals charged with misdemeanors in Okanogan County, opined that the new lower caseload limits are not “happening soon enough.”¹⁹⁶ He reasoned:

It’s going to force governments to pick and choose what kind of charges they’re going to focus on and to let some of the other ones go . . . Just because the case load number goes down to 120 doesn’t mean necessarily the police are going to not arrest folks, and so from the defense side, the prospect is, “Okay, we got to bring in a whole bunch more attorneys. How are we going to do that?”

From the government side, the question will be, “Okay, well, are we going to keep prosecuting the law in the same way.”¹⁹⁷

Feeney continued:

From a policy and political standpoint, it’s more conservative here. There’s more focus on public safety . . . You know the government is going to have to take a look at well, now we’ve got to employ 20 public defenders rather than 10. They’re not going to take a pay cut, so we have to either increase our overall budget to be able to fund that level of public defense or we have to change the way that we enforce the laws.¹⁹⁸

Feeney suggested the high arrest rates for misdemeanors might need to fall. As an example of crimes that should perhaps not be charged, Feeney explained:

[T]he annual Omak Stampede brings in a lot of people on one or two weekends a year and we’ll see just massive numbers [of misdemeanor charges] come through. And we’ve got to deal with that. Now there’s petty crime that occurs. I don’t know if I would say petty, I mean. They’re not minor, but they’re misdemeanor. They are like assaults and thefts, malicious mischiefs, disorderly conducts, drinking in public.

194. *Record of the Proceedings*, OKANOGAN CNTY. (Mar. 19, 2024), <https://cms9files.revize.com/okanoganwa/March%2019,%202024.pdf> [<https://perma.cc/Q3UW-CZZK>].

195. *Id.*

196. Ryan Feeney Interview, *supra* note 171.

197. *Id.*

198. *Id.*

. . . I would say like the lowest level crimes that I deal with are “no valid operator’s license.” You can get charged with a crime in Washington for driving a car from a dealership without a demonstration permit, and I’ll get cases like that and it’s like, why, what are we doing?¹⁹⁹

Similarly, law enforcement officials are concerned that the proposed reforms would undermine their efforts. Deputy Prosecuting Attorney Teddy Chow expressed opposition to the dramatic changes proposed to indigent-defense caseloads because, he reasoned, they will put prosecutors out of jobs. His thinking was that prosecutors will have to drop many cases when public defenders are not available to meet the speedy-trial guarantee, eventually leading to a drop in employment of deputy prosecutors.²⁰⁰ Chow also discussed what he perceived as the need to better screen individuals for their entitlement to indigent defense. He described a recent meeting with Burica and Okanogan County judges regarding this matter, reporting a lack of progress toward solutions.²⁰¹

In fact, Okanogan County has in recent years also struggled to retain an elected prosecuting attorney and deputies.²⁰² The turmoil began when the man elected prosecuting attorney in 2018 resigned from office just two years into his term, citing budget woes that made it difficult for him to run the office effectively.²⁰³ That elected prosecutor, Arian Noma, who identified as Black and

199. *Id.*

200. Telephone Interview with Teddy Chow, *supra* note 186. In fact, that is already happening in some Washington counties with too few public defenders, even at the current caseload standards. See Cameron Probert, *Accused Rapist, Sex Offender and Others Released Because of Benton Attorney Shortage*, TRI-CITY HERALD (June 7, 2024, 5:22 PM), <https://www.tri-cityherald.com/news/local/crime/article289079719.html> [<https://perma.cc/BT2K-UENJ>]; Cameron Probert, *Longtime Tri-Cities Defense Leader Leaving. WA Courts Can’t Handle What’s Coming, He Says*, TRI-CITY HERALD (Aug. 12, 2024, 10:59 AM), <https://www.tri-cityherald.com/news/politics-government/article290837314.html> [<https://perma.cc/XE6C-ENUH>]; Cameron Probert, *No End in Sight for Benton County Defense Attorney Shortage. 6 Suspects Already Freed*, TRI-CITY HERALD (June 11, 2024, 5:00 AM), <https://www.tri-cityherald.com/news/local/crime/article289156234.html> [<https://perma.cc/H87M-C3YH>].

201. Telephone Interview with Teddy Chow, *supra* note 186.

202. See Carissa Byrne Hessick, Sarah Treul & Alexander Love, *Understanding Uncontested Prosecutor Elections*, 60 AM. CRIM. L. REV. 31, 32 (2023) (noting that “many prosecutor elections are uncontested and uncompetitive”); Quinn Yeagain, *Sharing Elected Prosecutors*, 67 S.D. L. REV. 523, 531 (2024) (observing that “there are regularly recorded cases of no-candidate prosecutorial elections taking place in rural areas”).

203. In 2018, Arian Noma was elected prosecutor of Okanogan County after running a private practice in the county for four years. Noma, a Republican, vowed to seek prosecutorial reform and “focus on rehabilitation instead of incarceration or convictions, especially in how the county handles non-violent offenders, particularly juveniles.” Marcy Stamper, *On the Record: Arian Noma Reviews Progress After 18 Months in Office*, METHOW VALLEY NEWS (June 17, 2020),

Native American, also alleged that members of the community engaged in racially motivated intimidation of him and his family.²⁰⁴

Regarding the budget, Noma said his office faced a backlog of cases due to inadequate funding.²⁰⁵ When he resigned, Noma wrote a letter to the citizens of Okanogan County asserting that “Okanogan County’s budget crisis is one of the most pressing dilemmas and threats to public safety.”²⁰⁶ Citing the excessive caseloads carried by two deputy prosecutors handling felonies, Noma asserted that his office needed “at least seven more attorneys and three more support staff to carry out their duties.”²⁰⁷ Noma said he had repeatedly asked the Board of Commissioners for additional funds to hire these attorneys, but without success.²⁰⁸

After Noma resigned, the Okanogan County commissioners hired a local attorney who had at one time worked as a contract attorney providing indigent

<https://methowvalleynews.com/2020/06/17/on-the-record-arian-noma-reviews-progress-after-18-months-in-office> [<https://perma.cc/CHS5-SCEA>]. Noma denounced the “overcriminalization of minor infractions.” *Id.*; see also Marcy Stamper, *County Prosecutor Arian Noma Resigns*, METHOW VALLEY NEWS (Dec. 16, 2020) [hereinafter Stamper, *Prosecutor Resigns*], <https://methowvalleynews.com/2020/12/16/county-prosecutor-arian-noma-resigns> [<https://perma.cc/R5SU-DBFN>] (detailing Noma’s policy platform for criminal justice reform). Further illustrating the extraordinary turnover, when elected to the office, Noma defeated an attorney, Brandon Platter, who had been appointed to serve out the term of the prior prosecutor, who had resigned to take another job. Stamper, *Prosecutor Resigns*, *supra*.

204. Noma asserted that his home and minor children had been watched and his vehicles were followed and photographed. Stamper, *Prosecutor Resigns*, *supra* note 203. Noma also mentioned a Facebook page called “No More Noma” that disseminated his vehicle information and details that would make it possible for people to find his home. The page asserted that Noma’s reforms, “which had reduced jail numbers to an all-time low, would be obvious to people ‘when the same criminals are burglarizing your house, murdering your loved ones or raping small children.’” *Id.* Noma asserted that his white predecessors had not experienced similar attacks on social media. *Id.* Noma said in his resignation letter that he had “routinely received vile attacks about my race, ancestry, and even the color of my skin.” Kip Hill, *Okanogan County Prosecutor Resigns, Citing Budget Woes and ‘Racially Motivated Attacks,’* SPOKESMAN-REV. (Dec. 27, 2020), <https://www.spokesman.com/stories/2020/dec/27/okanogan-county-prosecutor-resigns-citing-budget-w> [<https://perma.cc/8GCA-FL7A>].

205. Stamper, *Prosecutor Resigns*, *supra* note 203.

206. *Id.*

207. *Id.*

208. See *id.* (describing Noma’s assertion that he had only three trial deputies to handle the work of five; citing unfiled cases and trials delayed, dismissed, or lost due to lack of personnel).

defense.²⁰⁹ She lasted one year in the post.²¹⁰ The commissioners next encouraged a lawyer who had previously advised the county on civil matters to apply for the prosecutor's job.²¹¹ When that attorney, Albert Lin, was hired, three deputy prosecutor positions were vacant.²¹²

During the process of interviewing Lin and other applicants for the position, the commissioners raised the salary of the county's elected prosecutor.²¹³ The Board of Commissioners did so out of recognition of "the county's difficulty in recruiting attorneys to fill vacancies, the complexity of the work, and compensation for similar positions in comparable counties."²¹⁴ What one commissioner referred to as the "stop-the-bleeding" resolution²¹⁵ passed in November 2022, raising the portion of the elected prosecutor's salary that the county pays by about \$10,000.²¹⁶ With a state contribution to the elected prosecutor's salary of just over \$114,000,²¹⁷ the total salary for the position rose to more than \$180,000.

209. See Marcy Stamper, *County Scrambles to Fill Prosecutor's Position—Again*, METHOW VALLEY NEWS (Feb. 2, 2022) [hereinafter Stamper, *County Scrambles*], <https://methowvalleynews.com/2022/02/02/county-scrambles-to-fill-prosecutors-position-again> [<https://perma.cc/G3ND-PZAN>]; Marcy Stamper, *Okanogan County Names New Prosecutor*, METHOW VALLEY NEWS (Mar. 2, 2022) [hereinafter Stamper, *New Prosecutor*], <https://methowvalleynews.com/2022/03/02/okanogan-county-names-new-prosecutor> [<https://perma.cc/422H-F6GT>].

210. Stamper, *County Scrambles*, *supra* note 209.

211. Telephone Interview with Teddy Chow, *supra* note 186.

212. Stamper, *New Prosecutor*, *supra* note 209.

213. *Id.* The partisan nature of the prosecutor selection process has been described in several Okanogan County news stories, as a consequence of frequent turnover in the prosecutor's office there. *Id.*; Stamper, *County Scrambles*, *supra* note 209. The party of the prosecutor vacating the office submits nominations to the county commissioners, and that political party also puts questions to the prosecutorial candidates. Stamper, *New Prosecutor*, *supra* note 209. When the county commissioners appointed Albert Lin to the prosecutor's office in early 2022, he and the other candidate completed questionnaires from the county's Republican Party. In addition to asking about management skills, the Republican Party questionnaire "posed more philosophical questions, including the candidates' views on governmental regulation, interpretation of the U.S. and state constitutions, and balancing public health and individual liberties." *Id.* They also asked about "public carrying of firearms and whether the candidate had 'any financial or political affiliation with George Soros.'" *Id.*

214. Stamper, *New Prosecutor*, *supra* note 209.

215. *Id.*

216. See *Okanogan County Commissioners' Resolution 180-2022: A Resolution to Amend Okanogan Counties [sic] Portion of Prosecutors Salary*, BD. OF CNTY. COMM'RS OKANOGAN, WASH. (Nov. 23, 2022), <https://cms9files.revize.com/okanoganwa/180-2022%20Prosecutor%20Salary%20Amendment%20County%20Portion.pdf> [<https://perma.cc/86HM-6VVD>]. The annual raise by the county was from \$57,765 to \$67,415.50. *Id.*

217. WASH. REV. CODE ANN. § 36.17.020(11) (West 2024). This amount is half the salary of a Superior Court Judge. WASH. REV. CODE ANN. § 43.03.012 (West 2024).

