

Vanderburgh public defenders, clients squeezed by manpower shortage



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EVANSVILLE — Public defense advocates believe they have a solution to problems — manpower shortages, increased felony filings and restrictions on attorney caseloads — that they say are leaving some indigent defendants stranded in the Vanderburgh County jail.

Unable for months to fill three vacant full-time positions for attorneys to handle felony cases, the Vanderburgh County Public Defender Agency will seek the County Council's approval to convert two of the full-time vacancies into four part-time positions. The move would come with no net increase in costs, one leading advocate said.

It is at least a temporary solution to problems of concern for some time to public defenders, judges and county budget writers, said attorney Scott Danks, a member of the public defender agency's board.

The biggest of them all: The lack of public defender manpower has left indigent persons charged with crimes without lawyers to represent them, Danks said. He said the agency pegs the number of unrepresented indigent defendants at roughly 80 on any given day. Most remain in jail because they are unable to post bond.

Having a lawyer might have meant the difference between staying in jail and getting out, Danks said.

"Your attorney brings you in court to argue why that bond should be reduced," he said. "That's why it's imperative that you have a lawyer from day one. And don't forget, they're presumed to be innocent. So these are pre-guilt detentions."

A strategic miscalculation?

Unlike the full-time positions that have been vacant for months, Danks said, the public defender agency's 22 part-time positions are attractive gigs that

don't stay vacant for long. They pay \$39,562 annually plus benefits. They are unlike the full-time positions in another way, too: The full-timers get cost of living increases and the part-timers don't.

"Those (part-time positions) have been highly sought after," Danks said. "Most of your criminal defense lawyers are solo practitioners in small firms, but it's a great way to supplement your income, have your health insurance paid. Also it gives you a lot of exposure because, if you're working as a part-time PD, you're in and out of the courts all the time. So it generates a lot of private business."

Chief Public Defender Steve Owens could not be reached for this story.

The Vanderburgh County Public Defender Agency had in previous years converted part-time jobs into full-time jobs.

Jon Schaefer, a Warrick County deputy prosecutor who was chief deputy at the public defender agency for the past eight years, said that course was best.

"(Owens') plan was to try to convert all of the part-timers into full-time positions, the theory being that everybody then is under the same roof and you have better control," Schaefer said. "There was always a complaint that part-time public defenders will divert more of their resources to their paying clients than they will their indigent clients."

But Danks said that looks like a strategic miscalculation now.

"I never understood why someone would want to combine highly sought after part-time positions typically occupied by well-seasoned lawyers into full-time positions that are difficult to fill," he said. "But in fairness, I don't suppose you know until you try it."

Full-time public defender pay is at issue

In Vanderburgh County, full-time public defender jobs start at \$58,942 and increase to \$64,740 after six months.

That won't cut it, said Schaefer, who blames county officials.

"(Owens) has been complaining to the County Council and County Commissioners for as long as I remember — and I think generally one of the biggest complaints about our county government is that there's not a lot of planning," said Schaefer, an unsuccessful candidate for Vanderburgh County prosecutor last year.

"We're going to pay the minimum just to get by today, and then we're going to kick the can down the road and we'll deal with the bigger problem in the future. They paid the minimum for the Public Defender's Office, saying 'We don't have a problem there,' instead of saying, 'We don't have a problem today, but we're going to have a problem in three years.'"

But County Council member James Raben, the fiscal body's longtime finance chairman, pointed out that full-time and part-time public defenders are eligible for the Public Employees Retirement Fund, county health insurance and other benefits. County officials have been willing to help with the manpower issue, Raben said.

One comparison between the pay offered in Vanderburgh and other counties is immediately available.

The Indiana Public Defender Commission's statewide jobs board led off on a recent Friday with separate posts from the Vanderburgh County Public Defender Agency — one seeking lawyers who are "willing to be appointed on an hourly basis to criminal cases" and the other seeking attorneys to fill the three vacant full-time positions.

"The compensations also includes a generous benefits package, including an excellent insurance plan, PERF contributions, and the ability to participate in the federal student loan forgiveness program," the latter ad stated.

Student loan forgiveness is one significant benefit for which part-time public defenders do not qualify, Schaefer noted.

Below Vanderburgh County's ad on the jobs board was a similar posting seeking two full-time public defenders in Elkhart County, which has a population about 27,000 higher than Vanderburgh. Elkhart County's ad promised similar benefits and a starting salary of \$68,000.

