



October 25, 2024

Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504

Re: Comments to proposed changes to the Washington State Supreme Court's adopted standards for Indigent Defense

Honorable Justices:

The City of Des Moines respectfully requests the Washington State Supreme Court reject the requested amendments to the Standards for Indigent Defense in CrR 3.1, CrRLJ 3.1, and JuCR 9.2.

Cities support a defendant's constitutional right to effective assistance of counsel. In the face of significant workforce challenges across the criminal justice system, cities are working to solve the issues and ensure that every adult misdemeanor defendant has effective assistance of counsel as contemplated in *Strickland v. Washington*.

The proposed revisions to the State's Standards for Indigent Defense will not solve current issues, but rather, these standards will result in new and greater challenges than before.

**The proposed changes are based on a national study that requires further local analysis before adoption of statewide changes.**

The proposed changes to the State's Standards for Indigent Defense are predicated on a 2023 national study completed by the RAND organization. The RAND report was funded by Arnold Ventures, an organization that is not a neutral entity, but rather is expressly focused on advocating for particular policy reforms and does their work by providing funds for research studies then used to advocate change with policymakers. The report notes that the views expressed in the report are solely the opinions of the authors, and have not been approved by the American Bar Association.

Furthermore, the RAND report itself says that the results of the study are "primarily applicable to locations or for purposes where jurisdictionally focused workload standards have not already been produced." The report continues to state that, "the most accurate weighted caseload model is developed specifically for an individual state or jurisdiction." In response to the study, other states (including Colorado and Maryland) are calling for local, rigorous study and analysis.

Washington can, and should, proceed along the same route with a neutral researcher. Washington State currently has caseload standards in place. Washington courts have been operating under these standards for approximately ten years, but we do not have evidence that these standards are not adequately protecting the rights of indigent defendants. If there are issues under the existing standards, they cannot be properly addressed without identifying what the actual issues are in Washington State under the current standards. The RAND report cannot do this.



In particular, the estimates by out-of-state felony attorneys of how much time a public defender needs to effectively defend misdemeanors ranging from driving with a suspended license in the third degree to shoplifting to driving under the influence should carry much less weight than the judgment of an experienced public defender who is bound by their ethical obligations under the court rules and the U.S. and Washington State Constitution.

### **The proposed recommendations will exacerbate current challenges with harmful consequences**

The criminal justice system requires coordination and functioning of all moving and interdependent parts, including prosecutors, defense attorneys, judges, court administrators and staff, victims' advocates, investigators, social workers and even external resources like substance use and behavioral health treatment providers.

Without adequate funding and workforce available to meet the proposed standards, it is inevitable that more criminal cases will be dismissed due to a lack of defense counsel, including misdemeanor DUI and domestic violence cases. Crime victims will go without an opportunity for judicial resolution, and will not have access to the victims' advocate services that would otherwise be available to them.

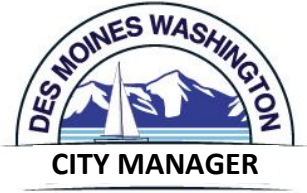
This is most likely to occur in geographical areas of our state that are rural, low-income, and/or experiencing high crime rates. Justice must be equal to all, regardless of geography. But rural areas, and areas with lower tax revenue and higher crime rates, struggle the most to recruit and retain public defense attorneys. Modifying the caseload standards will not address this.

### **There is an inadequate workforce to meet the proposed standards**

To implement the proposed caseload standards, jurisdictions will require at least three times the number of public defense attorneys, in addition to additional support staff, social workers, and investigators. The workforce required is not, and will not, be available within the timeframe envisioned by the proposed standards.

The City of Des Moines is already being affected by the existing shortage in public defenders. The City contracts with a well-regarded and successful public defense firm, but even this firm is having difficulty remaining fully staffed and meeting their existing staffing obligations to the jurisdictions it serves. The new staff they are able to bring on board are largely newly licensed attorneys or legal interns with a Rule 9 limited license. Both require significant training and oversight initially, further stretching firm resources. The City has also experienced significant difficulty in contracting with conflict counsel when the main contract firm cannot represent indigent clients.

The City supports a concerted legislative effort to increase the workforce pipeline for public defenders, prosecutors, court staff, social workers, investigators, and other key personnel. However, even if the legislature takes significant steps in the 2025 legislative session towards these goals, the recommended caseload standards as proposed are not feasible.



## **The proposed standards are financially infeasible for cities**

Based on initial estimates, implementation of the recommended revisions to the Standards for Indigent Defense could cost cities upwards of \$400 million dollars annually. Cities cannot afford this cost, and do not have the tools to raise the needed revenue.

Cities pay public defense costs out of their general fund budgets. Funding sources for a city's general fund are statutorily and constitutionally limited, in addition to being constrained by residents' ability and willingness to pay. The State currently funds only a small fraction of public defense costs. Given the current State budgetary forecasts, this is unlikely to change in the near future.

If faced with these cost increases, cities will be forced to make budget cuts to therapeutic courts, community courts, diversion programs, and other services designed to address the root causes of criminal behavior and keep people out of the criminal justice system. Cities may also be forced to look at budget cuts in other areas, such as parks and recreation programs that have been shown to decrease juvenile crime rates.

Lastly, the budget impacts will exacerbate justice-by-geography issues. Revenue, crime rates, and availability of attorneys all vary substantially from one city to another. Those cities that will be impacted the most will be those that are rural, lower income, with higher crime areas. The communities that will be hit the hardest are those that already are facing the most significant challenges.

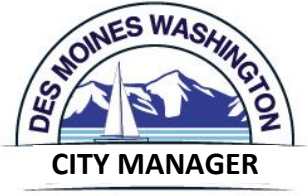
## **Better alternatives exist to address the challenges**

### *A Washington-state specific study:*

The RAND report highlighted national issues and has prompted other states and local governments to call for a location-specific study to determine the appropriate weighted caseload standard for their jurisdiction. Rather than making a decision on the WSBA recommendations in haste, cities support careful consideration of a state-specific standard by a neutral researcher, as recommended by the RAND report itself.

*Approve only the portions of the proposed recommendations that are feasible and achievable within current revenue and workforce limits, and which will improve public defense:*

The proposed caseload limits have been the focus of much of the attention related to the WSBA's recommendations, however, some components of the proposed revisions are feasible and would strengthen Washington's public defense services. For example, cities support the training and qualification requirements for misdemeanor public defenders. While the staff ratios envisioned in the proposed standards may not be workable everywhere, we support the idea of providing adequate social workers, investigators, and support staff for attorneys. Cities have had conversations with OPD about possibly having a statewide network of social workers, for example, to provide support in rural and underserved areas. These types of reforms are positive steps forward but may not happen if the rigid requirements of the proposed revisions are adopted.



*Exempt misdemeanors:*

If the Court is inclined to adopt the proposed revisions to the Standards for Indigent Defense in their entirety, we ask the Court to exempt adult misdemeanors from the revisions, or at a minimum, delay implementation as to misdemeanors for several years to allow time to build the necessary workforce and time for the legislature to appropriate the needed funding increases.

**Conclusion**

Cities appreciate the work done by our public defenders, particularly in the face of resource constraints across the criminal justice system. Cities are engaged in this issue and are an active part of the solution. We also know that the current recommendations will not solve the issues. At best, the recommendations are financially and logistically infeasible, and at worst, they will create harmful consequences. We ask that you do not adopt the proposed changes.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim George".

Tim George, Interim City Manager