



INFORMATIONAL MEMORANDUM

**TO: Mayor McLeod
Community Services and Safety Committee**

**FROM: Marty Wine
City Administrator**

**BY: Cheryl Thompson
Executive Coordinator**

DATE: October 7, 2024

SUBJECT: 2025-2026 Contract for Public Defense Services

ISSUE

The current contract for public defender services provided by Kirshenbaum & Goss expires December 31, 2024. The proposed contract for 2025-2026 is attached.

BACKGROUND

The Sixth Amendment of the United States Constitution requires that people accused of serious crimes who cannot afford to pay for private counsel be provided with an attorney. Responsibility for upholding the mandate of the Sixth Amendment lies with the states, although in Washington State this responsibility has been delegated to counties and municipalities that have judicial branches. The City of Tukwila contracts for public defense services to provide legal representation for indigent criminal defendants who qualify for appointment of counsel. Representation is provided from the time of screening for eligibility through trial, sentencing and appeals to the superior court, if necessary.

Two significant occurrences have impacted the provision of public defense services in the recent past: 1) Effective January 1, 2015, Public Defense Standards were adopted by the Washington State Supreme Court. These standards delineate the number of cases each attorney can handle per year and mandates that compensation include administrative and training costs. 2) The federal court decision, *Wilbur v. Mt. Vernon* provided additional emphasis on requirements for timely contact with clients, provision of support services for public defense attorneys to provide adequate representation like investigation services, interpreter services and expert witnesses, and reasonable compensation.

The City has developed a Public Defense program that fully complies with the Public Defense Standards and *Wilbur v. Mt. Vernon*.

The City has historically contracted with Kirshenbaum & Goss, Inc. P.S. for the provision of public defense services. In September 2022 the City advertised a Request for Proposals for the

provision of public defense services. Kirshenbaum & Goss was the only firm to submit a proposal.

In 2018 the City was paying \$32,600 per month for public defense services. Due to a decline in caseload numbers and the impacts of the pandemic, that rate was reduced and in 2023-2024 we paid a Base Compensation rate of \$29,500 per month for public defense services with an additional \$375 per case for each case assigned over the 240 quarterly caseload and an additional \$800 for any case that is appealed to King County Superior Court where the firm has to prepare and submit a brief. As of today, we have not exceeded 240 case assignments per quarter and there have been no appeals to Superior Court.

DISCUSSION

Due an increase in caseload numbers parallel to the caseload of 2018, the proposed 2025-2026 contract restores Base Compensation to \$32,600 per month for public defense services with \$30,600 being paid from the general fund and \$2,000 per month from Office of Public Defense grant funds. The contract provides for an additional \$550 per case for each case assigned exceeding a 240 quarterly caseload and maintains an additional \$800 for any case appealed to King County Superior Court. This contract also has an additional provision for compensation at \$550 per case specific to Drug Possession cases paid for through the Simple Possession Advocacy and Representation (SPAR) Program grant. The overall impact to the budget is an additional \$13,200 per year from the general fund.

The 2025-2026 agreement allows for compensation review in three circumstances: 1) When the City receives notice from the Office of Public Defense regarding the 2026-2027 Grant Application, to adjust compensation, if needed; 2) If the Tukwila Municipal Court implements a Community Court during the term of the Agreement, the impact to provision of public defense services for the Community Court will be assessed and compensation may be adjusted accordingly; and 3) to comply with any amendments made to the Washington Supreme Court Standards for Indigent Defense, which are currently under consideration.

The attached agreement has been reviewed by the City Attorney's Office.

Standards for Indigent Defense

The Washington State Supreme Court is currently reviewing a request from the Washington State Bar Association (WSBA) to revise the Standards for Indigent Defense that outlines the requirements that jurisdictions must meet in providing public defense services. The revisions requested by the WSBA for municipal courts are summarized below:

- Reduction of misdemeanor caseloads from 400 cases per attorney per year beginning July 2025 with the end result being 80-120 misdemeanor cases per attorney per year, depending on the complexity of the cases effective July 2027.
- Required ratio of investigators, support staff, mitigation specialists and interpreter services per attorney.