Public defenders can't just take on more cases

2023 has been a particularly bad year for local public defenders to be down three full-time felony-qualified lawyers. Felony case filings in Vanderburgh County are up through the first six months of the year, according to prosecutor's office data.

Through June 30 of last year, Vanderburgh County saw 1,439 felony cases filed. The number through Friday of this year — June 30 — was 1,603. It's an 11% increase.

But the Vanderburgh County Public Defender Agency doesn't have the option of simply telling its available lawyers to take on more cases. It has had to engage hourly attorneys to help carry the load, which hasn't been enough to avoid the backlog of jail inmates without representation.

Why? Public money for public defenders is tied to caseload management.

Vanderburgh, Gibson and Warrick counties are among 67 Indiana counties participating in a Indiana Public Defender Commission program that provides quarterly reimbursements of as much as 40% of eligible non-capital

case public defense costs. All of the state's 92 counties are eligible to receive a 50% reimbursement of death penalty case defense costs.

But public defense programs receiving the money must abide by complex, variable Public Defender Commission standards governing maximum attorney caseloads. The numbers of felony cases to which public defenders can be appointed are capped quarterly — and local public defenders have been reaching those caps sooner and sooner in recent quarters, their advocates say.

"Once you get a case appointed to you, that goes under your caseload cap," Schaefer said. "It doesn't matter if that case gets resolved in two weeks, six weeks, two years. That case always counts. So even if you get a case dismissed after two weeks, that still counts against your caseload."

Judge who called a meeting won't discuss it

Raben said Circuit Judge David D. Kiely called a recent meeting of judges and county budget writers to seek solutions to the public defender agency's issues. Kiely said his court had a backlog of about 100 cases needing legal representation for indigent defendants, Raben said.

But Kiely didn't want to talk about it publicly.

"Sorry, you burned this bridge," the judge told the Courier & Press by email.

The Courier & Press reported in 2021 that people on probation in Vanderburgh County had to pay Evansville-based ABK Tracking more than twice as much for court-ordered drug testing and electronic monitoring as other county court programs charge thanks to an exclusive, no-bid deal with Kiely. The judge acknowledged that ABK owner Danny Koester was a friend of his.

A class action lawsuit accused ABK Tracking, Kiely and Vanderburgh County of conspiring to "extort" money from poor residents, but U.S. District Judge Matthew P. Brookman dismissed the suit against ABK on June 9. Brookman ruled that the Southern District Court of Indiana "lacks subject matter jurisdiction" in the case, meaning it shouldn't have been tried in federal court.

In a bid to resolve Vanderburgh County's public defender funding issues, Raben said he and fellow council member Jill Hahn told Kiely they were willing to dip into a county general fund balance of about \$12 million along with other reserve funds.

"We did leave it with Kiely that hey, if you've got to do something, with some limits, we'll fund it if you've got to go to the local lawyers and just hire some people that will represent a person here or there part-time," Raben said.

But Raben said that before Danks unveiled the proposed conversion of full-time vacancies into part-time positions late last week.

Looking ahead

July 1 marked the beginning of a new quarter, and the public defender agency will begin accepting new appointments again.

Danks estimated the conversion of two full-time vacancies into four part-time positions can be implemented by the end of July.

But full-time public defender pay still has to be addressed, the veteran attorney said. The county's 2023 budget shows nine authorized full-time positions in addition to Owens, a number that would be reduced to seven with the new proposal.

"(Owens) just can't get an attorney to work full-time at \$65,000 a year as a public defender," Danks said. "So those things are going to have to be bumped up, and then the argument now is whether the PD Office can use its supplemental fund to do that."

The Public Defender's Supplemental Fund is supported by money from bond payments by defendants for whom public defenders are appointed. Danks said Owens has been tapping the fund to hire attorneys to work hourly. The fund contained \$531,000 as of last week, according to the County Council.

Council attorney Jeff Ahlers has indicated the fiscal body may not want to appropriate public money for a pay raise for public defenders if the public defenders agency is sitting on more than \$500,000 of its own, Danks said. He said he and Ahlers have been going back and forth over the question of whether the fund can be used for salary increases.

That jousting will likely continue for a while, Danks said.

"That's the current battle that we have," he said.