Like their indigent-defense counterparts, deputy prosecuting attorneys increasingly live far from the counties where they work. Chow, for example, who heads the prosecution of misdemeanors, lives in metropolitan Benton County, a three-hour drive away.²¹⁸ He travels to Okanogan once a month, where he typically spends three days working in the office.²¹⁹ Regarding compensation, Chow commented that he's never been paid as much as he is earning from Okanogan County, though he previously worked as a deputy prosecutor for several metropolitan counties in the region.²²⁰

Okanogan County's judiciary also illustrates a sort of multi-county round-robin phenomenon with criminal-legal-system personnel in rural Washington. Both of the county's superior court judges, one appointed in 2022 and one in 2023, are relatively young.²²¹ Both grew up in Okanogan County, and both did contract indigent-defense work in the region early in their careers.²²² The 2023 appointee to the bench was serving as elected prosecutor in neighboring Ferry County when she got her judicial appointment.²²³ When that happened, a Ferry

218. Telephone Interview with Teddy Chow, *supra* note 186. Another deputy prosecutor in the Seattle area handles felonies. *Id.*

219. *Id.*

220. *Id.*

221. See Press Release, Wash. Governor Jay Inslee, Inslee Appoints Robert Grim to the Okanogan County Superior Court (Feb. 02, 2022), <https://governor.wa.gov/news/2022/inslee-appoints-robert-grim-okanogan-county-superior-court> [<https://perma.cc/D7XL-EECG>]; Press Release, Wash. Governor Jay Inslee, Gov. Inslee Appoints Kathryn I. Burke to the Okanogan County Superior Court (Nov. 30, 2023), <https://governor.wa.gov/news/2023/gov-inslee-appoints-kathryn-i-burke-okanogan-county-superior-court> [<https://perma.cc/3HT7-DVFQ>].

222. Marcy Stamper, *Grim Named to OK Superior Court*, METHOW VALLEY NEWS (Feb. 16, 2022), <https://methowvalleynews.com/2022/02/16/grim-named-to-ok-superior-court> [<https://perma.cc/HAQ9-G3WF>]; Marcy Stamper, *Kathryn Burke Appointed Superior Court Judge*, METHOW VALLEY NEWS (Dec. 16, 2023) [hereinafter Stamper, *Burke Appointed*], <https://methowvalleynews.com/2023/12/07/kathryn-burke-appointed-superior-court-judge> [<https://perma.cc/EHW2-2DDR>].

223. Stamper, *Burke Appointed*, *supra* note 222. Further illustrating the round-robin effect, when Burke left her post as elected prosecutor in Ferry County to become a Superior Court judge in Okanogan County, the deputy prosecutor in that office, Nick Force, assumed the post. Andrew Patrick Interview, *supra* note 103. When Force left to join the bench, Jesse Lamp, who had moved to Stevens County to take the job Andrew Patrick (who had recently left to start his own law firm and contract to provide public defense in Ferry County) had held as a deputy prosecutor there, moved to Ferry County to serve as prosecutor. Andrew Patrick Interview, *supra* note 103. In November 2024, Jesse Lamp resigned as Ferry County Prosecutor, and Michael Golden is currently the interim prosecutor for Ferry County. Email from Jason Walker, Wash. Ass'n of Prosecuting Att'ys, to Lisa R. Pruitt (Nov. 4, 2024, 11:04 AM) (on file with authors); *Prosecutor, FERRY CNTY.*, https://www.ferry-county.com/law_and_justice/prosecutor.php [<https://perma.cc/Z5KX-7UDK>].

County deputy prosecutor took over there, but he was in that role only a short time before he became the district court judge in Ferry County.²²⁴ At that point, a deputy prosecutor from neighboring Stevens County became the indigent-defense contract attorney for Ferry County, leaving a vacancy in Stevens County, which has also struggled to keep a full complement of attorneys.²²⁵

Indeed, as this Essay was in production, Anna Burica gave notice that she was terminating her contract to manage Okanogan County's indigent defense in order to accept a judicial position with the Colville Confederated Tribes, whose territory straddles Ferry and Okanogan County.²²⁶ Nearly two months into a 180-day notice period for terminating the contract, the Okanogan County Commissioners voted to bring the indigent-defense function in house.²²⁷ In February 2025, they hired the only applicant for the role, who previously worked as a contract indigent defense attorney for the County.²²⁸ These recent events in Okanogan County convey a sense of the struggle to keep the legal systems staffed in a sparsely populated county where relatively few attorneys live and work—and where even fewer practice criminal law.

VI. THE IMPACT ON COUNTY GOVERNMENT

The situation in Okanogan County—with its knock-on effects in neighboring Ferry County—is unique in some ways, but it is also representative of the challenges playing out in many Washington counties. While the attorney shortage is an important factor, another cause of this crisis is fiscal: county governments bear the lion's share of responsibility to fund indigent defense, and they also fund substantial portions of prosecutorial and judicial functions. The result is spatial inequality in the provision of indigent defense, which stems in part

224. Andrew Patrick Interview, *supra* note 103.

225. *Id.*

226. Marcy Stamper, *Okanogan County Considers Bringing Public Defenders In-House*, METHOW VALLEY NEWS (Dec. 12, 2024), <https://methowvalleynews.com/2024/12/12/okanogan-county-considers-bringing-public-defenders-in-house> [<https://perma.cc/JR6Z-WZNR>].

227. Marcy Stamper, *Okanogan County Will Bring Public Defenders In-House*, METHOW VALLEY NEWS (Jan. 8, 2025), <https://methowvalleynews.com/2025/01/08/okanogan-county-will-bring-public-defenders-in-house> [<https://perma.cc/U9QF-6TA5>].

228. Marcy Stamper, *Okanogan County's New Office of Public Defender Begins to Take Shape*, METHOW VALLEY NEWS (Feb. 20, 2025) <https://methowvalleynews.com/2025/02/20/okanogan-countys-new-office-of-public-defender-begins-to-take-shape> [<https://perma.cc/45CY-ZXJA>].

from variations in each county's ability to finance this constitutionally mandated service.²²⁹

To illuminate these impacts, this Part explores Washington State trends in county-government spending on indigent defense, prosecution, and the judiciary. The data reveal that the rural counties, on average, spend more per capita on indigent defense than their urban counterparts. Nevertheless, the six study counties underspent on indigent defense relative to prosecution to a greater degree than the six largest urban counties. That said, the averages are less telling because of several outliers. Okanogan County and Grant County were outliers at the high end of indigent defense spending relative to prosecution spending, and Ferry County was an extreme outlier at the low end. Rural and urban counties spend roughly the same proportion of their budgets on judicial functions. Finally, revenue from fines and fees made up a miniscule portion of revenue all along the rural-urban continuum.

A. *Indigent Defense*

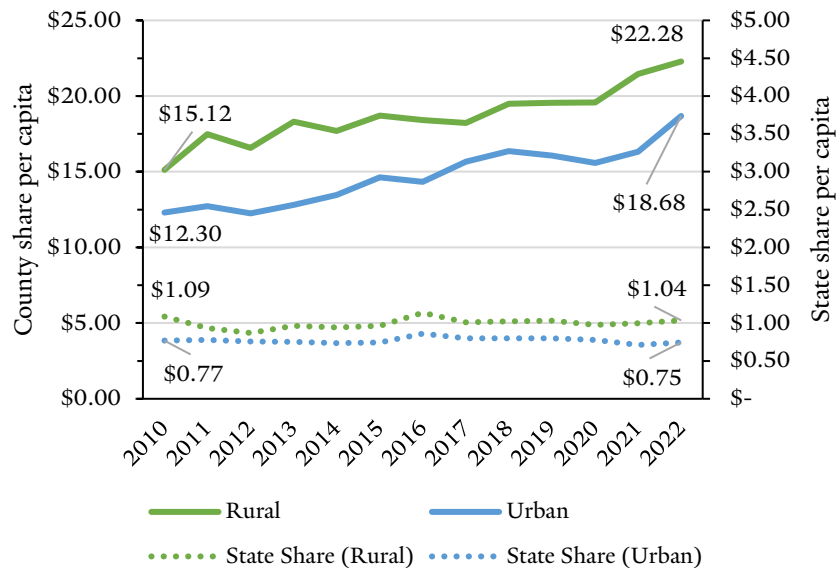
Data from the Washington State Auditor and the Washington State Association of Counties reveal that indigent defense is more expensive to deliver in the study's rural counties than in urban ones, with per capita expenditures about 20% higher in the former. Further, costs have been on the rise in recent years: from 2010 to 2022, per capita spending on indigent defense rose in the six rural counties by 47%.²³⁰ Indigent-defense costs escalated at a slightly greater pace in urban counties, by 52%, during the same period.²³¹

229. See Linda M. Lobao, Gregory Hooks & Ann R. Tickamyer, *Advancing the Sociology of Spatial Inequality*, in *THE SOCIOLOGY OF SPATIAL INEQUALITY 1-2* (Linda M. Lobao, Gregory Hooks & Ann R. Tickamyer eds., 2007) (describing sociology's spatial turn, attending to who gets what based on where they are); see also Pruitt & Colgan, *supra* note 122 (offering a spatial inequality analysis of provision of indigent defense in Arizona).

230. WASH. STATE OFF. OF THE AUDITOR, FINANCES AT A GLANCE FOR FY 2020-2023 (2024) [hereinafter WASH. STATE BUDGET DATA] (on file with authors). The rise was from \$15.12 in 2010 to \$22.28 in 2022. *Id.*

231. *Id.* The rise in urban counties was from \$12.30 to \$18.68. *Id.*

FIGURE 2. COUNTY SHARE OF PER CAPITA PUBLIC DEFENSE EXPENDITURES IN RURAL AND URBAN COUNTIES, 2010-2022²³²



Meanwhile, state contributions to indigent-defense expenses remained low and unchanged over time, at about \$0.77 per case in urban counties and \$1.00 per case in rural counties.²³³

In the six rural study counties, total spending on indigent defense increased more than 50% between 2010 and 2022, from \$4.1 million to \$6.2 million, while state contributions were virtually unchanged.²³⁴ Given the larger populations and caseloads, the six urban counties collectively spent about ten times as much as the six rural counties, but the trend remains the same. Indigent-defense spending increased more than 50%.²³⁵ Meanwhile, the state’s contribution increased only marginally.²³⁶

As of 2022, the most recent year for which data are available, Asotin County was bearing the greatest per capita cost for indigent defense among the study

²³². *Id.*

²³³. *Id.* Rural areas received *marginally* more state funding as a share of their total spending on public defense compared to urban counties (i.e., as a percentage of county spending on indigent defense, not in terms of dollars). *Id.* The rural-urban difference in state contributions is minimal once outliers (Whitman and King counties) are removed. *Id.*

²³⁴. *Id.* The slight rise over the dozen years was from \$272,459 to \$273,608. *Id.*

²³⁵. *Id.* The increase was from \$36,952,441 to \$59,584,962. *Id.*

²³⁶. *Id.* This increase was from \$2.2 million in 2010 to \$2.3 million in 2022. *Id.*

counties, at \$33.65.²³⁷ Recall that Asotin has just one contract attorney (volume discount, fixed cost) but pays many others \$150 per hour for overflow work.²³⁸ Meanwhile, neighboring Whitman County's cost was an outlier at the bottom end, spending just \$8.77 per capita.²³⁹ Among urban counties, King County was an outlier at \$37.12 per capita.²⁴⁰ These details are in Table 4.