These requirements would have a significant impact not only from a budgetary standpoint but could also impact charging decisions at the felony level all the way down to the misdemeanor level.

The Washington State Supreme Court is accepting public comment on the proposed changes through October 31, 2024. Staff has prepared the attached letter to submit as public comment from the City of Tukwila and is requesting that the City Council join Mayor McLeod in signing the letter expressing concerns about the proposed Standards.

RECOMMENDATION

The Committee is being asked to move the agreement and letter forward to the October 21, 2024, consent agenda.

ATTACHMENTS

Draft Contract for Public Defense Services for 2025-2026.

Draft letter to Washington State Supreme Court re: Indigent Defense Standards



CONTRACT FOR PUBLIC DEFENSE SERVICES

This Agreement is entered into by and between the CITY OF TUKWILA, Washington, a non-charter optional municipal code city hereinafter referred to as “the City,” and Kirshenbaum & Goss, Inc. P.S., a Washington Corporation, hereinafter referred to as “the Contractor” (collectively, “the Parties”).

WHEREAS, the City has a need to have legal services available for those charged with a crime in Tukwila Municipal Court who are deemed indigent and are entitled to the effective assistance of counsel at the public expense; and

WHEREAS, the Federal Court decision *Wilbur v. Mt. Vernon* emphasizes the need for the City to provide indigent defense services to clients of the Tukwila Municipal Court in a manner which fully complies with the City’s obligations under the Sixth Amendment to the United States Constitution; and

WHEREAS, the City desires to have the Contractor perform such services pursuant to certain terms and conditions; now, therefore,

IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the Parties hereto agree as follows:

1. **Scope and Schedule of Services to be Performed by Contractor.** The Contractor shall perform those services described on Exhibit A attached hereto and incorporated herein by this reference as if fully set forth. In performing such services, the Contractor shall at all times comply with all federal, state, and local statutes, rules and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith, including the provisions of CrRLJ 3.1 and the public defense standards adopted by the City pursuant to TMC 2.70. Compliance with these standards goes to the essence of this Agreement. The Contractor shall request and obtain prior written approval from the City if the scope of work or schedule of services is to be modified in any way.
2. **Compensation and Method of Payment.** The City shall pay the Contractor for services rendered according to the rate and method set forth on Exhibit B attached hereto and incorporated herein by this reference. Base Compensation is in consideration of a caseload not to exceed 960 cases per year. In compliance with the public defense standards, the case counts include the Contractor’s appearance at 48 arraignment calendars per year.
3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing January 1, 2025, and ending December 31, 2026, unless sooner terminated under the provisions hereinafter specified.

4. **Independent Contractor.** Contractor and City agree that Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Contractor nor any employee of Contractor shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor.
5. **Indemnification.** The Contractor shall defend, indemnify and hold the City, its officers, agents, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.
6. **Insurance.** The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
 - A. **Minimum Scope of Insurance.** Contractor shall obtain insurance of the types and with the limits described below:
 1. **Automobile Liability:** The Contractor shall procure and maintain in full force throughout the duration of this Agreement Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile liability insurance shall cover all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 2. **Commercial General Liability:** The Contractor shall procure and maintain in full force throughout the duration of this Agreement Commercial General Liability insurance with

limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate, and \$2,000,000 products-completed operations aggregate limit. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors, personal injury and advertising injury. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 26.

3. Workers' Compensation: The Contractor shall procure and maintain Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability Insurance: The Contractor shall procure and maintain in full force throughout the duration of this Agreement Professional Liability insurance with a minimum coverage of \$2,000,000 per claim and \$2,000,000 aggregate. Contractor shall provide evidence of such coverage in a manner and form acceptable to the City in the City's sole discretion. Cancellation of the required insurance shall automatically result in termination of this Agreement.

