

Attorneys hard to find for prosecutor, public defender openings: Shortage of public attorneys leaves offices scrambling to manage caseloads

July 19, 2023 | Daniel Carson

KEYWORDS **ELKHART COUNTY / INDIANA PROSECUTING ATTORNEYS COUNCIL / INDIANA PUBLIC DEFENDER COMMISSION / PROSECUTORS / PUBLIC DEFENDERS / SCOTT COUNTY / TIPPECANOE COUNTY**

At the Elkhart County Prosecutor's Office, full workforce capacity would consist of a staff of 29 deputy prosecutors, a chief deputy prosecutor and Vicki Becker, the county's prosecuting attorney.

Becker said her office currently has 18 attorneys.

"It's been around a year and a half hovering around that number," Becker said.

For prosecutor and public defender offices across Indiana, it's hard to find too many offices that are fully staffed. That translates to longer hours, burnout and higher turnover, as prosecuting attorneys and public defenders try to keep pace with caseloads that don't ever seem to go down.



Vicki Becker



Courtney Curtis

Courtney Curtis, assistant executive director at the Indiana Prosecuting Attorneys Council, said unlike counties that are part of the Indiana Public Defender Commission, prosecutor offices don't have standards and guidelines that govern caseloads. That, combined with pay that is generally lower than what other public attorneys make, has made it harder not only to recruit attorneys for prosecutors' offices, but also to retain them.

Curtis said the average age of deputy prosecutors is skewing younger and younger, with a plurality of the state's deputy prosecutors having less than five years of experience.

"You don't want a state with a bunch of prosecutors with less than three years of experience," she said.

When using the same standards as the PDC to look at prosecutor caseloads, Curtis said there are only five of 91 Indiana prosecutors' offices that are "right-sized," with a statewide average of 67%, a number she called "shockingly low." The Marion County Public Defender Agency reported 36 attorney openings in mid-February.

To catch up to PDC standards, there would need to be an additional 440 attorneys hired in prosecutors' offices across Indiana, Curtis said.

Pay not keeping pace

Andrew Cullen, the Public Defender Commission's director of public policy and communications, said starting pay for public defender positions is usually lower than most other public attorney openings, much less salaries offered by private law firms.

Cullen pointed to job postings on the PDC site, including one for two public defender jobs in Elkhart County, where the starting salary is posted as \$68,000 annually.



Andrew Cullen

For a recent law school graduate coming out of school with \$150,000 in student debt, pay is definitely a concern, Cullen acknowledged.



Derrick Mason

Derrick Mason, the PDC's executive director, said he and other commission staffers are hearing more and more about member counties that are facing attorney shortages in their public defender offices.

In some counties, Mason said, public defenders are going to other counties where the contract pay is better or are forsaking applications all together because the pay to be a public defender pales in comparison to other openings.

Torrin Liddell, the PDC's director of research and data analytics, said the median contract amount in the commission's 67 member counties was \$77,304 in the first quarter of 2023.

Liddell noted that Indiana Department of Child Services attorneys have an entry-level salary range of \$75,000 to \$123,962, with a median of roughly \$99,000.



Torrin Liddell

With less people graduating from law school in Indiana, it also makes it harder to find in-state graduates that could potentially fill openings.

Liddell said it seems like most of the public defenders who graduate from an Indiana law school are coming from the Indiana University Robert H. McKinney School of Law in Indianapolis, as well as the IU Maurer School of Law in Bloomington, to a lesser extent.

According to the American Bar Association, of the 245 IU McKinney law school graduates in 2022, 22 went into public interest law. There were 13 of 175 IU Maurer graduates and 10 of 210 Notre Dame Law School graduates from the same class who went into public interest law.

Coping with the shortage

Chris Owens has been with the Scott County Prosecutor's Office for 15 years, with six of those years spent as prosecutor.

Owens, current chair of the IPAC board, said IPAC will continue to work to find ways to boost prosecuting attorneys' pay. He pointed to this year's Senate Bill 280, which sought to address pay disparities. There was some talk around the Statehouse to structure pay to make it similar to public defenders, he said.



Chris Owens

Indiana Lawyer previously reported that Curtis testified in front of the Senate Corrections and Criminal Law Committee in January about SB 280 and the differences in pay among public attorneys.

The average salary for a prosecutor in Indiana in 2020 was \$69,777, Curtis said during her testimony, while the average starting salary for law school grads that year was \$75,000.

Among the counties participating in the PDC, the average starting salary for a public defender is \$80,000, Curtis testified. Comparatively, at the Indiana Department of Child Services, the average attorney salary is \$96,000.

SB 280 passed out of Corrections but died in the Senate Appropriations Committee.

Owens said he thinks pay is the reason there are so few applicants for open deputy prosecutor positions. Earlier this year, he said, he had two deputy prosecutors leave to go into private practice.

"We had two openings and I only had one applicant," he said.

The Scott County's Prosecutor's Office is supposed to have six attorneys, including Owens. Right now, they have five.

Looking out of state

Pat Harrington, Tippecanoe County's prosecutor, said his office has the capacity to fill 31 full-time deputy prosecutor positions, but right now it has 25 on staff.

"In the last seven, eight years, we have never been able to be fully staffed," Harrington, prosecutor since 2007, said.

To recruit new attorneys to his office, Harrington goes to every surrounding state to find potential applicants.



Patrick Harrington

When Harrington conducts exit interviews with deputy prosecutors who leave the Tippecanoe County office, he said the main issues cited for leaving are workload, pay and a feeling by attorneys that they can't keep up.

Further, he said the closure of Valparaiso University School of Law impacted his office.

"That was the number one source of attorneys for my office," Harrington said, noting he hired as many as nine Valparaiso graduates in one year to work in his office and would typically get three or four graduates per year.

The prosecutor said he's had some success recruiting from out-of-state law schools, such as the University of Dayton and the University of Louisville.

Becker said Elkhart County granted her office six additional positions in 2022, but she hasn't been able to fill any of them.

She said her office had a successful internship program, which created a pipeline for a lot of new attorneys in the prosecutor's office on an annual basis, but it had to shut down during the COVID-19 pandemic.

Over the years, Becker said, the program drew a handful of Valparaiso law students as well as several students from Notre Dame Law.

The internship program has restarted, Becker said, but the last group of interns were primarily from out-of-state schools. •