²³⁷. See *infra* Table 4.

²³⁸. *Id.*

²³⁹. *Id.*

²⁴⁰. *Trial Court Public Defense Dashboard*, WASH. STATE ASS'N CNTYS., <https://wsac.org/trial-court-public-defense-dashboard> [<https://perma.cc/GQL2-YQ8K>].

TABLE 4. YEARLY COUNTY FIGURES FOR PER CAPITA SPENDING ON INDIGENT DEFENSE, 2018-2022²⁴¹

| Rural County | 2018 | 2019 | 2020 | 2021 | 2022 |
|----------------------------|----------------|----------------|----------------|----------------|----------------|
| Asotin | \$23.39 | \$23.85 | \$24.14 | \$33.37 | \$33.65 |
| Ferry | \$27.50 | \$27.34 | \$26.60 | \$27.28 | \$27.99 |
| Grant | \$32.70 | \$31.85 | \$31.41 | \$31.87 | \$28.38 |
| Kittitas | \$13.98 | \$14.52 | \$12.43 | \$12.31 | \$15.46 |
| Okanogan | \$23.59 | \$24.51 | \$23.71 | \$27.38 | \$28.64 |
| Whitman (outlier) | \$6.89 | \$8.03 | \$8.34 | \$10.21 | \$8.77 |
| <i>Average</i> | \$21.34 | \$21.68 | \$21.11 | \$23.74 | \$23.82 |
| <i>Average w/o Outlier</i> | \$24.23 | \$24.41 | \$23.66 | \$26.44 | \$26.82 |

| Urban County | 2018 | 2019 | 2020 | 2021 | 2022 |
|----------------------------|----------------|----------------|----------------|----------------|----------------|
| King (outlier) | \$32.42 | \$30.30 | \$29.70 | \$31.67 | \$37.12 |
| Pierce | \$18.82 | \$17.23 | \$14.86 | \$19.47 | \$20.92 |
| Thurston | \$20.88 | \$22.02 | \$20.64 | \$20.68 | \$23.73 |
| Snohomish | \$12.37 | \$12.49 | \$14.08 | \$13.79 | \$15.28 |
| Spokane | \$19.19 | \$19.78 | \$20.70 | \$17.61 | \$17.31 |
| Clark | \$12.64 | \$12.78 | \$11.56 | \$13.59 | \$19.91 |
| <i>Average</i> | \$19.39 | \$19.10 | \$18.59 | \$19.47 | \$22.38 |
| <i>Average w/o Outlier</i> | \$16.78 | \$16.86 | \$16.37 | \$17.03 | \$19.43 |

The rising cost of providing this constitutionally mandated service has caused growing concern among rural county governments. This is reflected, for example, in our detailed description of additional fund allocations in Okanogan County.²⁴² We see similar stresses expressed by officials in other counties.²⁴³

Some counties have imposed higher taxes to cover rising costs, but raising revenue through taxation can be a challenge in rural areas. When indigent-defense costs in Asotin County rose 43% in 2023, for example, one commissioner reported that the county would raise its sales tax rate.²⁴⁴ But given that most

241. See *id.*; WASH. STATE BUDGET DATA, *supra* note 230.

242. See *supra* text accompanying notes 160-167.

243. See, e.g., *Adjourned Meeting of the Board*, FERRY CNTY. COMM'RS 2 (March 11, 2024) (on file with authors) (considering a request for a pay increase for a judge pro tem). The crisis is also reflected in comments by county officials to the media. The Franklin County administrator, for example, declared, "We're at the precipice of collapse . . . And it's not just affecting us, it's the whole state." Beekman, *System Breaking Down*, *supra* note 58.

244. *Id.*; see also 2023 Application for Chapter 10.101 RCW Public Defense Improvement Funds, Asotin County, Washington ("[W]ith the funds currently available to us, it is a daunting task

retail activity in the area is across the state line in Lewiston, Idaho, the commissioner acknowledged that “the revenue bump will be modest.”²⁴⁵ Another non-metro official, this one on the West Side’s Olympic Peninsula, noted that his county’s revenue-generating potential was limited by the fact that 80% of its land area is owned by state and federal governments.²⁴⁶

Meanwhile, the resultant fiscal constraints on nonmetropolitan court systems have a range of consequences. Budget woes not only hamstring counties’ ability to recruit indigent-defense attorneys and prosecutors, but they also prevent counties from making other criminal legal system investments that could enhance procedural fairness.²⁴⁷ For example, many criminal defendants do not receive mailed notices of court dates due to housing instability.²⁴⁸ While many urban courts have invested in systems to send phone and text-message reminders of upcoming court appearances, none of the rural study counties have this capacity.²⁴⁹ As a result, many defendants miss their court dates. This leaves rural indigent-defense attorneys yet another task: ensuring their clients know of upcoming court appearances.²⁵⁰

Budgetary constraints also prevent local governments from investing in social services that could help prevent involvement in the criminal legal system²⁵¹ and support system-involved individuals in extricating themselves from the system. Particularly important are services that help individuals navigate the

to try and attract qualified personnel to our area. As funding remains static, our needs are burgeoning.”).

245. Beekman, *System Breaking Down*, *supra* note 58.

246. Letter from James Kennedy, Jefferson Cnty. Prosecutor, to Wash. Sup. Ct. (July 18, 2024) (on file with authors).

247. A significant part of the defense budget goes to investigations. See *State v. A.N.J.*, 168 Wash. 2d 91, 109 (2010). Prosecutors, on the other hand, often rely on law enforcement to investigate. Email from Katrin Johnson, Wash. Off. of Pub. Def., to Lisa R. Pruitt (Nov. 12, 2024, 11:48 AM PST). Historically, a reluctance to fund indigent defense has exacerbated difference between prosecutorial and defense resources, providing prosecutors greater access to investigative and expert assistance. Maybell Romero, *Lowball Rural Defense*, 99 WASH. U. L. REV. 1081, 1089 (2021) (citing Eve Brensike Primus, *Defense Counsel and Public Defense*, in 3 REFORMING CRIMINAL JUSTICE: PRETRIAL AND TRIAL PROCESS 121, 125 (E. Luna ed., 2017)).

248. See Becky Kramer, *Looking into Lock ‘Em Up*, WSU ALUMNI MAG. (2024), <https://magazine.wsu.edu/2024/04/29/looking-into-lock-em-up> [<https://perma.cc/Y73R-4BWQ>] (quoting Okanogan County Judge Robert Grim on his suggestion that such notice systems might be useful).

249. See Gross, *supra* note 3, at 196 (“[F]ailure-to-appear rates drop when defendants receive a phone or text message reminder about upcoming court appearances.”).

250. See Ryan Feeney Interview, *supra* note 171; Andrew Patrick Interview, *supra* note 103.

251. See Walton et al., *supra* note 11, at 24-25 (finding that many rural counties primarily deliver social services through the criminal justice system).

criminal legal system after an arrest,²⁵² including those that provide housing, transportation, and recovery support.²⁵³ These appear to diminish the likelihood of recidivism, but they are very often absent from rural areas due to lack of funds.²⁵⁴

B. Prosecution

The fiscal strain that indigent-defense provision puts on county governments is aggravated by the fact that those governments are also responsible for funding significant portions of the prosecutorial and judicial functions. The State of Washington contributes to each county an amount equal to half the salary of a superior-court judge to pay the county's elected prosecutor.²⁵⁵ The remainder of the costs, including those associated with employing deputy prosecutors, are borne by the county.²⁵⁶

This Section analyzes spending disparities between prosecutorial and indigent-defense functions across jurisdictions to assess whether defense services are adequately funded. First, we looked at parity or lack thereof between the prosecutorial and indigent-defense functions because a lack of parity signals concern that indigent defense may be underfunded.²⁵⁷ We found the spending imbalance between prosecution and indigent defense was greater in rural than in urban areas. In other words, there is a lower degree of parity in the six rural study counties combined than in the six most populous counties combined.

252. See, e.g., PARTNERS FOR JUST., <https://www.partnersforjustice.org> [<https://perma.cc/2AL9-2ZAT>]. The nonprofit organization Partners for Justice trains non-attorney advocates to embed in public-defender offices to assist clients with case navigation and provide wraparound services through networks of community-service providers, civil attorneys, and other local services they help build. The organization provides training in collaborative, client-led models of practice and works with individual offices to assess current practices and implement collaborative defense.

253. See Walton et al., *supra* note 11, at 4-5 (demonstrating that county governments have “limited local public funding” for jails and crucial public services, such as transportation).

254. See Schwartz & Sherman, *supra* note 11, at 6, 49.

255. See *supra* note 217 and accompanying text.

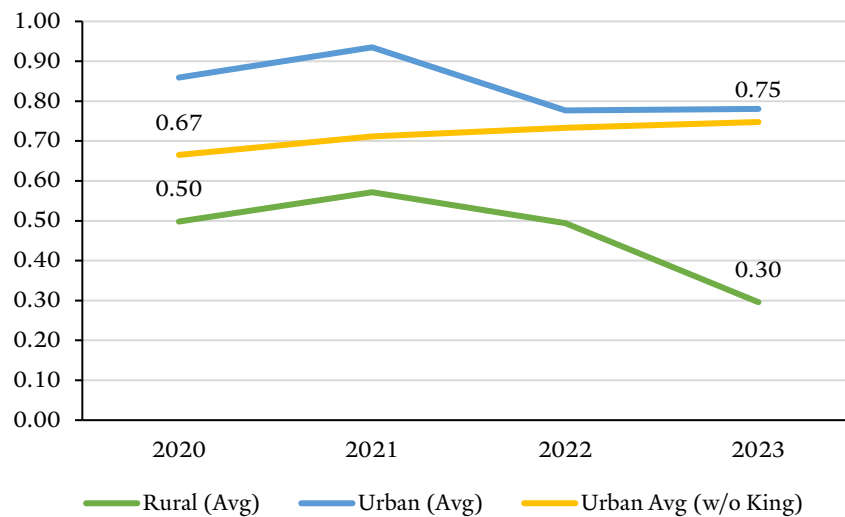
256. WASH. REV. CODE ANN. § 36.17.020(11) (West 2024) (“Upon receipt of the state contribution, a county shall continue to contribute towards the salary of the elected prosecuting attorney in an amount that equals or exceeds that contributed by the county in 2008.”); see also *supra* notes 216-17 (detailing the balance of state and local funds to pay the elected prosecutor of Okanogan County).

