



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 6570
November 4, 2024
Consent Agenda**

AGENDA BILL INFORMATION

TITLE:	AB 6570: Written Public Comment on the Proposed Changes to Washington State Supreme Court Standards for Indigent Defense	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
RECOMMENDED ACTION:	Ratify Mayor signing the City’s comment letter to the Washington State Supreme Court regarding proposed changes to Standards for Indigent Defense.	

DEPARTMENT:	City Council
STAFF:	Jessi Bon, City Manager Ali Spietz, Chief of Administration Carson Hornsby, Management Analyst II
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Letter regarding the proposed changes to the Washington State Supreme Court’s adopted Standards for Indigent Defense
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

EXECUTIVE SUMMARY

The purpose of this agenda bill is to seek City Council ratification per Section 5.8 of the Council Rules of Procedure for the City’s comment letter submitted to the Washington Supreme Court signed by Mayor Nice, with Deputy Mayor Rosenbaum’s concurrence, regarding the [proposed amendments to the Standards for Indigent Defense](#) recommended by the Washington State Bar Association (WSBA) (see Exhibit 1). The City’s comment letter was also signed by City Manager Bon and Judge Gregory.

- Public defense attorneys have faced increased caseloads in recent years leading to attrition and recruitment issues for public defense offices throughout the state. The WSBA proposed amendments to the Standards for Indigent Defense to address these issues.
- The Washington State Supreme Court opened a [public comment period](#) through October 31, 2024 to seek input on the [proposed amendments to the Standards for Indigent Defense](#) recommended by the WSBA.
- Several concerns have been raised about the feasibility of the WSBA proposal related to budget constraints of cities and counties, workforce shortages for public defense attorneys and support staff, and the results of the study referenced in the proposal.

- The proposed Standards for Indigent Defense are estimated to cost cities in Washington roughly \$400 million annually. The Association of Washington Cities (AWC) will submit written comment on behalf of its members and has encouraged cities to submit written comment on the WSBA proposal.

BACKGROUND

Current Standards for Indigent Defense

The right to counsel is part of the 6th Amendment to the U.S. Constitution and has applied to state courts since 1963. The vast majority of states include at least some state funding for public defense of indigent defendants; however, Washington is one of only 12 states that provide minimal state funding and largely leaves public defense costs to local governments.

The State Supreme Court first adopted the current case load standards for indigent defense in 2012. The current Indigent Defense Standards cap public defenders at:

- 150 felonies per attorney per year.
- 300 misdemeanor cases per attorney per year, OR 400 misdemeanor cases per attorney per year in jurisdictions that have not adopted a case weighting system.
- 250 juvenile offender cases per attorney per year.

WSBA Proposed Standards for Indigent Defense

The new standards proposed by WSBA phase in progressively lower caseload limits over the next three years that cap public defenders and effectively cuts by two-thirds the number of cases a public defender can accept:

- By July 2025: 110 felony case credits per full-time felony attorney per year, or 280 misdemeanor case credits full-time misdemeanor attorney per year.
- By July 2026: 90 felony case credits per full-time felony attorney per year, or 225 misdemeanor case credits per full-time misdemeanor attorney per year.
- By July 2027: 47 felony case credits per full-time felony attorney per year, or 120 misdemeanor case credits per full-time misdemeanor attorney per year.

The proposed caseload limits apply equally to government-employed public defenders and private attorneys on contract as public defenders. They also apply regardless of an attorney's experience.

WSBA has also proposed a different system of weighting cases for the purposes of the cap, wherein each case type is assigned a case credit weight used to calculate an attorney's workload. Misdemeanors are split into "high" and "low" categories with different credit weights:

- Misdemeanor-High cases are weighted at 1.5 credits each. The category includes drug offenses, sex offenses, domestic violence offenses, and DUIs.
- Misdemeanor-Low cases are weighted at 1.0 credits each. This category includes all other misdemeanors.

Other items in the WSBA proposal include:

- Changes to how public defenders are compensated, including requiring comparable compensation between government-employed public defenders and prosecutors, regardless of relative caseloads.
- New compensation requirements for expert witnesses, mitigation specialists and social workers, mental health professionals, and interpreters.
- Requiring public defense to have access to their own investigation services.

- Standards for additional staff support for public defenders.
- Other changes and restructuring of attorney training, supervision, and private criminal practice.

ISSUE/DISCUSSION

AWC will submit written comment on behalf of its members and has encouraged cities to submit written comment to the Washington State Supreme Court regarding the WSBA proposal. The proposed Standards for Indigent Defense are estimated to cost cities in Washington roughly \$400 million annually. Several concerns have been raised by cities and counties about the feasibility of the WSBA proposal.

The proposed letter from the City of Mercer Island references concerns about the following topics:

- Initial estimates indicate the City of Mercer Island will need to double its number of public defense attorneys to meet the proposed standards.
- The proposed elimination of the flat fee per case contract model will further increase the cost of each case (the City's existing public defense attorney contract is structured to provide compensation as a flat fee per case).
- The demand for public defense attorneys will be roughly tripled without measures to address the shortage of public defense attorneys in Washington State.
- Adoption of the proposed standards without addressing funding and workforce shortages will potentially lead cities and counties to become increasingly selective about the types of crimes they prosecute. Selective prosecution of felonies at the county level may result in substantial increases to misdemeanor caseloads at the municipal court level.
- The RAND study referenced in the WSBA proposal is a national study that is not specific to Washington State. The study was conducted by an organization that is not a neutral entity.

NEXT STEPS

Staff will continue to monitor the State Supreme Court's rulemaking process regarding the proposed amendments to the Standards for Indigent Defense.

The State Supreme Court has scheduled a [public hearing](#) on November 13, 2024 to hear testimony on the proposed amendments to the Standards for Indigent Defense. The hearing is scheduled for 9 a.m. to noon at the Temple of Justice on the State Capital Campus in Olympia. Testimony will be taken both in-person and via Zoom. Advance registration is required to testify in either format.

RECOMMENDED ACTION

Ratify the City's comment letter to the Washington State Supreme Court regarding the proposed changes to Standards for Indigent Defense.