No. 1032528

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE DETENTION OF M.E.,

AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER KING COUNTY DEPARTMENT OF PUBLIC DEFENSE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Decisions

Statutes, Rules, Orders

Other

STATEMENT OF IDENTITY AND INTEREST

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958 and has a nationwide membership of many thousands of direct members and up to 40,000 attorneys in affiliate organizations. NACDL is dedicated to advancing the proper, efficient, and fair administration of justice. NACDL files many amicus briefs each year in federal and state courts, seeking to provide assistance in cases presenting issues important to criminal defendants, criminal defense lawyers, and the criminal legal system as a whole. It has a longstanding interest in ensuring that the right to counsel under the Sixth and Fourteenth Amendments means not merely the presence of an attorney, but the provision of effective, competent legal representation.

This case raises issues of national significance concerning the role of courts in managing public defense obligations under difficult structural conditions. The trial court in the order at issue on this appeal compelled the King County Department of Public Defense (DPD) to assign cases to attorneys who had already reached their caseload limits. That order violates constitutional guarantees and places defenders in the ethically untenable position of accepting assignments they cannot competently perform.

The trial court's order presents a dangerous inversion of constitutional priorities. NACDL urges this Court to reverse that order, and to reaffirm its prior decisions and its recent order on caseload limitations, all of which advance the principle that because the right to counsel is a right to effective representation, courts cannot require defenders to take on excessive caseloads.

INTRODUCTION

This Court has long recognized that the constitutional right to counsel demands more than the appointment of a lawyer in name. It requires that counsel be effective and ethical, and that they have adequate resources to meet their obligations. In June 2025, the Court affirmed that principle by adopting binding statewide caseload limits for public defenders—a milestone in Washington's ongoing effort to align its public defense system with constitutional requirements.

This case presents a major test of that commitment. The ruling below compelled DPD to take on new cases notwithstanding the fact that any DPD attorney doing so would exceed the applicable caseload cap. The superior court's ruling cannot be reconciled with this Court's mandates. Nor can it be squared with defenders' ethical obligations to "control" their "work load[s] … so that each matter can be handled competently." Washington Rules of Professional Conduct Rule 1.3, Cmt. 2.

To allow the superior court's ruling to stand violates this Court's directives, defenders' ethical obligations, and the constitutional right of defenders' clients to effective representation. The superior court's order perpetuates the systemic strain both this Court and the state bar association have sought to alleviate through caseload standards.

When defenders decline new cases pursuant to binding caseload limits, those attorneys are *complying* with rules and principles of constitutional and ethical representation. They are not defying those rules. The right to counsel cannot be fulfilled by overextended representation. But the right is plainly compromised when courts force attorneys to choose between ethical compliance and judicial obedience.

Across the country, other jurisdictions have faced the same problem of defender capacity and have reached the same conclusion: Structural crises require structural solutions. Rather than compel overloaded public defenders to take on additional cases, states including Massachusetts, Maine, Oregon, and

Alaska have adopted creative processes, including the use of alternate or secondary public defender offices to aid in absorbing conflicts and overflow. In adopting new approaches, other government actors have also recognized that the judiciary cannot resolve structural failures alone, and that better options exist when all branches share responsibility. Washington has begun to follow this path—and must continue to do so.

Aspects of this case are forward-looking. With the Court's June 2025 order reaffirming binding caseload caps and launching a ten-year implementation period, the system is now in a transitional phase. For the foreseeable future, jurisdictions across the state will be working under conditions of high demand and limited capacity. This Court should issue a decision ensuring that the caseload limits it has embraced are implemented through constitutionally sound structural reforms—and are not cast aside through ethically impermissible orders such as that issued by the superior court here.

In re M.E. is a bellwether case. The Court should use it to set the course for reform in the decade ahead. NACDL urges this Court to affirm what it has already recognized: that quality matters, and that respecting caseload standards is not a threat to due process but an indispensable safeguard.

ARGUMENT

I. The Ruling Below Is Incompatible with this Court's June 2025 Order Establishing Mandatory Caseload Limits

The superior court's order requires DPD to accept cases even when doing so would force defenders to exceed mandatory caseload caps. That is incompatible with this Court's June 9, 2025 order adopting mandatory statewide indigent defense caseload standards (the June 2025 Order). *In the Matter of the Standards for Indigent Defense Implementation of CrR 3.1, CrRLJ 3.1, and JuCR 9.2*, No. 25700-A-1644, Order at 1–2 (Wash. June 9, 2025) (setting binding caseload limits and requiring phased compliance beginning January 1, 2026).