B. **Other Insurance Provision.** The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

C. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

D. **Verification of Coverage.** Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

E. **Notice of Cancellation.** The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

7. **Record Keeping and Reporting.**

A. The Contractor shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Agreement and other such records as may be deemed necessary by the City to ensure the performance of this Agreement.

B. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the office of the archivist in accordance with RCW Chapter 40.14 and by the City.

8. **Amendment or Renegotiation.** This Agreement may be amended prior to the effective date of any significant changes to the Washington Supreme Court Standards for Indigent Defense.
9. **Termination.** This Agreement may at any time be terminated by the City giving to the Contractor thirty (30) days written notice of the City's intention to terminate the same. If the Contractor's insurance coverage is canceled for any reason, the City shall have the right to terminate this Agreement immediately.
10. **Discrimination Prohibited.** The Contractor, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation, the presence of any disability, or any other protected class status under state or federal law, in the selection and retention of employees or procurement of materials or supplies.
11. **Assignment and Subcontract.** The Contractor shall not assign or subcontract any portion of the services contemplated by this Agreement without the written consent of the City.
12. **Entire Agreement.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements written or oral. No amendment or modification of this Agreement shall be of any force or effect unless it is in writing and signed by the parties.
13. **Notices.**
Notices to the City of Tukwila shall be sent to the following address:

City Administration
City of Tukwila
6200 Southcenter Blvd.
Tukwila, WA 98188

Notices to the Contractor shall be sent to the following address:

Kirshenbaum & Goss, Inc. P.S.
6300 Southcenter Blvd Suite 211
Tukwila, WA 98188
14. **Severability and Survival.** If any term, condition, or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement,

which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.

15. **Applicable Law, Venue, Attorney’s Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney’s fees and costs of suit.

DATED this ____ day of _____, 2024.

CITY OF TUKWILA

CONTRACTOR:

CT

Thomas McLeod, Mayor

David Kirshenbaum

Attest/Authenticated:

Approved as to Form:

