



April 23, 2024

Larry Jefferson, Director
Washington State Office of Public Defense
711 Capital Way S, Ste 106
P.O. Box 40957
Olympia, Washington 98504-0957

Re: FY 2025-2027 OPD Budget Development Listening Sessions

Dear Director Jefferson:

The elected leaders of King, Pierce and Snohomish counties want to express our appreciation for your engagement of County and City Officials to help develop the Office of Public Defense (OPD) budget request for the 2025 legislative session. We do feel OPD can provide significant assistance to address trial court indigent defense at the local level. To that end, we offer several ideas for future consideration.

1. Caseload Standards

The trial court indigent defense caseload standards recently adopted by the Washington State Bar Association (WSBA) for potential action by the Supreme Court pose a significant challenge to county budgets, potentially stressing some counties to the brink of failure. All counties require state funding assistance for this cost to ensure other essential services are not impacted. We believe OPD could play a pivotal role in our advocacy efforts by helping counties quantify the cost of the new caseload standards.

We propose OPD seek funding to convene a work group tasked with developing a model capable of producing a credible estimate of the cost impact on counties. This model could serve as a framework for future funding requests as caseloads grow and change. OPD has some expertise in this area; OPD uses modeling to estimate costs for attorneys and social workers for the parent representation program. More importantly, as the state agency with subject matter expertise, we believe OPD can attract the diverse group of local finance and indigent defense experts, state agency and legislative staff, and other relevant stakeholders to develop a credible cost estimate to help educate state and judicial policy makers on the fiscal impact the proposed caseload standards will have on county budgets and the justice system.

2. State Provided Indigent Defense

It is important to point out that counties incur public defense costs solely as an agent of the state. Under the Washington Constitution, all criminal charges under the RCWs are brought in the State of Washington's name by prosecutors acting as state officials when servicing this function. They are adjudicated by state courts, who are also state officials under the constitution, geographically located within each county. County government has no control over the decisions of prosecutors or judges because they are serving a state function. It is fundamentally the responsibility of the State to fund adequate defense when cases are lawfully prosecuted in its name.

As a result, we would like to begin a discussion of policy and fiscal impacts of the state directly providing trial court indigent defense. We recognize that there is a diversity of opinions on this issue. Some counties would prefer the state to assume all aspects of trial court indigent defense while other counties would prefer providing the service with the state assuming the cost. However, there are options between these two poles that may make sense for fiscal, efficiency or access to justice reasons. We believe that a discussion of who is the best service provider for categories of trial court indigent defense (e.g. juvenile, civil commitment, etc.) is long overdue given that the rehabilitation often occurs at the state level, and deficiencies in those systems contribute to individuals recycling back through the local criminal justice system.

3. Workforce Issues

The Legislature expanded the right to trial court indigent defense to include children in dependency actions, tenants in unlawful detainer actions, and some drug possession/use cases. This expansion has contributed to the difficulty of hiring and retaining public defenders for the criminal justice system. The proposed indigent defense caseload standards will only exacerbate this problem.

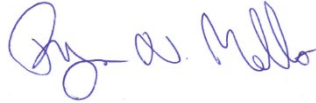
We believe OPD is uniquely positioned to assess the state and local indigent defense workforce needs. We would encourage you to resubmit your request to the Legislature for funding to conduct a statewide evaluation of county and city public defense services, but request that greater emphasis be placed on the resourcing of this service. That emphasis may mean engaging with the Washington State Bar Association, institutions of higher education, and others to examine how to increase the supply of public defenders, not just their income. While the law student rural public defense program created in 2SSB 5780 is a good start, indigent defense workforce development is a statewide problem requiring a more comprehensive solution.

We stand ready to discuss this approach more with you and welcome that discussion if helpful. If you wish to further this conversation please contact our staff Michael White, King County State and Tribal Relations Director, at michwhite@kingcounty.gov or 206-351-1674; Julie Murray, Pierce County Council Chief of Staff, at julie.murray@pierce.wa.gov or 253-798-6253; and Lacey Harper, Snohomish County Executive's Office, at lacey.harper@co.snohomish.wa.us or 360-688-6944.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Upthegrove".

Dave Upthegrove, Chair
King County Council

A handwritten signature in blue ink, appearing to read "Ryan Mello".

Ryan Mello, Chair
Pierce County Council

A handwritten signature in black ink, appearing to read "Jared Mead".

Jared Mead, Chair
Snohomish County Council

A handwritten signature in black ink, appearing to read "Dow Constantine".

Dow Constantine
King County Executive

A handwritten signature in blue ink, appearing to read "Bruce Dammeier".

Bruce Dammeier
Pierce County Executive

A handwritten signature in blue ink, appearing to read "Dave Somers".

Dave Somers
Snohomish County Executive