This Court has already held that excessive caseloads impair the right to counsel, stating in the June 2025 Order that "the crisis in the provision of indigent criminal defense services throughout our state requires action now to address the crisis and to support quality defense representation at every level." The Court should not condone superior court orders that undercut its caseload standards and override the grave constitutional concerns that have catalyzed its reforms in this area.

A. This Court Has Long Recognized that Excessive Caseloads Undermine the Right to Counsel

Long before it adopted the June 2025 Order, this Court recognized that effective assistance of counsel is a critical constitutional guarantee, and that excessive public defender caseloads pose particular constitutional dangers. The Court stated in *A.N.J.* that "[t]he right of effective counsel … [is] fundamental to, and implicit in, any meaningful concept of ordered liberty." *State v. A.N.J.*, 168 Wn.2d 91, 96 (2010). The Court further stated that the promise of meaningful

representation has often been undermined by inadequate funding and "statistically impossible case loads," rendering the right to counsel "more myth than fact, more illusion than substance." *Id.* at 98. The Court recognized the structural flaws that undermine Sixth Amendment protections when defense systems push attorneys beyond their ethical and practical limits: "Public funds for appointed counsel are sometimes woefully inadequate, and public contracts have imposed statistically impossible case loads on public defenders." *Id.*

Five years ago, this Court again recognized that systemic deficiencies in public defense may result in constitutional violations and give rise to constitutional claims. In *Davison v. State*, a class action challenging Grays Harbor County's public defense system, the Court affirmed denial of the state's summary judgment motion, concluding that the plaintiff's claims "alleging systemic, structural deficiencies in the state system of public defense remain viable." 196 Wn.2d 285, 288 (2020). The Court further acknowledged that the Washington

State Bar Association's (WSBA) indigent defense standards—particularly caseload limits—serve as constitutional benchmarks for effective representation. *Id.* at 297-98.

In a concurrence, Justice González reviewed the long history of issues with the quality of public representation in Washington. *Id.* at 304-05. As long ago as 1985, a legislative commission studying the matter recommended that the state support the provision of defender services with funding—but the state did not do so. *Id.* Twenty years later, media reports documented chronic deficiencies in public representation; a year after that, leading legal aid organizations sued Grant County "for systematically failing to provide adequate public defense." *Id.* The trial court presiding over that litigation found "systematic deficiencies" in Grant County's provision of public representation. *Id.*

In response to these issues, this Court has worked since 2013 to set caseload standards. *See id.* (citing authorities).

Unless the Court acts to enforce its current standards, systemic violations of the right to counsel will persist.

B. This Court's June 2025 Order Reaffirms that Caseload Limits Are Mandatory

In recent years, the availability of public defense counsel has sunk to new lows. The public defense system has consequently reached a breaking point, with counties across the state unable to assign attorneys to those who qualify for (and have a constitutional right to) appointed counsel.[1] In November

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[1] *See, e.g.*, Cameron Probert, *WA Defense Attorney Crisis 'Band-Aid' Is Failing. Tri-Cities Pleads for State Help*, Tri-City Herald (May 15, 2023), https://www.tri-cityherald.com/news/local/crime/article275367071.html; Denver Pratt, *Whatcom County Takes Steps to Find Public Defenders for People, Some Who Are Still in Jail*, Bellingham Herald (July 7, 2023), https://www.bellinghamherald.com/news/local/article254152843.html; Jerry Cornfield, *'Verge of Collapse': Washington Public Defenders Swamped by Cases*, Wash. State Standard (Jan. 23, 2024), https://washingtonstatestandard.com/2024/01/23/verge-of-collapse-washington-public-defenders-swamped-by-cases/; *17 WA Counties File Suit Against the State of Washington for Unconstitutional Indigent Defense*, Wash. State Ass'n of Counties (Sept. 8, 2023), https://members.wsac.org/news/media/17/17-WA-Counties-

2023, the Washington State Office of Public Defense submitted an emergency letter to this Court, warning that the system was "on the verge of collapse" and emphasizing that defenders were suffering moral injury and attrition; among other things, defenders could no longer ethically certify compliance with then-existing limits.[2]

In June 2025, this Court adopted the WSBA's revised indigent defense standards as binding law. June 2025 Order at 2. The Court's action confirmed that these are not merely aspirational guidelines but were and are mandatory, enforceable, and necessary standards.

