KING COUNTY PROSECUTING ATTORNEY'S OFFICE

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JUSTICE
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Dear King County Leaders:

The purposes of this letter are to share my serious concerns regarding the Washington State Bar Association's recently adopted *Standards for Indigent Defense Services* and to encourage your consideration of the potentially catastrophic fiscal and practical impacts this proposal will have on King County's criminal justice system.

We respect the job and the difficult work that public defenders do, and they are an important part of the criminal legal system. This note about financial concerns and unintended disparities does not change the respect we have for the many good people who are public defenders.

If adopted by our Washington State Supreme Court, these proposed caseload standards will bankrupt King County's General Fund and create huge disparities between defense and prosecution.

In their current form, the new public defense standards establish that "[t]he maximum annual caseload for a full-time felony attorney is 47 case credits." Public defense attorneys would be assigned variable credits based on case type – ranging from eight credits per case for cases where the defendant faces a possible punishment of life without parole, to one credit per case for certain less serious felonies. There are different standards for misdemeanor attorneys and civil commitment (Involuntary Treatment Act or ITA) attorneys. These new caseload standards would *drastically* reduce current maximum caseloads for public defenders and would result in three immediate consequences:

- King County would be required to fund hundreds of new public defenders and other legal service support staff; and
- There would be an extremely wide and disparate gulf between the large caseloads of prosecutors and the significantly smaller caseloads of public defenders. This gulf would add to the existing landscape in which some cases assigned to the King County Prosecuting Attorney's Office (PAO) are not currently covered by public defenders, but by private counsel.
- If these proposed caseload standards are adopted, we will also see critical impacts on the administration of justice because our current court system will not have anything close to the personnel required to staff cases at the required level.

To illustrate the practical and fiscal impacts of these standards, I have outlined how they would play out if they were to be applied to the PAO. The PAO currently has 175 Deputy Prosecuting Attorneys (DPAs) working on adult felony, adult misdemeanor cases, juvenile cases, ITA cases and additional areas of work. If the new public defense standards were applied to the last 12 months of cases for adult felony and misdemeanor cases, juvenile cases, and ITA cases alone, the PAO would need a minimum of 539 total DPAs. This means that the PAO would need 364 additional DPAs and about same number of corresponding Legal Service Professionals (LSPs) plus administrative support staff and resources. The costs for additional positions and administrative resources would be an added cost of at least $154 million each year, including costs for space, IT costs, or equipment needs for hundreds of new additional FTEs. $154 million represents an additional 13% of the total 2024 General Fund budget of $1.17 billion.

Assuming the PAO receives funding to provide parity with the proposed public defense caseload and staffing standards, the combined increased costs of DPD and PAO would result in King County's criminal justice system agencies totaling more than 100% of the county's General Fund.

In our approach to calculating the impact of the proposed caseload standards, the PAO applied an intentionally conservative number. The position numbers would necessarily be much higher once additional mandatory work of the PAO is considered.

Below is more information about how we calculated the above figures:

- The work required by DPAs to file a criminal case was considered as part of the case handling.
- A case review that resulted in a decline of an adult felony was counted as 1/3 of a felony caseload credit per-case (the same as the public defense standards applies for probation violations).
- Juvenile declines were counted as 1/3 of a misdemeanor caseload credit per-case. Other types of declines were not included as part of obtaining a conservative calculation of the number of needed attorneys.
- The public defense standards also provide varying number of credits for various classes of cases. The KCPAO converted its case categorization to the public defense categories in a conservative fashion.

To make these standards consistent with the goals of managing an integral criminal justice system anywhere in the state or country, realistic capacities and feasible expectations are needed. Any standard that will be applied statewide should consider the varying and diverse systems of criminal justice across Washington State.

There is still time to act to raise concerns with the Washington State Supreme Court, which has ultimate authority on whether these standards will be enforced. On Monday May 13, the Washington State Supreme Court Rules Committee voted on an expedited public comment period through the end of October, with a final decision in early 2025. Additionally, given the possible impacts of the rule, they voted to propose at least two public meetings to accept additional comments before the end of October. This means that there is still time to make your voice heard to the Supreme Court about the impact these standards will have on King County.

There are also actions the court can take that have not yet been analyzed and would not have the same drastic consequences on the criminal justice system. For example, recent changes in court rules have significantly increased the amount of time defense holds onto cases. These changes reduced the number of hearings where a defendant's presence is required, and the number of warrants issued. The total absence of any appearances or check-ins from defendants between arraignment and trial means there are many cases where the attorney has no contact, stopped working on a case, and it is still on their books preventing new assignments. Further, when defendants never have to come to court or interact with their case, the case can become "out of sight, out of mind" and there's no urgency to move forward. Requiring a reasonable number of appearances before trial would likely yield lower caseload standards while avoiding the negative impacts of the proposed caseload standards.

I am happy to further discuss these issues and answer any questions you may have. I also encourage you to join me in sharing this information with relevant interested parties before this issue is decided by the Washington State Supreme Court.

Sincerely,

Leesa Manion

Prosecuting Attorney