



WASHINGTON STATE  
OFFICE OF PUBLIC DEFENSE

Internet Email: [opd@opd.wa.gov](mailto:opd@opd.wa.gov)

(360) 586-3164  
FAX (360) 586-8165

September 25, 2009

The Honorable Charles W. Johnson  
Associate Chief Justice  
Washington Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

Re: Comments on DMCJA's proposed amendments to CrRLJ 4.1 – arraignment

Dear Justice Johnson:

This letter is in response to your June 23 request for comments on a proposed amendment to CrRLJ 4.1 submitted by the District and Municipal Court Judges Association (DMCJA). The Office of Public Defense (OPD) appreciates the opportunity to share our perspective on the positive value of public defense counsel at arraignments.

As you may recall, OPD is on record supporting previous proposals to require defense counsel at misdemeanor arraignments.<sup>1</sup> The agency reiterates its position of support regarding this most recent proposal. OPD also supports changes to the DMCJA proposal as suggested by the Washington State Bar Association.

As stated in OPD's previous comments, a court rule that unequivocally requires defense counsel at misdemeanor arraignments is well-grounded in case law, statute and existing court rules. The proposed amendment currently before the Court would provide unambiguous direction to courts that have not consistently and fully implemented existing law.

In the past, some stakeholders have expressed concerns that requiring counsel at arraignment would increase local government costs, amounting to an "unfunded mandate." However, cost cannot justify a systematic denial of the statutory and constitutional rights to counsel at critical stages of a proceeding. Moreover, mounting evidence indicates that **providing defense counsel at arraignments actually leads to real cost savings for local governments.**

Of the 38 counties and 15 cities currently receiving state funds for public defense improvements pursuant to Chapter 10.101 RCW, many already have implemented first-appearance counsel and report to OPD that the early involvement of defense counsel at arraignment reduces the number of court hearings and—especially significant—substantially reduces the amount of time spent in jail awaiting subsequent hearings.<sup>2</sup> Many jurisdictions report that the savings generated far exceed the cost of providing counsel.

<sup>1</sup> See comment letter from OPD dated April 29, 2009.

<sup>2</sup> Office of Public Defense, 2008 Status Report on Public Defense in Washington State pp. 3-6 (Mar. 2009).



The Honorable Charles W. Johnson  
September 28, 2009  
Page 2

For example, after the city of Des Moines began furnishing public defenders at first appearance hearings with a \$31,000 grant in 2008, significantly more defendants were able to resolve their cases at these hearings. In addition, more defendants were released after their first appearance rather than waiting several more days in jail until a public defense attorney was assigned and available. According to a June 2009 letter from the municipal court administrator, this translates to a reduction of 1,317 jail days and a cost savings of more than \$112,000.

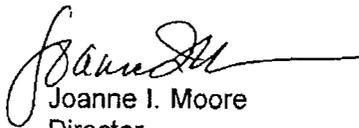
In a recent preliminary review, the indigent defense coordinator for Benton and Franklin counties reports that after only four months of providing attorneys at in-custody arraignments, jail-related savings are more than \$220,000. The indigent defense program is also avoiding ongoing attorney representation costs in the cases now resolved at arraignment. He reports these savings have been realized without any change in charging practices, plea offers, bail or sentencing.

Those experiences reported by cities and counties are bolstered by an independent evaluation of OPD pilot projects at Thurston County District Court and Bellingham Municipal Court.<sup>3</sup> Prior to implementation of the pilot projects in 2006, these courts did not routinely provide counsel at arraignment. As part of the pilot project each always had counsel available in court to consult briefly with defendants prior to or at their first contact with the court.

Just as in the reports OPD has received from the city of Des Moines, Benton and Franklin counties and numerous other local governments, the pilot project evaluation found that the practice of providing arraignment attorneys allowed the court to appropriately resolve many matters at the first court appearance, which in the end reduced costs associated with court continuances and extended time in jail.

The OPD appreciates the opportunity to comment favorably on the DMCJA's proposed amendment, as well as the changes proposed by the Bar Association. If there are any questions or requests for further comment, please let me know.

Sincerely,

  
Joanne I. Moore  
Director

---

<sup>3</sup> Looking Glass Analytics, Bill Luchansky, Ph.D., The Public Defense Pilot Projects Washington State Office of Public Defense (Mar. 2009).