
**SUPERIOR COURT
OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY**

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Chief Justice Steven C. González
Washington State Supreme Court

Delivered via email: supreme@courts.wa.gov

Dear Mr. Chief Justice:

On behalf of the Pierce County Superior Court bench, I write today to address the proposed rule change regarding caseloads for public defenders. While we support the review of these caseloads, we have strong concerns that the Rand study used as a foundation for the proposed changes is deficient in many ways including the lack of underlying objective data, the lack of data specific to the State of Washington, and the lack of evidence that reducing the number of cases a public defender may handle will alleviate the shortage of such lawyers in the jurisdictions currently facing significant shortfalls. Moreover, unintended consequences may result from the proposed changes, such as a decline in therapeutic court participation. Finally, we are concerned that both monetary limitations and finding enough people to fill the new job positions would frustrate the stated goals and result in additional problems in the justice system. We urge the Supreme Court to reject the proposed standards at this time and, instead, engage in a study that uses actual data from jurisdictions in the State of Washington.

By Washington statute, the WSBA's Standards for Indigent Defense Services are meant to serve as guidelines to cities and counties as they adopt their own standards for delivery of public defense services. Separately, the Washington Supreme Court maintains its own Standards for Indigent Defense, which are codified in Court rules that govern lawyer ethical and professional obligations. The Court stated it is interested in updating its standards when, last September, it asked the Council on Public Defense to analyze the national study and make corresponding recommendations for Washington's criminal courts. With adoption of those recommendations, the WSBA is now asking the Supreme Court to do the same.

The WSBA's Council on Public Defense adopted the new standards after a two-year study and interviews of public defenders throughout the State. Many of their recommendations are based on a national study by the Rand Corporation, published in July of 2023. The study highlighted three key findings:

1. Based on the consensus of an expert Delphi panel, the average time needed to represent an individual in an adult criminal case ranged from 286 hours to 13.5 hours, depending on case type.
2. Existing national public defense workload standards are outdated, not empirically based, and inadequate.
3. New national workload standards better reflect modern criminal defense practice and professional and ethical responsibilities.

While the Rand study claims that it is supported by empirical evidence, such actual empirical evidence is lacking. First, its methodology is based solely on surveys of so-called experts (described in the study as an "expert Delphi panel") and not on any hard data. Moreover, there is simply no validation contained in the study that adoption of its proposed standards will address the core problem facing criminal justice systems in Washington, namely the recruiting and retention of public defenders. The Delphi method has been used in other states facing similar problems. For instance, in New Mexico, the panel concluded that a lawyer representing a defendant in a murder case should work 514.5 hours. In the Delphi study performed in Rhode Island, the conclusion from its panel was that a murder case would require 181.6 hours. In the Rand study, its panel came to the conclusion that representing someone charged with murder would require 248 hours. As one can see, the difference in opinion is based on the lack of objective data.

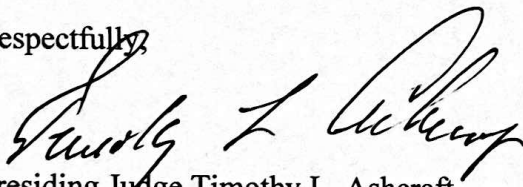
Finally, the Rand study's biggest shortcoming is the way it is being used as the underpinning of attempts to address the core issue: the shortage of public defenders, especially in rural areas of the State, that leads to a lack of representation for the majority of charged defendants. While this court does not disagree that workload standards should be addressed to better reflect today's criminal defense practice, as well as professional and ethical responsibilities, it is but one part of the solution to our current crisis.

Separate from the Rand study's deficiencies, we are concerned about unintended consequences. Many believe that the implementation of these standards would ultimately result in fewer prosecutions, especially for property crimes. If this is true, therapeutic courts will suffer. Most of the participants in therapeutic courts are facing property crime charges. Therapeutic courts offer these individuals a chance to address their issues, such as drug addiction or mental health, while getting the benefit of reduced or dismissed charges. But if fewer property crimes are being charged, the pool of people that can benefit from these programs will be greatly reduced, resulting in fewer people getting the needed help and potentially decreasing community safety.

Finally, there are significant concerns about insufficient money to hire the increased number of attorneys required, and even if the money is available, simply finding enough attorneys to do this type of work. The practicalities of any change in workload standards must be part of the consideration.

In summary, we urge the Supreme Court to delay any decision regarding this important issue pending a statewide study that looks at the specific needs in Washington (county by county), including an analysis of the financial and human resource requirements of such changes, as well as other secondary effects to the justice system in our State.

Respectfully,

A handwritten signature in black ink, appearing to read "Timothy L. Ashcraft". The signature is fluid and cursive, with a large initial 'T' and 'A'.

Presiding Judge Timothy L. Ashcraft
Pierce County Superior Court
On behalf of the Pierce County Superior Court bench

