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Study Finds 'Massive Waste' in Misdemeanor Cases

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SEATTLE -- Treating petty, nonviolent misdemeanors as infractions rather than crimes would save untold millions of dollars and better protect defendants' rights without cost to public safety, according to a [nationwide](#) study.

That is the top recommendation in "Minor Crimes, Massive Waste: The Terrible Toll of America's Misdemeanor Courts," a report prepared by the Defender Initiative at the [Seattle University](#) School of Law and released Tuesday by the National Association of Criminal Defense Lawyers.

Other principal recommendations from the 1 1/2-year study include less pressure to plead guilty in first appearances, enforcement of ethical obligations of judges and prosecutors, ensuring counsel for all defendants facing the possibility of jail time as required by Supreme Court rulings and providing adequate resources for public defenders.

John Wesley Hall, a lawyer from Little Rock, Ark., and president of the association, said he looked forward to presenting the findings to the House Judiciary Committee in a congressional hearing June 4.

"Misdemeanor court is a black hole for justice and resources," Hall told reporters. "I don't think there is a bigger waste of human potential and taxpayer money in the entire criminal justice system."

He and Robert C. Boruchowitz, a law professor and chief researcher, said they had not shown the findings to any group of prosecutors but hoped the study would lead to greater awareness of the need to reduce backlogs, cut costs and eliminate injustices. Lawyers in the King County prosecutor's

office have not seen it, spokesman Dan Donohoe said.

Researchers who reviewed statistics and visited misdemeanor courts in Arizona, Florida, Illinois, North Dakota, Pennsylvania, Texas and Washington state reported that cases per public defender ranged from 360 a year in Benton County, Wash., and 380 in Seattle, both set limits, to 2,403 in Chicago, 2,502 in Utah and 18,720 in New Orleans.

For comparison, the National Advisory Committee on Criminal Justice recommends a maximum of 400 cases per defender.

"What's happening in these courts is simply not fair. It violates fundamental American instincts and concepts," Boruchowitz said.

"Most people who go to court go to misdemeanor courts, and when they see people literally processed like chickens, 100 or 130 at a time, with lawyers who are literally running around like chickens, trying to figure out where they should stand, whom they should talk to and how they can advocate _ or with no lawyers at all and defendants either negotiating with prosecutors, which is arguably unethical, or, with no prosecutor at all, talking to the judge about their case, is simply not a good picture of American justice," he said.

Because of state-to-state differences, the precise number of misdemeanor cases nationwide is unknown.

Based on an estimated 12-state median misdemeanor rate of 3,544 per 100,000 residents by the National Center for State Courts in 2006, misdemeanor prosecutions more than doubled from 5 million in 1972 to 10.5 million in 2006.

That overstates the number and proportion of U.S. citizens who wind up in court because of multiple cases against individuals and prosecution of foreign nationals, but still “it is a startling reminder of the breadth of the impact of these courts,” the study found.

The lead researcher, Boruchowitz, said uncounted millions of dollars are wasted in criminal prosecution for such offenses as feeding the homeless in parks in Orlando, Fla., and Las Vegas and turnstile jumping at subway stations or sleeping in a cardboard box in New York.

In Washington State, the number of misdemeanor cases in court would be cut 30 percent a year by eliminating criminal prosecution of third-degree driving with a suspended license, which often reflects failure to pay fines for past infractions by people of limited means, researchers found.

Dealing with suspended license cases as infractions akin to speeding tickets or parking violations and cooperative programs to help such drivers mend their ways and regain their licenses resulted in a net increase of \$270,000 in revenue annually to King County, which includes Seattle, according to the report.

Boruchowitz, who once ran a public defender office, said prosecutors, defense lawyers and judges could accomplish most of the needed changes by exercising prerogatives in their official positions without regulatory or statutory change.

“I think education is a big part of it,” he told reporters. “I think most lawyers and judges don't understand what's going on in these courts.”