257. See Pruitt & Colgan, *supra* note 122, at 300-04 (first citing *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963); and then citing Ronald F. Wright, *Parity of Resources for Defense Counsel and the Reach of Public Choice Theory*, 90 IOWA L. REV. 219, 231 (2004)); *id.* at 301 (noting that “[i]n jurisdictions where indigent defense is underfunded in comparison to prosecution, the fairness of process afforded to indigent defendants is questionable”).

Importantly, in Washington State, each county's office of the prosecutor also provides counsel to the county on civil matters.²⁵⁸ The data we analyzed, provided by the Office of the State Auditor, do not disaggregate the civil and criminal functions. Thus, we refer to the amounts used in our analysis as "prosecution/legal services" while noting that this category overstates the county expenditures on criminal prosecutions.

Figure 3 compares spending on indigent defense relative to prosecution/legal services in the rural study counties, as well as in the state's six most urban counties. Specifically, it shows the amount spent on indigent defense per dollar spent on prosecution/legal services.

FIGURE 3. AMOUNT SPENT ON INDIGENT DEFENSE PER DOLLAR EXPENDED ON PROSECUTION AND LEGAL COSTS IN RURAL AND URBAN COUNTIES, 2020-2023²⁵⁹



²⁵⁸. MUN. RSCH. & SERVS. CTR. OF WASH., REVENUE GUIDE FOR WASHINGTON COUNTIES 154 (2024) (stating that “prosecuting attorneys serve dual roles acting on behalf of the state (in pursuing criminal cases) as well as the county and other local governments (in civil matters)”); see also Email from Jason Walker, Wash. Ass’n of Prosecuting Att’ys, to Lisa R. Pruitt (Aug. 19, 2024, 9:22 AM) [hereinafter Email from Jason Walker, Aug. 19, 2024] (on file with authors) (describing the civil and criminal roles of prosecuting attorneys in the State of Washington). The civil division in large counties, like King County, bills county agencies for legal services; thus, the funding for defense in larger metropolitan counties is greater than the funding for prosecution. *Id.*

²⁵⁹. WASH. STATE BUDGET DATA, *supra* note 230.

While indigent-defense spending has increased in recent years, spending on prosecution has risen at a much higher rate, widening the expenditure imbalance.²⁶⁰ In 2020, the study counties spent \$0.50 on indigent defense per dollar spent on prosecution/legal services. By 2023, that figure had dropped to \$0.30. Meanwhile, urban areas spent about \$0.70 for indigent defense per dollar spent on prosecution/legal services.

That said, some rural counties spent a great deal more on indigent defense relative to prosecution, even compared to several of the state's most urban counties. Grant and Okanogan counties were among the highest spenders on indigent defense per dollar spent on prosecution/legal services. The increased spending in Grant County might be due in part to the ACLU lawsuit, discussed above, alleging that the county's indigent-defense delivery violated the constitutional rights of defendants. Grant County now has a large and well-staffed Department of Public Defense and currently spends more on indigent defense than on prosecution/legal services—\$1.07 to \$1.00.²⁶¹

We have already detailed in Part V how Okanogan County has responded to recent, frequent requests for added funds to support its indigent-defense needs. Indeed, it has done so even as it has also added staff to its prosecutorial/legal services and raised the salary of its elected prosecutor.²⁶² Okanogan now spends \$0.81 on indigent defense for every prosecution/legal services dollar—a higher ratio than metropolitan Thurston, Clark, Snohomish, and Pierce Counties.

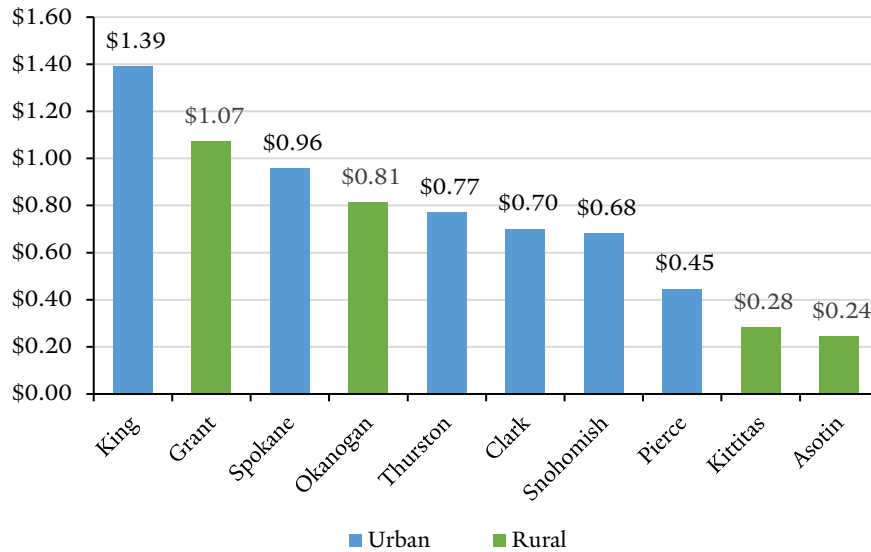
Meanwhile, Ferry, Asotin, and Kittitas Counties were among the lowest spenders of the twelve rural and urban counties we compared, as shown in Figure 4. Ferry County is not shown in Figure 4 because its reported spending on indigent defense was negligible, just \$0.03 to \$0.04 per dollar spent on prosecution. Whitman County is not shown because it did not report data to the State Auditor.

260. One reason for the greater disparity between the prosecution and indigent-defense functions in some small counties is that these counties do not have coroners. Email from Jason Walker to Lisa R. Pruitt, *supra* note 258. Hence, a portion of the prosecutor's budget in smaller counties pays for autopsies and staff. *Id.* Some counties, like Asotin County, however, hire employees to function as full-time coroners. *Id.*

261. See *supra* notes 155-156 and accompanying text.

262. See *supra* notes 216-217 and accompanying text.

FIGURE 4. AMOUNT SPENT ON INDIGENT DEFENSE PER DOLLAR EXPENDED ON PROSECUTION AND LEGAL COSTS (AVERAGE OF 2020-2023)²⁶³



C. The Judiciary

While the state government contributes some funds to the judiciary, counties still bear significant financial responsibility for operating their court systems. The cost of salaries for superior-court judges is split evenly between state and county,²⁶⁴ but county governments fund the entire salaries of district-court judges.²⁶⁵ By one measure, the State of Washington ranks last in the nation for

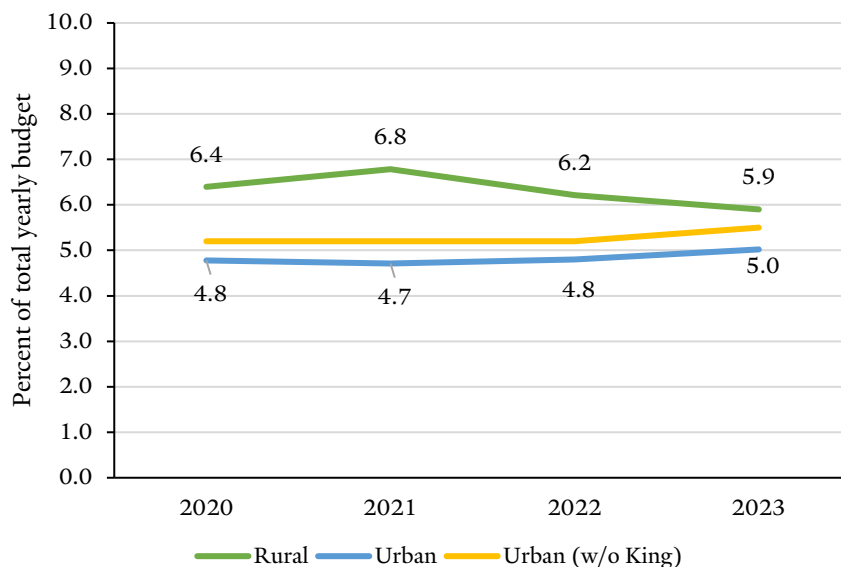
²⁶³ WASH. STATE BUDGET DATA, *supra* note 230.

²⁶⁴ *Judicial Branch*, WASH. CITIZENS' COMM'N ON SALARIES FOR ELECTED OFFS., <https://salaries.wa.gov/salary/judicial-branch#:~:text=Superior%20court%20judges'%20salaries%20are,which%20the%20court%20is%20located> [<https://perma.cc/UQ73-ZJ8Z>]; see also WASH. REV. CODE ANN. § 2.08.092 (West 2024) (“The annual salary of the judges of the superior court shall be established by the Washington citizens’ commission on salaries for elected officials.”). That salary is \$228,261. WASH. REV. CODE ANN. § 43.03.012(3)(d) (West 2024).

²⁶⁵ *Judicial Branch*, *supra* note 264; see also WASH. REV. CODE ANN. § 3.58.010 (West 2024) (“The annual salary of each full time district court judge shall be established by the Washington citizen’s commission on salaries for elected officials.”). The current salary for full-time district judges is \$217,337. WASH. REV. CODE ANN. § 43.03.012(3)(e) (West 2024).

its level of investment in trial courts.²⁶⁶ Regarding judicial expenditures, the data revealed modest differences across the rural and urban counties, with rural counties typically devoting a slightly greater share of their budgets to judicial functions. Roughly 6% of rural counties’ total budgets was spent on judicial functions compared to 5% or less, on average, in the most urban counties. These data are shown in Figure 5.

