



King County

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Metropolitan King County Council

October 30, 2024

Chief Justice Steven C. González
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504

RE: Comments in support of amending Washington Court Rules establishing state standards for indigent defense

Dear Chief Justice González,

First, I would like to extend my deep appreciation for the Court's consideration of the Washington State Bar Association (WSBA) proposal. The health of public defense is vital to the fairness and legitimacy of our legal system, and your consideration of this topic reflects the Court's deep commitment to constitutional protections and Sixth Amendment rights. I also appreciate the Court's investment of time to consider the perspectives of stakeholders, both through written comments and public hearings.

Today, I am writing to provide comments on the proposed amendments to the Standards for Indigent Defense Services that have been submitted by the WSBA and the WSBA Council on Public Defense. Specifically, I focus in on two key issues before the Court: the aspect of the proposal that would reduce caseloads for public defenders and, assuming revised standards, the implementation of new standards by local jurisdictions.

Current caseloads for public defense are unsustainable and must be reduced. Among other factors, technology has created efficiencies and opportunities but has also broadened the scope of evidence and forensic data that a public defender must manage and analyze in order to mount an effective defense, making the workload of public defenders fundamentally different than it was when the existing caseload standards were established. This is especially true for Class A attorneys, who are defending community members against the most serious charges.

The heavy workload is the leading factor in a staffing crisis for our public defense agencies. In King County, we have seen high levels of attrition, losing 59 lawyers in the past two years, 20 of whom were Class A attorneys. We have heard in no uncertain terms that the demanding workload contributed to the decision by these seasoned attorneys to leave the department and, sometimes, the field. The impact of that attrition is felt by fellow staff as they absorb their exiting colleagues' workload, especially as fewer and fewer Class A attorneys are available to



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handle those most serious cases. This attrition is a warning that, without intervention, our residents' access to adequate defense is at risk. I do not claim to have the expertise to say unequivocally that the new caseload standards must be adopted exactly as proposed by the WSBA but I believe the Court should give deference to the expertise of the WSBA and its Council of Public Defense and treat their proposal as the baseline from which the Court might consider changes.

While I urge the Court to reduce public defender caseloads, I also share the concerns that have been raised to the Court about the serious challenges that local jurisdictions, including King County, will face in implementing these changes. In particular, I am concerned that local jurisdictions will not be able to bear the fiscal burden of reduced caseloads without state legislative action, and also that we will struggle to recruit and train the attorneys required to implement substantially lower caseloads.

In terms of the fiscal issues, many local jurisdictions lack the revenue tools to address the financial investment that reduced caseloads will require. Nearly three quarters of King County's general fund goes to support criminal and civil justice and public safety services, including law enforcement, jails, courts, public defense and more.

The general fund is the only one that the County can use to fund these services, but it is also the most constrained because state law restricts revenue growth to a lower rate than the cost of maintaining services to residents. With this limit, it is clear that the County does not have the ability to raise the general fund resources that would be required to fully implement the standards as proposed. The King County Council is currently reviewing the County's 2025 Annual Budget and while we have staved off significant cuts next year, the County faces a \$150 million general fund shortfall for the 2026-2027 biennium, and that is before accounting for lower public defense caseloads. With that reality in mind, new caseload standards will require County officials to work with the State Legislature to either remove limits on raising revenue or to allocate state funding to support the vital work that public defense does.

In addition to the funding challenges, local jurisdictions will also have to recruit and train the significant number of new attorneys and staff necessary to successfully implement the proposed standards. Of course, reducing caseloads is a necessary step to recruit new attorneys. However, not every new law graduate will be interested in a career in public defense; new graduates need training and experience before they can take on more complex cases; and the recruitment of public defenders frequently competes with the recruitment of attorneys in other public interest areas, such as civil legal aid. Our state has also recently and laudably expanded investments into legal representation in matters such as eviction defense and immigration. However, in light of



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court backlogs and potential federal policy changes, it is likely that these areas will need a growing number of attorneys as well. These circumstances raise serious concerns as to local jurisdictions' ability to hire the number of attorneys needed to implement the proposed caseload standards, particularly when they are all doing so at the same time, and especially in the timeline proposed by WSBA.

Because of these challenges, I would ask the Court to consider modifying the proposed implementation timeline for the caseload standards and to create a process to review the implementation of the standards as they take effect. Specifically, I would respectfully suggest that the Court maintain the proposed date for implementation of phase 1 of the WSBA proposal on July 2, 2025, but push back the implementation of phases 2 and 3 to July 2, 2027, and July 2, 2029, respectively. In other words, implementation of phases 2 and 3 would come two years after the earlier phase rather than one year after.

At the same time, I would urge the Court to convene an implementation task force of the relevant stakeholders to review the implementation of the new standards in real time and consider recommendations on any modifications that might be necessary for later phases. The Court could ask this task force to submit its evaluations of phase 1 by June 30, 2026, and of phase 2 by June 30, 2028. The Court could then review the evaluations and issue any modifications to later phases by August 31, 2026, and August 31, 2028. The rationale behind this suggested timeline is that most counties and cities prepare their budgets in the fall, and it will therefore be helpful to have a clear understanding of the scope of resource needs by the September before. The timeline would also allow the State Legislature to respond with funding or other policy decisions during its long sessions in early 2027 and 2029 to the final decisions the Court makes on standards that take effect at the beginning of the next state fiscal year.

I believe the modified timeline suggested above will allow the Court to balance the competing compelling priorities implicated by the proposed revised caseload standards. While some stakeholders have asked the Court to wait and conduct further study, I do not believe this is a wise course. The crisis in public defense demands urgent action and the implementation of phase 1 next year and a clear expectation that further reductions will be made over the next four years will be significant steps in addressing that crisis. At the same time, the proposed caseload standards represent a substantial reform to the operation of the state's criminal legal system and their implementation will require concerted action by multiple levels of government (many of which operate on different budgeting timelines). This is in addition to the legitimate uncertainties about the ability of local jurisdictions to recruit enough attorneys to the public defense system, especially simultaneously. The proposed modified timeline will give our state time to evaluate these changes as they are occurring.



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Finally, while I recognize that the Court has a great deal of information to consider on this proposal, I would urge the Court to announce its decision on the issue with sufficient time to allow the State Legislature to address the decision's impact during the 2025 session.

No matter the outcome, the Court's decision about public defense caseloads will have ripple effects throughout the legal system. Over the past several years, criminal legal agencies have faced similar challenges in responding to backlogs, staffing shortages, and demands that exceed resources available. Agencies have creatively addressed these challenges but, as the Chair of the County's Law and Justice Committee, I have heard firsthand the toll that they have taken on the people working to preserve residents' access to justice. I am deeply concerned that without adjusted caseloads, we will continue to lose dedicated public servants and that without reasonable expectations for implementation and funding, that the system as we know it will falter. Both of those possibilities pose risks to the public trust and the legitimacy of the legal system as a whole.

I appreciate your consideration of my comments.

With gratitude,

Jorge L. Barón

King County Councilmember, District Four