Andy Youn, City Clerk

City Attorney’s Office

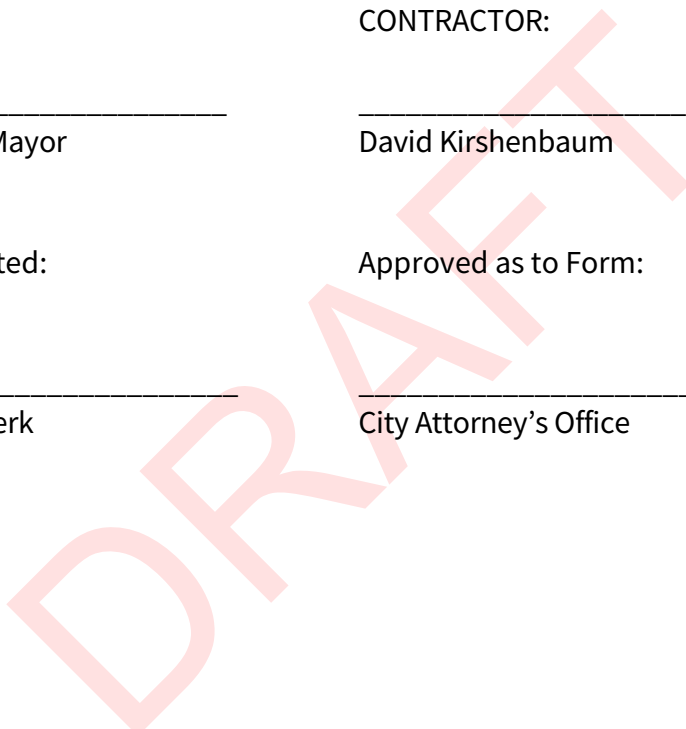


EXHIBIT A - SCOPE OF SERVICES

1. **General Scope of Representation.** Provide legal representation services in accordance with the standards adopted by the City in TMC 2.70, the standards set forth by the Washington State Bar Association Standards for Indigent Defense Services, the Rules of Professional Conduct, *Wilbur v. Mt. Vernon*, other related case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases for all indigent criminal defendants charged with a misdemeanor or gross misdemeanor under ordinances of the City who qualify for appointment of counsel. The Contractor agrees to attempt to contact the client within 72 hours of notification of appointment. The Contractor shall provide legal representation for each of these defendants from time of screening for eligibility through trial, sentencing and appeals to the superior court, if necessary.
2. **Video Court Services.** Provide daily video court public defense services to defendants charged under ordinances of the City who are detained at the SCORE Jail and qualify for public defense services in a manner consistent with the accepted practices for similar services, performed to the City's satisfaction.
3. **Attorney of the Day Services.** Provide an attorney for weekly arraignment calendars, available to all unrepresented defendants for consultation.
4. **Screening.** Determination of indigency for eligibility for appointed counsel under this Agreement shall be determined by an independent screening process established by the City. Should the Contractor determine a defendant is not eligible for assigned counsel prior to the establishment of the attorney/client privilege, the Contractor shall so advise the City to reconsider the screening of that particular individual.
5. **24-Hour Contact Information.** The Contractor shall provide to the City Police Department, a telephone number or numbers at which an attorney may be reached 24-hours each day for "critical stage" advice to the defendants during the course of police investigations and/or arrest for misdemeanor violations of City Ordinances.
6. **Authority to practice.** Any counsel associated with or employed by the Contractor shall have the authority to perform the services called for herein and the Contractor may employ associate counsel to assist him/her at the Contractor's expense and with written consent from the City in compliance with Section 11 of this Agreement. The Contractor and any other attorneys retained pursuant to this section shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington and shall have read and be fully familiar with the provisions of the Washington Supreme Court rule and the standards adopted by the City pursuant to TMC 2.70, as well as the *Wilbur v. Mt. Vernon* decision.
7. **Conflicts.** In the event representation of a defendant hereunder raises a conflict of interest such that the Contractor cannot ethically represent the defendant, said defendant shall be referred

back to the City for further assignment, without being included in the caseload assignments for the Contractor.

8. Discovery. The City shall provide to the Contractor, at no cost, one copy of all discoverable material concerning each assigned case. Such material shall include, where relevant, a copy of the abstract of the defendant's driving record.
9. Training. Contractor agrees to attend seven (7) hours of criminal defense training each year. The training must be approved by the Washington State Office of Public Defense (OPD) in compliance with the OPD Improvement Program Training requirements. This requirement also applies to all associate counsel. Each attorney will submit a copy of their Continuing Legal Education (CLE) Credits transcript from the Washington State Bar Association (WSBA) with the Annual Report.
10. Case management. Pursuant to TMC 2.70.050 Standard 8, the Contractor shall maintain a case reporting and case management system that includes number & type of cases, attorney hours and disposition.
11. Reporting. Contractor agrees to submit the following reports:
 - Monthly Case Assignment List: Includes Cause Number, Name, Charges, Date of Assignment and Date of First Effort to Contact;
 - Monthly Statistics Report: This report shall take substantially the same form as that attached hereto as Exhibit C and shall be submitted with the monthly invoice;
 - Quarterly Certification of Compliance: The Contractor shall certify compliance with the standards required by CrRLJ 3.1. The Certification shall take substantially the same form as that attached hereto as Exhibit D and shall be filed quarterly with the Tukwila Municipal Court on the following dates: January 1, April 1, July 1, and October 1, or the next court day, if the filing day falls on a weekend or holiday;
 - Annual Report: Detailing the number of other public defense contracts including jurisdiction, the number and type of non-public defense cases handled, and the total hours billed for non-public defense cases.
12. Client Contact Prior to Court Hearings. Contact all clients 1-2 business days prior to their court hearing to confirm access to and knowledge of how to utilize the necessary technology to appear before the court.
13. Additional Coverage for Review Calendars. Provide a minimum of two attorneys at each review calendar to expedite efficient hearings.