FIGURE 5. JUDICIAL FUNCTION EXPENDITURES AS PERCENT OF TOTAL SPENDING, RURAL VERSUS URBAN COUNTIES, 2020-2023²⁶⁷



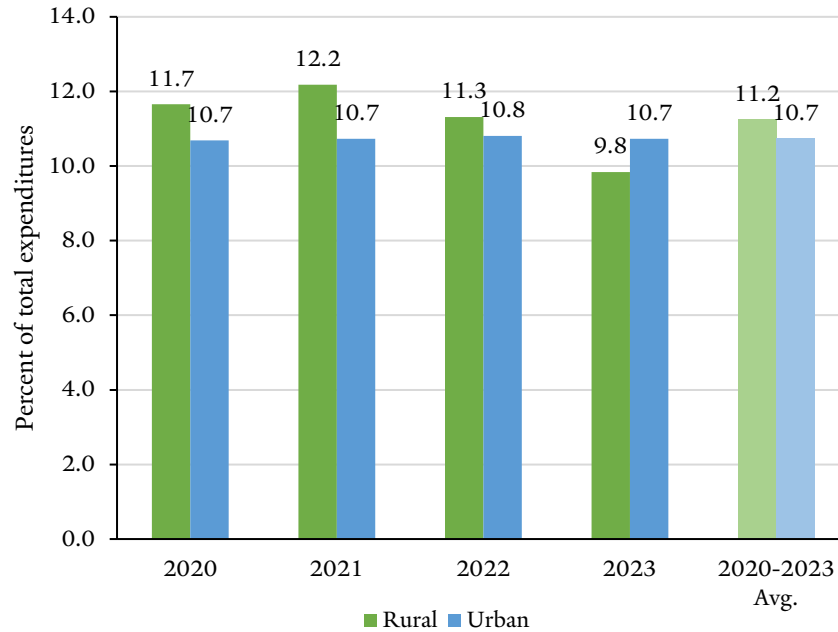
Overall, more than one-tenth of county budgets went to judicial and legal functions (both prosecution/legal services and indigent defense). Differences between rural and urban counties were not substantial. Rural counties usually spent more than 11% of their budgets on these functions, while urban counties typically spent less than 11%, yielding a difference of less than 1% on average.

²⁶⁶. See Evan Walker & Andy Nicholas, *It’s Time to Reform Washington’s Harmful System of Fines and Fees*, FINES & FEES JUST. CTR. (Jan. 18, 2022), <https://finesandfeesjusticecenter.org/articles/its-time-to-reform-washingtons-harmful-system-of-fines-and-fees> [<https://perma.cc/426N-PRHF>]; see also Email from Carl McCurley, Ct. Rsch. Manager, Wash. State Ctr. for Ct. Rsch., to Lisa R. Pruitt (Aug. 21, 2024, 2:54 PM) (substantiating the claim advanced by the Fines & Fees Justice Center).

²⁶⁷. WASH. STATE BUDGET DATA, *supra* note 230.

Rural-urban differences in spending on judicial and legal functions were even slimmer when King County was excluded because that county spends less on judicial/legal functions as a share of its total spending, compared to other counties.

FIGURE 6. EXPENDITURES ON JUDICIAL, PUBLIC DEFENSE, AND PROSECUTION/LEGAL FUNCTIONS, 2020-2023²⁶⁸



County spending on detention and corrections eats up another 8% or so of total county expenditures. Combined judicial, legal, and detention/corrections thus account for about one-fifth of total county spending, with relatively little variation along the rural-urban continuum.

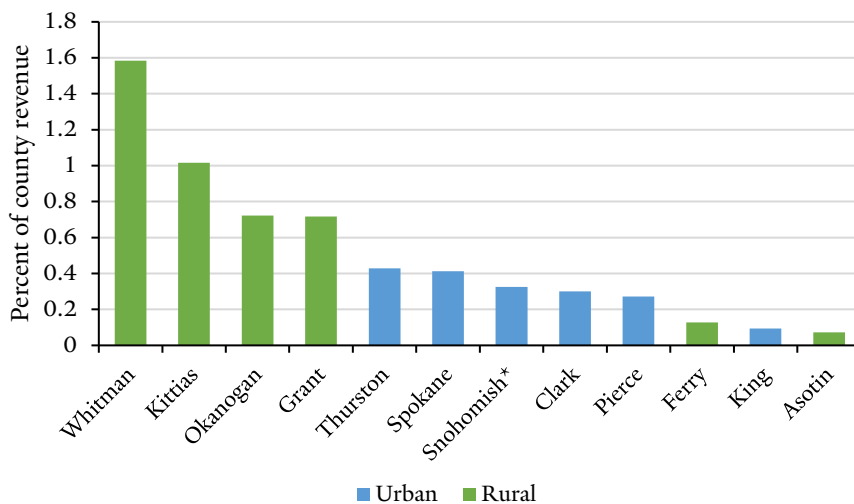
D. Legal Financial Obligations

Finally, we wanted to understand the role that fines and fees, now sometimes referred to as “Legal Financial Obligations” or “LFOs,” play in financing county governments. We were especially interested in this issue given recent attention

²⁶⁸ *Id.*

by scholars and activists to the incentives local governments have to levy fines and fees as a means of raising revenue.²⁶⁹ Analysis of budget data revealed that court-ordered “Fines and Penalties” for criminal or civil misdeeds (e.g., traffic violations) typically made up less than 1% of 2023 total revenues, across rural and urban counties.²⁷⁰ Although the percentages – and thus the dollar amounts – are very small, court-ordered fines, penalties, and cost-recoupments made up a larger share of rural than urban revenues. On average, these were 0.7% of rural-county revenues and 0.3% of total revenue in urban counties. Yet the variations among the rural counties were dramatic, from about 1.6% of revenue in Whitman County to just about 0.02% in Asotin. The variations among urban counties were far smaller, as depicted in Figure 7.

FIGURE 7. COURT-ORDERED FINES AND PENALTIES AS A PERCENT OF TOTAL COUNTY REVENUE, 2023²⁷¹



269. See, e.g., Beth Colgan, *Fines, Fees, and Forfeitures*, in 4 REFORMING CRIMINAL JUSTICE: PUNISHMENT, INCARCERATION, AND RELEASE 205, 209 (Erik Luna ed., 2017); Gabriela Kirk, Kristina J. Thompson, Beth M. Huebner, Christopher Uggen & Sarah K.S. Shannon, *Justice by Geography: The Role of Monetary Sanctions Across Communities*, 8 RUSSELL SAGE FOUND. J. SOC. SCIS. 200, 210 (2022); Cynthia Delostrinos, Michelle Bellmer & Joel McAllister, *The Price of Justice: Legal Financial Obligations in Washington State*, WASH. STATE SUP. CT. MINORITY & JUST. COMM’N 13-16 (Jan. 2022), https://www.courts.wa.gov/subsite/mjc/docs/MJC_LFO_Price_of_Justice_Report_Final.pdf [<https://perma.cc/C8PY-ZWVY>].

270. County revenues come primarily from taxes and from federal, state, or grant dollars transferred to counties, which comprise about 65%-70% of total revenue.

271. WASH. STATE BUDGET DATA, *supra* note 230. Data for Snohomish County are from 2022, instead of 2023, due to lack of availability.

Criminal cases brought in a relatively small share of all revenues from fines, penalties, and cost recoupments – just one-fifth or less, on average.²⁷²

VII. HOW SYSTEM-INVOLVED INDIVIDUALS EXPERIENCE INDIGENT-DEFENSE SERVICES

Our data suggest that the shortage of attorneys available to provide indigent defense – and perhaps also personnel deficits in prosecutors’ offices – are undermining the fairness of the criminal legal systems in the study counties. In short, the consequence is a certain form of spatial injustice. In interviews, many system-involved individuals described being detained for lengthy periods before they got to appear before a judge.²⁷³ Lack of attorneys was not the only cause of delays, with at least one also caused by a judicial vacancy. These deficits aggravated the delays caused by the pandemic.²⁷⁴

The July 2024 experiences of one system-involved individual, observed under the National Institute for Justice grant, illustrate how delays accumulate, including due to the harried and unprepared state of indigent-defense counsel.²⁷⁵ The in-custody defendant was charged with driving on a suspended license and without the required ignition interlock. Because of outstanding warrants in another county, he was charged with a felony. The individual entered a not-guilty plea on July 1, without the advice of counsel, and remained in custody. His next hearing was scheduled for July 9, but he still did not have an attorney appointed. Counsel was finally appointed on July 16, but the attorney mistook the individual for a different client, and he did not realize this new client was in custody. The attorney requested a one-week continuance to permit him to speak to the client; that request was granted, leaving the client in custody an extra week, until July 23. Such custodial periods – due to legal system deficits – are highly disruptive to system-involved individuals’ efforts to stabilize and keep on track their work and personal lives.

272. The median dollar amount for rural counties is about \$57,000 per year and for urban counties about \$375,000 per year. Money brought in through library fines, delinquent property taxes/water bills, and other non-court-ordered penalties tended to total as much or more than monies brought in through criminal-case penalties, fines, and recoupments.

273. See *Jail Booking Data*, *supra* note 17 (providing pretrial jail admissions in rural and urban counties by felony and misdemeanor/infraction status); see also Beekman, *System Breaking Down*, *supra* note 58 (describing the long delays before the appointment of counsel in Yakima County); *supra* note 64 (citing sources that detail the delays in Benton and Franklin counties).

274. The pandemic is a well-documented stressor on Washington’s criminal legal system. See, e.g., Beekman, *WA to Train Public Defenders*, *supra* note 58; Clark, *supra* note 57; Sherman & Schwartz, *supra* note 19, at 1217; Grays Harbor Letter, *supra* note 58.

275. This narrative comes from field observation by Emma Deneau, Rsch. Assistant, and is contained in field notes.

Indeed, the jail-booking and release data we analyzed showed that those detained pretrial in a rural jail tended to be confined longer than those held in urban jails.²⁷⁶ For example, among those accused of a misdemeanor and jailed pretrial, 25% in rural jails stayed longer than one week, while 14% remained in urban jails longer than one week. Similarly, for those jailed on felony-level accusations, 36% stayed longer than one week in rural jails, compared to 22% in urban jails. Bail amount, if set, along with ability to pay, are among the factors playing into these differences in length of pretrial confinement. So, too, are attorney shortages and associated backlogs.

Our interview data also provide a textured window into the experiences of system-involved individuals.²⁷⁷ The interviews reveal indigent-defense shortcomings similar to those documented in studies of primarily metropolitan places.²⁷⁸ Among the interview data, fifty participants (71%) discussed working with indigent-defense counsel. Among those fifty, twenty-three (35%) indicated a positive experience with their indigent-defense attorney, while the remainder did not have a positive experience. Reported problems included unprepared attorneys and inability to communicate with one's assigned counsel until just before a court appearance. Sometimes that appearance was to enter a plea.

This practice is often referred to colloquially as “meet ‘em and plead ‘em.” Interestingly, a federal district court in the Western District of Washington held the practice constitutionally inadequate a decade ago, and it did so using that same colloquial phrase.²⁷⁹ The court there observed that “indigent defendants had virtually no relationship with their assigned counsel and could not fairly be said to have been ‘represented’ by them at all.”²⁸⁰

Sadly, several system-involved individuals reported experiences that closely resemble “meet ‘em and plead ‘em.” Aaron Johnson, a thirty-five-year-old white man living below the poverty line, for example, described the struggle to communicate with his assigned indigent-defense attorney:

276. The jail-booking data referenced here was obtained through formalized agreements with local sheriffs' departments. Due to Institutional Review Board restrictions under which this study was conducted, the data was not independently viewed or verified by the editors of the *Yale Law Journal*. More information on the study's methodology is contained in Appendix A.

