

TO: Washington State Supreme Court
FROM: Deanna Dawson, CEO of the Association of Washington Cities
DATE: March 26, 2024
RE: WSBA Recommended Revised Standards for Indigent Defense and Caseload Limits

Dear Chief Justice González, Associate Chief Justice Yu, and the Honorable Justices of the Washington State Supreme Court:

I write to you today to share concerns that we have with the Washington State Bar Association Board of Governor's recommended changes to the Washington Standards for Indigent Defense, and to reach out in partnership so that we may work together to address the indigent defense needs in our state.

As a former public defender, I know first-hand the challenges facing these hard working attorneys. We appreciate the work they do in assisting some of the most vulnerable in our communities, and cities are committed to providing effective assistance of counsel as guaranteed by the 6th and 14th amendments to the US Constitution and the Washington State Constitution.

At the same time, cities all across Washington State are facing significant challenges in recruiting and retaining sufficient numbers of qualified public defense attorneys. This is a challenge that I am personally familiar with, and our cities are grappling with each day. These challenges are even more acute in the rural areas of our state.

In the face of these challenges, AWC and our cities are working to solve the issues. We supported recent legislative efforts to increase the number of prosecutors and public defenders in the state and will continue to do so in the future. Cities are also establishing and expanding innovative and best-practice therapeutic courts and other diversion programs that require substantial financial investment and personnel but result in better long-term outcomes.

Cities are engaged in the issue and want to be part of the solution. We know that the current recommendation will not solve the issue. There are many complex factors at play. We need to work together to address the workforce challenges, to build a pipeline of attorneys to take on these roles, and to develop sustainable revenue to fund these positions. Rapidly tripling the required number of public defense attorneys without addressing these issues will only exacerbate the challenges and render the criminal judicial system non-functional.

We are asking for the opportunity to meet with you to discuss practical and feasible solutions that will ensure the criminal justice system is functional for all involved, including public defenders and their clients.

The proposed standards are financially not feasible for municipalities

As you know, the State currently funds a small fraction of public defense costs, and the vast majority of the expenses are borne by local governments. Public defense costs are paid out of a city's general fund budget; funding sources for a city's general fund are statutorily and constitutionally limited. Cities are constrained not only by the limits of their residents' ability to pay, but also by legal restrictions on the city's ability to raise revenue. A tripling of the required number of public defense attorneys would be a tremendous cost that far exceeds the capacities of cities to fund.

Based on initial rough estimates, implementation of the recommended caseload standards would result in an increase of misdemeanor public defense expenses statewide potentially in excess of \$400 million dollars annually. This, of course, does not include the costs to counties for felony public defense.

Cities simply cannot afford this cost, and do not have the tools to raise the needed revenue. Local government funding constraints will result in cities facing an untenable choice to cut critical programs, including funding for other court staff and judicial programs, as well as human service programs designed to address root causes of criminal behavior and to keep individuals out of the criminal justice system.

Recent legislative changes have already resulted in a large increase in criminal justice costs for cities, without a commensurate increase in funding for municipalities. And at the same time, cities are looking at new and innovative ways to fund upstream solutions. Adding additional costs to cities at this time will hamper these efforts and the progress being made.

Even if funding were available, there is an inadequate workforce to meet the proposed caseload standards

Funding is not the only challenge. To implement reduced caseload standards, jurisdictions will require not only additional state funding, but also a concerted legislative effort to increase the workforce pipeline for public defenders and support staff.

As noted throughout the recommendations from the Council for Public Defense, nationally we are experiencing a significant shortage of public defense attorneys. Even if full funding were provided by the state, jurisdictions will not be able to hire triple the number of public defense attorneys in three years compared to today. A reduced caseload standard will not result in three-times as many individuals being interested in pursuing a career in public defense in such a short amount of time. Cities statewide would be hampered in their ability address misdemeanor crimes consistently and effectively, including crimes like drug possession, domestic violence, and DUI.

AWC supports careful consideration of the caseload standards for indigent defense attorneys. However, implementation of a large reduction in caseload standards must be accompanied by state investments in public defense, as well as a concerted effort to increase the workforce pipeline for defense attorneys, support staff, prosecutors, victim's advocates, defense investigators, and social workers.

The recommended caseload standards are not feasible, and we ask for the opportunity to meet with you before the court considers proposing changes to court rules and discuss viable solutions and alternatives to the proposed standards. I welcome any questions you may have and look forward to hearing from you soon.

Regards,



Deanna Dawson
CEO, Association of Washington Cities