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

1. **Base Compensation Rate.** Effective January 1, 2025, for all public defense services set forth in Exhibit A, Contractor shall be paid a flat monthly fee of \$32,600, which includes \$2,000 per month Office of Public Defense (OPD) grant funds to compensate for additional services provided as outlined in Exhibit A Sections 12 & 13. Should provision of the additional services be modified in any way, compensation will be adjusted accordingly. OPD grant funds have been awarded for 2025. If needed, a mid-contract review will be conducted to adjust compensation based on grant funding.
2. **Caseload Compensation.** Caseload assignments will be evaluated on a quarterly basis. For each case per quarter over 240 cases additional compensation will be provided at the rate of \$550 per case.
3. **Possession and Public Use Cases:** Simple Possession Advocacy and Representation (SPAR) grant funds have been awarded through June 30, 2025. These funds will pay \$550 per case for possession or public use of a controlled substance cases. The City will apply for continued grant funding for the remainder of 2025-2026.
4. **Appeals.** The City shall pay the Attorney an additional sum of \$800 per RALJ appeal filed with the King County Superior Court in which a brief has been filed by the Contractor.
5. **Community Court.** The Tukwila Municipal Court is researching implementation of a cross-jurisdictional Community Court. If a Community Court is implemented during the term of this contract, the impact to provision of public defense services for the Community Court will be assessed and compensation will be adjusted accordingly.
6. **Preauthorized Non-Routine Expenses.** Non-routine case expenses requested by Attorney and preauthorized by order of the Tukwila Municipal Court. Non-Routine expenses include, but are not limited to:
 - a. Medical and psychiatric evaluations;
 - b. Expert witness fees and expenses;
 - c. Interpreters for languages not commonly spoken in the city or interpreters;
 - d. Investigation expenses;
 - e. Medical, school, birth, DMV, 911, emergency communication recordings and logs, and other similar records when the cost of an individual item does not exceed \$75; and
 - f. Any other non-routine expenses the Tukwila Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.
7. **Invoices.** The Contractor shall invoice the City by the fifth day of the month for all cases assigned to him/her for the previous month. The bill shall delineate the following:
 - City compensation;
 - Miscellaneous Charges: Copies of invoices and/or receipts shall be attached to the bill; and
 - A list of the cases assigned for the month including the defendant's full name, case number, charges, date of assignment & date of first contact.

EXHIBIT C – PUBLIC DEFENSE MONTHLY REPORT – Kirshenbaum & Goss

CLIENT CONTACT	# per month
Jail Visits	
Out of Court Meetings	
Phone Calls	
Email Correspondence	
MOTIONS PRACTICE	
Motions	
RESOURCES UTILIZED	
Expert Consulted	
Immigration Case Assistance/Resources (WDA)	
Interpreter (out of court)	
Investigator	
Referred for Mental Health/Competency Evaluation	
Social Services Liaison	
COMPLAINTS	
Complaint Forms Received from Clients	
Complaints Filed with the WSBA	
TRAINING (in hours)	
WDA	
WACDL	
Other	