277. The following quotes use pseudonyms for the system-involved individuals. The socioeconomic status of each is designated “below the poverty line” if below the poverty line, “low-income” if 100-200% of the poverty line, or “middle income” if more than 200% of the poverty line.

278. See, e.g., NATAPOFF, *supra* note 8, at 17-18, 106-115; Primus, *supra* note 3, at 242; Romero, *supra* note 3, at 1103-12.

279. *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124, 1133 (W.D. Wash. 2013).

280. *Id.* at 1124.

The very first public defender I got was completely lousy. He had never met me. . . . I tried, for, like, two weeks to get a hold of him on the phone. . . . I didn't get to talk to him until, like – like, I showed up to my court date and, like, 10 minutes before I actually went in front of the judge is when I got to see him and talk to him, finally

Most of the time, if you have a public defender . . . you are probably not going to be able to talk to them on a regular basis. And you are probably only going to be able to talk to them, like, right before you go in front of a judge when you are already at court. So in that respect, the experience has not been positive.

Johnson continued:

And my first [defense] attorney, the first time that him and I even saw each other, he looked at my record—my one theft three charge—and looked up to me and just goes, ugh, you got to – you got to stop stealing. And those were his exact words. . . . And, to say the least, he was not the best public defender I have ever had. And ever since then, I have just stuck with one public defender who seems to like me and has been willing to actually try and stick up for me. She hasn't always been the most effective at that, but the fact that she is willing to has been great.²⁸¹

Brenda Huff, a forty-six-year-old Native American woman living below the poverty line, similarly spoke of talking to her public defender only on the days of court appearances.

Lucille Quinn, a sixty-five-year-old, low-income white woman, complained that her appointed counsel didn't give her advance notice of what would happen at a particular court appearance:

When I went in and was sentenced in court and I had a court appointed attorney and she didn't even let me know that I was being sentenced that day because there had been continuances and bullshit—you know? And so I didn't even have a chance to write up something to say to the judge. So it was all, like, extemporaneous speaking.²⁸²

Another individual, thirty-three-year-old Brian Armstrong, a white man living below the poverty line, complained that public defenders “don't even answer the phone when you call.”²⁸³ Cora Gibson, a forty-one-year-old white woman also

²⁸¹. Interview with Aaron Johnson (pseudonym) (Aug. 2021). To protect the anonymity of participants, we refer to them using pseudonyms and omit exact dates.

²⁸². Interview with Lucille Quinn (pseudonym) (Oct. 2020).

²⁸³. Interview with Brian Armstrong (pseudonym) (Feb. 2024).

living below the poverty line, commented on both her attorney's lack of communication and their unfamiliarity with her case:

It is all confusing. Like, my attorney sucked . . . he never talked to me or anything. And, like, when I went to go down to court, he was like what are you doing here? I'm like – And then they called my name, and he was like that's not my client – oh, wait. Yeah, it is.²⁸⁴

When asked if she had other attorneys who were helpful, Quinn responded:

He was hard to get ahold of. I couldn't get – you know, he just didn't know anything about me or my case or anything.²⁸⁵

Several of the system-involved individuals were knowledgeable about the typical pressure on indigent-defense attorneys to plead cases quickly, including the financial disincentives to take cases to trial. Some expressed skepticism that their attorneys' priority was to represent their best interests. Alan Robbins, a forty-one-year-old low-income white man, commented that his indigent-defense attorney

is doing his job. I don't want to bad mouth anybody but they are public pretenders is what I call them – you know? Ultimately, they are there to do the bare minimum to push you through the court system. . . . They are just there to basically get you the best plea bargain they can get you . . . basically it is just the attorney there to, you know, more or less be a mediator between you and the prosecutor.²⁸⁶

Robbins concluded that the lawyer is “basically an employee of the court and they act like it.” Thus, he felt the attorney was not really working for him, but instead served the interests of the court. Robbins reasoned that, given what he assumed the attorney was being paid, it was not worth the attorney's time to prioritize what might be in the client's best interests.

Another system-involved individual, Clay Nash, a thirty-two-year-old low-income white man, explained:

They appointed me counsel, but the problem is . . . that [a] public defender is not there to defend you. They are there to represent you, get paid, and move to the next case. They are there to make a plea bargain with the prosecutor, because that's exactly what they are going to do.

²⁸⁴. Interview with Cora Gibson (pseudonym) (Feb. 2024).

²⁸⁵. Interview with Lucille Quinn, *supra* note 282.

²⁸⁶. Interview with Alan Robbins (pseudonym) (Dec. 2020).

They are going to walk in and go, “Hey, this is what he did. What can we do to get him to plea out so we can move this along?” . . . So we call them public [pretenders].²⁸⁷

Notably, four system-involved individuals interviewed used the term “public pretender” to refer to the lawyers who provided their indigent defense.

Not all interviewees had bad experiences with legal counsel; some individuals had mixed or inconsistent experiences. Danielle Hunter, a forty-five-year-old mixed-race Native American and white woman living below the poverty line, reported on her positive experience with a public defender, only to lose that representation when the attorney’s contract ended:

I had two different attorneys in [this] County because one public defender—he was doing really good and helping get evidence and everything. But then his contract ended and they wouldn’t renew his contract because they only do contracts in [the] County for public defenders every year. And then they don’t have to re-hire you.²⁸⁸

Hunter was less fortunate with the second public defender:

So it was lucky that I already had [an attorney] working on my case and had all the evidence and then I had friends on the outside that went and got more evidence and, you know, proved stuff. And then basically I ended up presenting everything to the prosecutor and the judge outside of my public defender because, yeah, it was pointless to have him even—when you gave him evidence and stuff, you know, it mysteriously got lost, or this, or that.²⁸⁹

The issue of conflicts of interest also arose in the interviews—in particular, the optics of attorneys playing different roles in neighboring jurisdictions.²⁹⁰ For example, Aaron Johnson, quoted above, recounted how the same attorney who worked as a prosecutor in his county seat served simultaneously as a judge in the municipal court in another town that is just a fifteen-minute drive away.²⁹¹

²⁸⁷. Interview with Clay Nash (pseudonym) (Oct. 2020).

²⁸⁸. Interview with Daniele Hunter (pseudonym) (Apr. 2021).

²⁸⁹. *Id.*

²⁹⁰. See Yeagain, *supra* note 202, at 526.

²⁹¹. See generally Margaret Raymond, *The Other Half: Challenges of the Part-Time Rural Prosecutor*, 69 S.D. L. REV. 504 (2024) (discussing the complex ethical and legal concerns raised by part-time prosecutors).

VIII. POLICY IMPLICATIONS

A decade ago, the Chief Justice of South Dakota, speaking about the shortage of attorneys in rural areas of his state, commented: “A hospital will not last long with no doctors, and a courthouse and judicial system with no lawyers faces the same grim future.”²⁹² A decade on, we see rural criminal legal systems in some eastern and central Washington counties perilously close to just the fate Gilbertson pondered. In fact, at times when key personnel are lost, some systems seem barely to limp along until the next multi-county, round-robin shuffle of attorneys and judges. Some counties’ systems—typically those of the least populous and most remote counties—are especially vulnerable and unstable. To say there is not a deep bench of legal professionals would be an understatement. In some counties, there is no local bench at all.²⁹³

The shortage of local lawyers with criminal-law expertise is only one of the many stressors on these criminal legal systems. Another major stressor is the spatial inequality created by local funding of indigent-defense, prosecution, and judicial functions. When attorneys are reluctant to practice in rural places, higher salaries provide added enticement. Yet nonmetropolitan counties typically have weaker tax bases and struggle to achieve economies of scale in service delivery, leaving them least equipped to bear rising costs. The situation is aggravated by a statewide shortage of attorneys with criminal-law expertise and the need to compete with more populous counties—including those east of the Cascades—some of which are quickly raising pay and offering significant recruitment and retention bonuses.²⁹⁴

One solution that stakeholders have generally embraced is increased use of remote appearances by counsel. This is happening even as defendants are typically required to appear in court in person.²⁹⁵ This hybrid model, where the client is in court but the lawyer is not, or vice versa, can preclude confidential

292. David Gilbertson, *Reflections on the Rural Practice of Law in South Dakota: Past, Present, and Future*, 59 S.D.L. REV. 433, 438 (2014).

293. See *supra* notes 71, 119-125 and accompanying text (describing how Ferry County met its indigent-defense needs by turning to Stevens County twice in less than one year); *supra* notes 169-173 and accompanying text (describing Okanogan County’s turn to attorneys across the state to meet its needs via remote appearances); *supra* notes 221-228 (describing the movement of attorneys between Okanogan and Ferry counties to fill various roles in the criminal legal system).

294. See *supra* notes 76-79 (featuring detailed salary data from Yakima County).

295. Email from Brenden Higashi, Senior Rsch. Assoc., Wash. State Ctr. for Ct. Rsch., to Lisa R. Pruitt (July 9, 2024, 3:34 PM) (on file with authors); Penny Larsen, *Summary Report of Remote Proceedings Prevalence and Practices in Washington Courts*, WASH. CTS. (Oct. 2023), https://www.courts.wa.gov/programs_orgs/pos_bja/RemoteTF/Remote%20Proceedings%20Survey%20Summary%20-October%202023.pdf [<https://perma.cc/52YW-5B8K>].

communication between attorney and client because virtual breakout rooms are not an option.²⁹⁶ Further, consequences of attorneys living and working far from their clients seems likely to aggravate the sort of “meet ‘em and plead ‘em” practices a federal district court in Washington has held constitutionally infirm.²⁹⁷ Indeed, in this contemporary, high-tech iteration, defendants may never get the benefit of even a brief face-to-face meeting with counsel, let alone meaningful and confidential communication.

Other deficits associated with the fiscal strictures under which these rural legal systems function may also undermine fairness and equity for the individuals caught up in them. For example, nonmetro counties cannot afford electronic systems, standard in urban locales, that provide reminders of court appearances.²⁹⁸ Meanwhile, other rural service and infrastructure deficits (e.g., in housing, transportation, and drug treatment) further hamstring efforts by defendants to extricate themselves from the criminal legal system.²⁹⁹ Many of these individuals also face civil-justice-system challenges, again with little legal assistance available.³⁰⁰

While institutional stakeholders from the Washington legislature to the Washington State Bar Association are aware of these stressors on rural criminal legal systems, the few actions taken to date have done little to mitigate the problem. As a state, Washington tends to embrace progressive causes, driven primarily by the political dominance of the state’s “blue” West Side. For example, the National Center for Access to Justice assessed Washington as the best state for

296. Cf. *State v. Luthi*, 549 P.3d 712, 720 (Wash. 2024) (holding that an inmate was deprived of due process due to confinement in an in-court holding cell and that the use of the holding cell prevented the inmate from speaking confidentially with their lawyer); Letter from James Kennedy, *supra* note 246.

