

## Florida Public Defender's Association Proposes Amendment to Current Florida Bar Rules in Response to the Public Defender Shortage Crisis

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The criminal justice system in Florida is facing a crisis; there are too many defendants and insufficient public defenders. The Florida Public Defenders' Association released a proposal last Monday petitioning to allow law school graduates to practice law for one year pending their BAR exam. Granted the graduate undergoes character and fitness tests and practices under the supervision of an attorney, they can gain real-world experience while waiting for the exam.

Sure, this proposal is a cry for help from public defenders who are overworked and underpaid, however, there are others who would benefit should this proposal be passed. The criminal justice system is like an imbalanced scale leaning towards whichever attorney has slightly more limited resources; if this proposal were passed, both sides of the courtroom would profit, ensuring equilibrium as defendants go through trial. Legal services organizations, state attorneys, and public defenders' offices serving the indigent population would have access to a broader pool of applicants, now accessible to anyone who has completed law school and not just those who have done clinical or law student practice programs.

FDPA President Carlos Martinez told the Florida Bar that 20 public defenders in Florida are filling 250 vacancies due to the need for more personnel. Martinez, a public defender in the 11th Judicial Circuit of Florida, runs an office that handles 65,000 cases yearly. Martinez attributed the public defender crisis to a high turnover rate, saying only 17 of the 34 attorneys he hired in 2021 still work for him.

Kristy O'Malley, a student at the University of Miami School of Law, attributed the shortage of public defenders to low salaries, saying that given the rising prices of law school, it is more feasible for new lawyers to take on positions that can help them pay off student loan debt.

"We are facing a crisis when it comes to the lack of PDs and prosecutors," said Miami-based criminal defense attorney Michael Grieco. "As long as there are initial competency assessments then we need the bodies."

Martinez's office is not the only public defender's office struggling to provide defendants with their right to a fair trial. Nationwide, public defenders' offices face shortages that delay cases and leave defendants behind bars. Thousands of defendants' right to a fair trial is undermined without someone to advocate for them and walk them through the judicial process, whether having someone to explain charges to them or get them out of jail on bond.

"I think it's a great idea," said UM law professor Craig Trocino of the proposal, adding public defenders are burdened by the nature of a system that leaves them overworked and underpaid. Should the proposal be passed, law school graduates would get to work directly under seasoned assistant public defenders.

"It becomes not humanely possible to be the best lawyer you can be with not enough time or resources in public defense to adequately represent someone," said Trocino, who also serves as director of the Innocence Clinic at the University of Miami's School of Law, which specializes in correcting wrongful convictions.

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"In the United States, we have a two-track justice system; some take a road that is smoothly paid while others get one full of bumps," said Trocino. Referencing over 3000 wrongful convictions since 1989, Trocino described a justice system that needs reparation. While some can afford to pay for a criminal defense lawyer, many defendants are given lawyers who lack the time and resources to defend their clients properly.

Trocino specifically referenced the case of Dustin Duty, a 36-year-old wrongfully convicted of a 2013 armed robbery. Duty, who served eight years in prison, was acquitted by Trocino and the Innocence Clinic in 2021. According to Trocino, Duty's defense lawyer was not acting to the standards of the sixth amendment in his weak defense.

Despite the apparent public defender crisis, FPDA proposal's question remains at the forefront. Does the need for more public defenders outweigh the importance of the bar exam in determining an attorney's competence to practice law?

"I think the bar exam sets a minimum threshold of knowledge required to start a career practicing law," said O'Malley. "It is important to ensure that lawyers have retained the information they were taught over their three years of law school."

"I've taken and passed multiple bar exams, and their passage reflects minimally on my ability to practice," said Grieco. Grieco asserted that apprenticeships and certified legal internships are a much more valuable method of gaining experience for trial lawyers.

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Before the proposal amends the Practice After Graduation section of the Florida Bar Rules, it must be approved by the Board of Governors and the Supreme Court. Until then, the gap between the number of criminal cases and public defenders who can adequately give defendants a fair trial continues to widen.