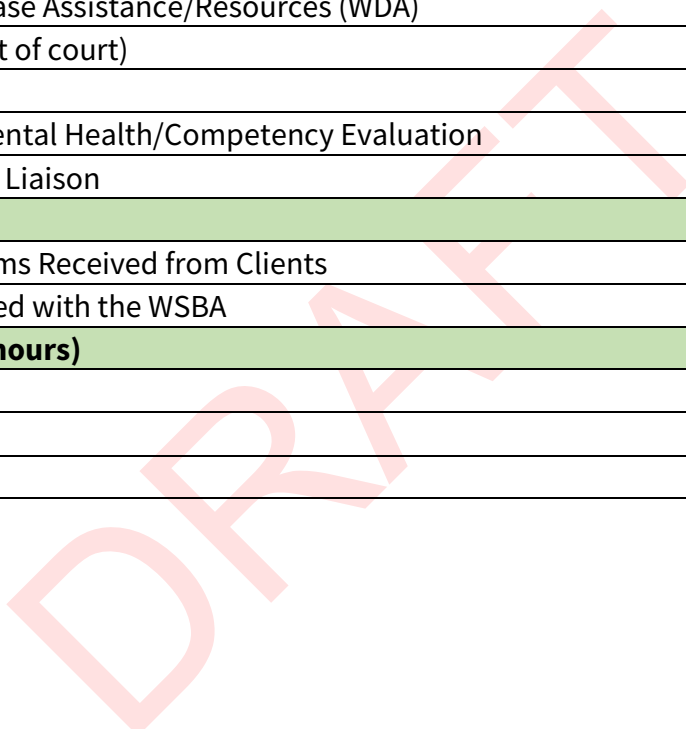


EXHIBIT D – CERTIFICATION OF COMPLIANCE

**MUNICIPAL COURT FOR
CITY OF TUKWILA
STATE OF WASHINGTON**

**CERTIFICATION OF APPOINTED
COUNSEL OF COMPLIANCE WITH
STANDARDS REQUIRED BY**
CrR 3.1/CrRLJ 3.1/JuCR 9.2

CERTIFICATION BY:

[NAME], [WSBA#]

QUARTER [1ST,2ND, 3RD, 4TH]
CALENDAR YEAR 202_

Certification for:

_____ to _____
MM/DD/YYYY MM/DD/YYYY

The undersigned attorney hereby certifies:

1. I am familiar with the Standards for Indigent Defense adopted by the Supreme Court which apply to attorneys appointed to represent indigent clients.
2. I file certification forms in each court in which I provide indigent defense representation.
3. Approximately ____% of my total practice time is devoted to indigent defense cases.
Approximately ____% of my total practice time is devoted to indigent defense cases in Tukwila Municipal Court.
4. I am appointed in other courts to provide indigent defense representation. My practice time in each is approximately as follows:
___ Not Applicable
Court: _____ Total practice: _____ %
Court: _____ Total practice: _____ %
Court: _____ Total practice: _____ %
5. **Caseload:** I limit the number of cases and mix of case types to the caseload limits required by Standards 3.2, 3.3 and 3.4. My caseload is prorated to the percentage of my practice devoted to indigent defense.
6. **Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1. I am familiar with the specific case qualifications in Standard 14.2 and accept appointment as lead counsel only when I meet the qualifications for that case.
7. **Office:** I have access to an office that accommodates confidential meetings, a postal address, and adequate telephone and communication services as required by Standard 5.2.
8. **Investigators:** I have investigators available to me and use investigative services as appropriate, as required by Standard 6.1.

Attorney Signature

WSBA No.

Date



October 22, 2024

Washington Supreme Court
PO Box 40929
Olympia WA 98504

Re: Proposed changes to the Washington Supreme Court Standards for Indigent Defense

Dear Honorable Justices:

The City of Tukwila respectfully implores the Washington Supreme Court to reject the requested amendments to the Standards for Indigent Defense in CrRLJ 3.1. The City of Tukwila supports a defendant's constitutional right to effective assistance of counsel. The criminal justice system is facing significant workforce challenges, and the City of Tukwila is working to provide resources that ensure every adult misdemeanor defendant has effective assistance of counsel where the attorney meets an "objective standard of reasonableness" under "prevailing professional norms."¹

The proposed revisions to the state's Standards for Indigent Defense will not solve current issues and will result in new and weightier challenges than before, and the potential for felony cases to be charged as misdemeanors would have a significant impact on the Municipal Court caseload.

The proposed changes are based on a national study.

The proposed changes to the state's Standards for Indigent Defense are predicated on a 2023 national study² completed by the RAND organization. The report notes that the views expressed in the report are solely the opinions of the authors and have not been approved by the American Bar Association³. Furthermore, the RAND report says that the results of the study are "primarily applicable to locations or for purposes where jurisdictionally focused workload standards have not already been produced." Washington state currently has caseload standards in place. The report continues to state that, "the most accurate weighted caseload model is developed specifically for an individual state or jurisdiction." Therefore, the appropriate response would be for Washington to conduct the necessary research and base recommendations on that research. These issues are too important to rush in haste to a solution.