297. *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1137 (W.D. Wash. 2013).

298. See Becky Kramer, *Looking into Lock ‘Em Up*, WSU ALUMNI MAGAZINE (2024), <https://magazine.wsu.edu/2024/04/29/looking-into-lock-em-up> [<https://perma.cc/66YA-9DAT>] (quoting Okanogan County Judge Robert Grim); Leon Digard & Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, VERA INST. OF JUST. 8 (2019), <https://vera-institute.files.svdcn.com/production/downloads/publications/Justice-Denied-Evidence-Brief.pdf> [<https://perma.cc/8NE7-S9J8>].

299. See, e.g., Jessica T. Simes & Erin Tichenor, “We’re Here to Help”: *Criminal Justice Collaboration Among Social Service Providers Across the Urban-Rural Continuum*, 96 SOC. SERV. REV. 268, 274 (2017) (discussing high incarceration rates and poor social service availability among rural communities compared to urban communities, which “map onto deficits in other public investments”); Walton et al., *supra* note 11, at 24-25 (finding that many rural counties primarily deliver social services through the criminal justice system).

300. For background material, see generally *supra* note 14.

the progressiveness of its “legal financial obligations” regime,³⁰¹ an accolade that predated even the state’s reform of its fines and fees regime.³⁰² The data we presented about the meager role LFOs play in financing local government supports this conclusion.³⁰³

Even more striking, Washington was the first state in the nation to institute a right to counsel in housing cases,³⁰⁴ and it did so at an annual cost of over \$17 million.³⁰⁵ Compare that to the mere \$1.6 million associated with S.B. 5780, the legislation passed in early 2024 that aims to improve the pipelines for prosecutors and indigent-defense attorneys.³⁰⁶ Indeed, the legislature recently declined to increase state funding to counties to support indigent defense, and it pared back S.B. 5780 by declining to provide debt relief for attorneys in these roles.³⁰⁷ Yet we have reason to believe that student-loan debt relief³⁰⁸ and benefits associated with employment, such as health insurance, are the sorts of policies most likely to attract recent law graduates to rural prosecutorial and indigent-defense

301. *NCAJ Launches Fines and Fees Index*, NAT’L CTR. FOR ACCESS TO JUST. (May 18, 2021), <https://ncaj.org/ncaj-launches-fines-and-fees-index> [<https://perma.cc/KKH3-R5V4>] (noting that every state earned a failing score under the Center’s rubric, but Washington state earned the highest score, reflecting the most progressive policies among the states and the District of Columbia).

302. H.R. 67-1412, 67th Leg., 2021 Reg. Sess., at 1-4 (Wash. 2021) (removing, for offenders who are indigent, the burden of paying restitution to third parties, e.g., insurers or corporations, who are not individual victims of the offender; adding the requirement that, to incarcerate an individual for failure to pay restitution, the failure must be willful); H.R. 68-1169, 68th Leg., 2023 Reg. Sess., at 2-3 (Wash. 2023) (providing that juveniles and their guardians are no longer subject to LFOs and relieving indigent adult offenders of the crime victim penalty assessment (CVPA) and lifting prohibition on judges reducing, waiting or converting CVPA to community service hours; providing that, upon motion, judges must waive any remaining LFO debt imposed prior to the bill’s passage).

303. *See supra* Section IV.D.

304. WASH. REV. CODE ANN. § 59.18.640 (West 2024); *see also* Sydney Brownstone & Heidi Groover, *Washington Becomes First State to Guarantee Lawyers for Low-Income Tenants During Evictions*, SEATTLE TIMES (Apr. 26, 2021, 5:57 PM), <https://www.seattletimes.com/seattle-news/homeless/washington-becomes-first-state-to-guarantee-lawyers-for-low-income-tenants-during-evictions> [<https://perma.cc/LEP8-QPK7>] (reporting on Washington State’s decision to provide free civil legal assistance to all tenants facing eviction).

305. Operating Budget—2023-2025 Supplement, S.B. 5950, 68th Leg., Reg. Sess., at 25 (Wash. 2024).

306. *See supra* notes 92-956 and accompanying text (discussing Washington’s S.B. 5780).

307. *Id.*

308. *See supra* notes 63-66 and accompanying text. As of January 2025, a bipartisan bill introduced in the Washington legislature proposed student-loan debt relief for prosecutors and public defenders. *See* Beekman, *Washington Counties Want Big Money to Address Public Defender Crisis*, *supra* note 98.

roles.³⁰⁹ So are higher salaries. Indeed, the one state that, for more than a decade, has paid five-year stipends to attorneys to practice in rural locales – South Dakota – has seen a high number of those attorneys remain in rural areas after their commitments to do so ended.³¹⁰

Most recently, the Washington State Bar Association has proposed to dramatically lower caseload limits for indigent-defense lawyers. This proposal is certainly well-intentioned but, if adopted, would compel rural counties to hire more attorneys to provide the representation remotely, a practice that already raises red flags. Remote appearances by defense counsel are not yet subject to rules that specify what is required in terms of the adequacy of their representation.³¹¹ That said, some promising case law is emerging from Washington courts on the right to counsel and confidential communications in virtual proceedings.³¹² The Washington Court of Appeals in 2023 held that a trial court’s failure to set any “ground rules” for the defendant “to exercise his right to privately confer with his counsel” placed an “unreasonable expectation on a defendant to interrupt a proceeding to assert their right to confer with their counsel.”³¹³

Washington’s established practice of evaluating legislation’s health impacts offers a model for assessing rural equity concerns. Since 2006, the state has regularly examined proposed legislation to assess its health impact.³¹⁴ The state

309. Cf. Grays Harbor Letter, *supra* note 58 (documenting the struggles of Yakima County to recruit public defenders in spite of increased pay and retention bonuses).

310. See generally HAKSGAARD, *supra* note 2, at 157 (noting that several of the attorneys who have remained in the counties to which they initially committed five years have become full-time or part-time prosecutors in those places).

311. See *supra* notes 12 and accompanying text; see also Turner, *Remote Criminal Justice*, *supra* note 6, at 203-22; Jenia I. Turner, *The Emerging Constitutional Law of Remote Criminal Justice*, 59 WAKE FOREST L. REV. 753, 760-93 (2024) (surveying case law about constitutional concerns arising from remote criminal legal proceedings, including on the issue of effective assistance of counsel).

312. See Turner, *supra* note 311, at 791-93.

313. *Bragg v. State*, 536 P.3d 1176, 1183 (Wash. Ct. App. 2023); see also Turner, *supra* note 311, at 791-93 (discussing *Bragg* and surveying cases on the issue from other jurisdictions). The Washington Court of Appeals also held in 2021 that a trial court violated the defendant’s ability to consult confidentially with their attorney, though the violation was found harmless. *State v. Anderson*, 497 P.3d 880, 883-85 (Wash. Ct. App. 2021). It is worth noting that Professor Jenia Turner, who surveyed all cases across the nation adjudicating constitutional issues arising from remote criminal proceedings post-2020 concluded that “most of the cases that found violations of the right to counsel in the remote setting were from Washington state.” Email from Professor Jenia I. Turner to Lisa R. Pruitt (Jan. 3, 2025, 3:54 PM) (on file with authors).

314. WASH. REV. CODE ANN. § 43.20.285 (West 2024); *Health Impact Reviews*, WASH. STATE BD. OF HEALTH (2022), https://sboh.wa.gov/sites/default/files/2022-10/Tabo6b_HIROnePager

performed one such assessment on recent legislation reforming Washington’s fines and fees scheme.³¹⁵ The state could similarly assess legislation or policy proposals for their likely differential impact on rural places, which is also an equity issue. The European Union, for example, engages in the practice of “rural proofing,” which it defines as “reviewing policies through a rural lens, to make these policies fit for purpose for those who live and work in rural areas.”³¹⁶

Rural proofing the new caseload limits would further highlight the crisis facing rural indigent defense and might prompt greater state investments in this sector. It might also draw attention to another potential solution: the possibility that police cite fewer people for minor infractions and that prosecutors bring fewer charges for the misdemeanors that are consuming so many legal-system resources in some rural counties. Lastly, it would shine a spotlight on the differential burden on rural counties, which typically have fewer means of raising revenue, when such a substantial portion of justice-system costs are borne by county governments. All of these are aspects of spatial justice.

Meanwhile, law schools in the state and region have an enormous opportunity – indeed, a responsibility – to train and produce practice-ready attorneys, specifically including those prepared to go into court as deputy prosecutors and indigent-defense attorneys. This function need not fall to institutions such as WAPA and OPD. The money the legislature has allocated to that pipeline work creates more bureaucracy, and it might be better spent defraying student-loan debt and raising salaries. Law schools should also attend in their admissions to applicants most likely to “go rural,” including those who hail from rural places and are thus often most open to returning to them.³¹⁷

There is other low-hanging fruit for the state and the counties. Most obviously, employing more attorneys full time instead of merely offering them part-time contract indigent-defense work would have two obvious benefits: it would

_Updated2022Session-Oct2022.pdf [https://perma.cc/U7SV-YY5Z] (“A Health Impact Review (HIR) is an objective, non-partisan, evidence-based analysis that provides the Governor and Legislators with information about how proposed legislation or budget provisos may impact health and equity in Washington state.”).

315. *Health Impact Review of HB 1169 Concerning Legal Financial Obligations*, WASH. STATE BD. OF HEALTH & GOVERNOR’S INTERAGENCY COUNCIL ON HEALTH DISPARITIES 17 (Jan. 17, 2023), <https://sboh.wa.gov/sites/default/files/2023-01/HIR-2023-01-HB1169.pdf> [https://perma.cc/AE9M-Q6HR].

316. *Rural Proofing*, EUR. UNION (2024), https://rural-vision.europa.eu/action-plan/cross-cutting/rural-proofing_en [https://perma.cc/8VG6-RE6G] (describing the practice of rural proofing in the European Union); see also *Rural Proofing*, DEP’T FOR ENV’T FOOD & RURAL AFFS. (Nov. 2022), <https://assets.publishing.service.gov.uk/media/6388a51bd3bf7f32848cbc3d/rural-proofing-guidance.pdf> [https://perma.cc/K82S-LH9H] (describing the practice of rural proofing in the United Kingdom).

317. Letter from James M. Kennedy, *supra* note 81; HAKSGAARD, *supra* note 2, at 50-57, 62.

make them eligible for federal student-loan forgiveness after a decade and for valuable employment benefits like health insurance and retirement schemes. While such a shift would have some costs to counties, the return on investment in the medium-to-long term could be considerable if the changes enticed more newly minted attorneys to give rural practice a try.

CONCLUSION

Solving the travails of rural criminal legal systems in Washington State will require an all-hands-on-deck approach that engages a wide range of institutional stakeholders, including both state and county governments. This is a moment when many of the institutional actors are aware of the interlocking crises of rural attorney staffing deficits and the acute burden placed on local governments. The State of Washington should prove its commitment to the state's rural reaches by taking meaningful action—and devoting sufficient resources—to solving both crises.