¹ *Strickland v Washington*, 466 US 668 (1984)

² http://www.rand.org/pubs/research_reports/RRA2559-1.html

³ RAND Report Page ii

The criminal justice system requires effective coordination of all moving and interdependent parts, including prosecutors, defense attorneys, judges, court staff, victims' advocates, investigators, social workers and external resources like substance use and behavioral health treatment providers. Without adequate funding and workforce available to meet the proposed standards, it is inevitable that more criminal cases will be dismissed due to a lack of defense counsel, including misdemeanor DUI and domestic violence cases. The proposed recommendations will exacerbate current challenges with harmful consequences.

Smaller jurisdictions struggle the most to recruit and retain public defense attorneys. Modifying the caseload standards will not provide equal access to justice but will increase the challenges that smaller jurisdictions will have in providing public defense services. Instead, the solution lies in concerted workforce efforts to increase access to internships, student loan forgiveness programs for contract attorneys, and other programs designed specifically to increase the workforce in smaller, underserved areas.

There is an inadequate workforce to meet the proposed standards

To implement the proposed caseload standards, the City of Tukwila will require at least three times the number of public defense attorneys, as well as social workers and investigators. There is a very real concern that the workforce required will not be available within the timeframe envisioned by the proposed standards. With the inability to expand the workforce to meet the standards, the City of Tukwila would be hindered in the ability to address misdemeanor crimes consistently and effectively, including crimes like domestic violence, drug possession, and DUI. Additionally, misdemeanor caseloads may be incrementally increased when felony charges are reduced down to a misdemeanor.

The City of Tukwila supports a concerted legislative effort to increase the workforce pipeline for public defenders, prosecutors, court staff, social workers, investigators, and other key personnel. However, even if the legislature takes significant steps in the 2025 legislative session towards these goals, the recommended caseload standards as proposed are not feasible.

The proposed standards are financially infeasible for cities

The City of Tukwila pays public defense costs out of the general fund budget. Funding sources for a city's general fund are statutorily and constitutionally limited, in addition to being constrained by residents' ability and willingness to pay. The State currently funds only a small fraction of public defense costs. Given the current state budgetary forecasts, this is unlikely to change in the near future.

Faced with these cost increases, the City of Tukwila may be forced to make budget cuts to other services, including those designed to address the root causes of criminal behavior keeping people out of the criminal justice system.

Better alternatives exist to address the challenges

A Washington-state specific study:

The RAND report highlighted national issues and has prompted other states and local governments to call for a location-specific study to determine the appropriate weighted caseload standard for their jurisdiction. Rather than making a decision on the WSBA recommendations in haste, the City of Tukwila supports careful consideration of a state-specific standard developed by a neutral researcher.

We urge approval of only portions of the proposed recommendations that are feasible and achievable within current revenue and workforce limits, and which will improve public defense. The proposed caseload limits have been the focus of much of the attention related to the WSBA's recommendations, however, some components of the proposed revisions are feasible and would strengthen Washington's public defense services. For example, the City of Tukwila supports the training and qualification requirements for misdemeanor public defenders. While the staff ratios envisioned in the proposed standards may not be workable everywhere, we support the idea of providing access to investigators, social workers, and interpreters. These types of reforms are positive steps forward but if the rigid requirements of the proposed revisions are adopted the City of Tukwila will be limited in the provision of these resources.

If the Court is inclined to adopt the proposed revisions to the Standards for Indigent Defense in their entirety, we ask the Court to exempt adult misdemeanors from the revisions, or at a minimum, delay implementation as to misdemeanors for several years to allow time to build the necessary workforce and time for the legislature to appropriate the needed funding increases.

The City of Tukwila appreciates the work done by our public defenders. We know that the current recommendations will not solve the issues. At best, the recommendations are financially and logistically infeasible, and at worst, they will create harmful consequences. We ask that you do not adopt the proposed changes.

We appreciate the opportunity to comment on the proposed revisions to the Standards for Indigent Defense, and we welcome any questions you may have.

Thomas McLeod
Mayor

Mohamed Abdi
Council President