Lisa R. Pruitt is Distinguished Professor of Law, University of California, Davis. Thanks to Tessa C. Bryce and Madeline M. Cooper for managing the manuscript; to Elizabeth H. Glenski, Simran Chahal, Chloe Fearey, Courtney Patton, Odilia Barr, and Paul Hamann for research assistance; to Refugio Acker-Ramirez and David B. Holt of the Mabie Law Library for indefatigable assistance. We are also grateful for the librarians at the Gallagher Law Library, University of Washington School of Law, who helped us navigate various Washington state institutions. The Washington State Auditor's Office was particularly responsive to our requests for data. Charlie Alison created the map. For comments on earlier drafts, we are grateful to Jordan Gross, David Raupp, Margaret Raymond, Hannah Haksgaard, Jason Walker, Katrin Johnson, Laurel Arroyo, Keith Moore, Carl McCurley, Brenden Higashi, Brian Farrell, Elizabeth Chambliss, Andrew Davies, Michele Statz, Jessica Shoemaker, Renee Danser, Alison Guernsey, Greg Brazeal, Beth Colgan, Agnieszka McPeak, Jenia I. Turner, and Irene Joe. We also appreciate feedback from participants in the 2024 Law and Rurality Workshop at the University of Iowa College of Law.

Jennifer Sherman is Professor of Sociology, Washington State University. This work was funded by the Vera Institute of Justice, Arnold Ventures, and the National Institute of Justice (Advancing Research on Rural Justice Systems, Award #15PNIJ-21-GG-02805-RESS to J. Schwartz & J. Sherman). The opinions, findings, conclusions and recommendations expressed in this publication are those of the authors and do not necessarily reflect those of the Department of Justice.

Jennifer Schwartz is James F. Short Distinguished Professor of Sociology, Washington State University.

APPENDIX A. METHODS

The larger research project began by securing participation from those responsible for running county jails and providing law enforcement (i.e., sheriff's departments) in six counties in eastern and central Washington. Sherman and Schwartz also engaged with others working in the criminal legal system (e.g., judges, prosecutors, defense attorneys, probation officers, social service and treatment providers) and with system-involved individuals who spent time in one or more of the participating jails. For the first wave of data collection, sponsored by Vera Institute of Justice and Arnold Ventures, Sherman and Schwartz began with formalized agreements with sheriffs' departments to provide local data and for staff to participate in Zoom focus groups and interviews. In subsequent waves, sponsored by the National Institute of Justice, Schwartz and Sherman met regularly with broad stakeholder groups across the study region, conducting periodic meetings that included sheriff's departments; legal system staff including judges, defense, and prosecuting attorneys; local medical staff; social service providers; and recovery navigators in each county.

This Essay also draws on data from interviews with those who had been incarcerated. The qualitative interview data with system-involved individuals was collected by Sherman in two phases, from July 2020 to August 2021 (n=37) and from November 2023 to May 2024 (n=34). The original study design called for in-person interviews to be conducted at two of the six jails, but the COVID-19 pandemic and subsequent statewide lockdowns forced a pivot to phone interviews with participants who were previously or currently incarcerated in jails across the six counties.

The interviews were open-ended but maintained a similar structure, including sections on participants' personal histories, criminal-legal involvements, experiences with domestic violence, and background information. At the conclusion, all participants were asked three "reflection" questions that prompted them to think more broadly about themselves and how criminal-legal involvements had impacted them.

Participants were recruited through fliers posted by jails and social-service providers and handed out upon release from participating jails; ads placed in local newspapers, Craigslist, and Facebook community pages; referral by social-service agencies; and snowball sampling. Most interviews lasted between one and two hours. All participants were offered gift cards to either Wal-Mart or Amazon.com, sent electronically immediately upon completion.

Interviews were transcribed verbatim and analyzed with NVivo software, using a modified grounded theory approach that derived coding categories from the themes that arose throughout the study. Multiple rounds of coding were used to create the final schemes, including first focusing on broad categories,

then on variation within those categories, and finally on variations in meaning within and between categories. These included coding categories for specific issues like jail conditions or criminal charges; specific experiences like domestic violence or addiction; and interpretations of meanings, such as shame or self-worth.

In the project's second phase, Schwartz obtained detailed jail data covering 2020-2022 through a data-use agreement with the Washington State Office of Financial Management and Washington Association of Sheriffs and Police Chiefs. The team developed a unique dataset from the administrative *jail booking and release* information for the six counties and, for a comparison group, the six most urban counties in Washington State. We excluded King County because we do not have jail data for Seattle. The dataset captures each booking (including all charges, categorized by most serious), admission classification (e.g., pretrial, sentenced), and entry/release dates to calculate length of stay. We analyzed pre-trial jail bookings, 110,870 in all, which comprised about 75% of the total. The Institutional Review Board restrictions under which the individual-level data were collected required this Essay's coauthors to restrict access to the data. The data were not viewed nor verified by the editors of the *Yale Law Journal*.

APPENDIX B. NUMBER OF ACTIVE ATTORNEYS AND POPULATION BY COUNTY, 1999 AND 2024³¹⁸

| County | 1999 | | | 2024 | | | Pct Change, 1999 to 2024 | | |
|--------------|-----------|------------|-------|-----------|------------|-------|--------------------------|------------|-------|
| | Attorneys | Population | Ratio | Attorneys | Population | Ratio | Attorneys | Population | Ratio |
| Adams | 11 | 15,235 | 0.72 | 12 | 20,820 | 0.58 | 9% | 37% | -20% |
| Asotin | 18 | 21,206 | 0.85 | 19 | 22,549 | 0.84 | 6% | 6% | -1% |
| Benton | 194 | 137,844 | 1.41 | 334 | 215,219 | 1.55 | 72% | 56% | 10% |
| Chelan | 173 | 60,835 | 2.84 | 218 | 79,997 | 2.73 | 26% | 31% | -4% |
| Clallam | 93 | 64,690 | 1.44 | 110 | 77,616 | 1.42 | 18% | 20% | -1% |
| Clark | 458 | 336,268 | 1.36 | 818 | 521,150 | 1.57 | 79% | 55% | 15% |
| Columbia | 8 | 4,155 | 1.93 | 6 | 4,053 | 1.48 | -25% | -2% | -23% |
| Cowlitz | 107 | 91,949 | 1.16 | 98 | 112,864 | 0.87 | -8% | 23% | -25% |
| Douglas | 13 | 34,191 | 0.38 | 24 | 44,798 | 0.54 | 85% | 31% | 41% |
| Ferry | 6 | 7,188 | 0.83 | 4 | 7,497 | 0.53 | -33% | 4% | -36% |
| Franklin | 39 | 46,782 | 0.83 | 52 | 99,034 | 0.53 | 33% | 112% | -37% |
| Garfield | 2 | 2,339 | 0.86 | 3 | 2,363 | 1.27 | 50% | 1% | 48% |
| Grant | 82 | 72,019 | 1.14 | 99 | 102,678 | 0.96 | 21% | 43% | -15% |
| Grays Harbor | 93 | 67,102 | 1.39 | 91 | 77,290 | 1.18 | -2% | 15% | -15% |
| Island | 82 | 73,490 | 1.12 | 101 | 86,267 | 1.17 | 23% | 17% | 5% |
| Jefferson | 46 | 26,748 | 1.72 | 73 | 33,714 | 2.17 | 59% | 26% | 26% |
| King | 10,575 | 1,664,846 | 6.35 | 14,968 | 2,271,380 | 6.59 | 42% | 36% | 4% |
| Kitsap | 425 | 236,560 | 1.80 | 626 | 277,658 | 2.25 | 47% | 17% | 25% |
| Kittitas | 38 | 32,021 | 1.19 | 72 | 45,508 | 1.58 | 89% | 42% | 33% |
| Klickitat | 18 | 19,530 | 0.92 | 26 | 23,589 | 1.10 | 44% | 21% | 20% |
| Lewis | 79 | 68,621 | 1.15 | 84 | 86,154 | 0.97 | 6% | 26% | -15% |
| Lincoln | 9 | 9,759 | 0.92 | 9 | 11,738 | 0.77 | 0% | 20% | -17% |
| Mason | 47 | 50,357 | 0.93 | 63 | 68,389 | 0.92 | 34% | 36% | -1% |
| Okanogan | 53 | 38,432 | 1.38 | 60 | 43,712 | 1.37 | 13% | 14% | 0% |
| Pacific | 18 | 20,768 | 0.87 | 22 | 24,200 | 0.91 | 22% | 17% | 5% |
| Pend Oreille | 10 | 11,604 | 0.86 | 6 | 14,361 | 0.42 | -40% | 24% | -52% |
| Pierce | 1,569 | 688,807 | 2.28 | 1,975 | 928,696 | 2.13 | 26% | 35% | -7% |
| San Juan | 38 | 12,898 | 2.95 | 54 | 18,566 | 2.91 | 42% | 44% | -1% |
| Skagit | 157 | 101,180 | 1.55 | 211 | 131,417 | 1.61 | 34% | 30% | 3% |
| Skamania | 10 | 9,831 | 1.02 | 12 | 12,640 | 0.95 | 20% | 29% | -7% |
| Snohomish | 835 | 596,598 | 1.40 | 1,389 | 844,761 | 1.64 | 66% | 42% | 17% |
| Spokane | 1,323 | 409,736 | 3.23 | 1,687 | 551,455 | 3.06 | 28% | 35% | -5% |
| Stevens | 36 | 40,137 | 0.90 | 41 | 48,837 | 0.84 | 14% | 22% | -6% |
| Thurston | 996 | 205,459 | 4.85 | 1,513 | 299,003 | 5.06 | 52% | 46% | 4% |
| Wahkiakum | 7 | 3,841 | 1.82 | 7 | 4,765 | 1.47 | 0% | 24% | -19% |
| Walla Walla | 70 | 53,854 | 1.30 | 91 | 61,568 | 1.48 | 30% | 14% | 14% |
| Whatcom | 286 | 160,310 | 1.78 | 498 | 231,919 | 2.15 | 74% | 45% | 20% |
| Whitman | 67 | 38,386 | 1.75 | 46 | 48,012 | 0.96 | -31% | 25% | -45% |
| Yakima | 329 | 220,785 | 1.49 | 372 | 256,643 | 1.45 | 13% | 16% | -3% |

318. The 2024 and 1999 active-attorney population statistics were obtained from the Washington State Bar Association. See *WSBA Member Licensing Counts*, *supra* note 36 (2024 data); *Membership Count by County*, *supra* note 38 (1999 data). County population statistics were obtained from the U.S. Census Bureau. See *Census Bureau Population Data*, *supra* note 31 (2024 data); *State Population Estimates and Demographic Components of Population Change*, *supra* note 46 (2019 data).