The June 2025 Order resolves any doubt that attorneys who decline new cases after reaching capacity are acting in

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File-Suit-Against-the-State-of-Washington-for-Unconstitutional-Indigent-Defens.

[2] Larry Jefferson, *Memorandum to the Washington State Supreme Court: Urgent Request for Moratorium and Reform in the Public Defense System* (Nov. 27, 2023), https://opd.wa.gov/sites/default/files/2023-12/000045-Memo%20to%20WSSC%20on%20Workload.pdf.

accordance with their professional obligations. To allow trial courts to override those capacity-based limits offends the constitutional and ethical limits this Court has established.

Requirements governing public defenders' fulfillment of ethical obligations underscore the point. Public defenders are required to file quarterly certifications of compliance with the WSBA's caseload standards.[3] If courts are permitted to override those standards, the certifications and caseload limits themselves become meaningless. Worse still, such judicial overrides place attorneys in an impossible ethical bind. They

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[3] *WSBA Standards for Indigent Defense* (Mar. 2024), *Introduction & Standard 3.D*; https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/wsba-indigent-defense-standards-as-approved-by-bog-2024.03.08.pdf?Status=Master&sfvrsn=3c831ff1_5 (requiring quarterly certification of caseload compliance); *see also Wash. Supreme Ct. Standards for Public Defense Certification* (Feb. 2021), 3.2 & Certification of Compliance, https://www.courts.wa.gov/court_rules/pdf/CrR/SUP_CrR_03_01_Standards.pdf; *see also Davison,* supra, at 299 ("Among other things, our standards require attorneys to certify to the courts that they comply with caseload limits [and] meet minimal case-level qualifications requirements.").

must choose between (1) complying with the court order and depriving their clients of the constitutional right to effective counsel, and (2) declining to comply—so as to uphold constitutional and binding ethical obligations—but risking sanctions in doing so.

The ethical obligation to manage caseloads applies to *all* attorneys; all are bound to provide competent and timely representation to their clients. *E.g.*, Wash. Rules of Prof. Responsibility 1.3, Cmt. 2 (attorneys must "control" their "work load[s] … so that each matter can be handled competently."). But work load issues are particularly acute for public defenders and their clients. Parties who cannot afford their own attorney do not have the option of hiring new counsel if they suspect appointed counsel is overworked or otherwise incompetent.[4] Such parties depend on the court to appoint

[4] Norman Lefstein, Executive Summary and Recommendations: Securing Reasonable Caseloads (2012 American Bar Association Standing Committee on Legal Aid and Indigent Defendants), at 9 (available at

competent counsel. If a court imposes excessive caseloads on appointed counsel, the clients simply have nowhere else to turn.

C. Washington Precedent Supports Enforcement of Defender Workload Standards

Washington's appellate courts have recognized both the importance of enforcing ethical caseload standards and the inconsistency and overreach that can occur when trial courts force attorneys to exceed those limits. In *State v. Graham*, this Court reversed a sanction imposed on a public defender who sought additional time so that he could both provide meaningful representation to the defendant in the appeal of a homicide case with an extensive record and provide effective representation to his other clients, who had their own needs. 194 Wn.2d 965 (2019). After his appointment, the defender assessed the materials he would need to review in handling the appeal, considered the significance of the charges, and determined that

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https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads_supplement.pdf).

in light of his existing client obligations, he needed more time to provide effective representation. *Id*. at 967. The attorney communicated the issue to the Court of Appeals—which granted a continuance but punished him for not filing the appeal brief by the original, impossible deadline.

This Court reversed, holding that the Court of Appeals had abused its discretion by sanctioning the attorney for taking steps necessary to "fulfill[] his duty of effective representation." *Id.* at 970. The Court of Appeals' ruling, this Court held, was "contrary to the policies promoting effective representation of indigent criminal defendants." *Id.* The Court further noted that "[r]ecent cases" had "highlighted the constitutional importance of maintaining proper caseloads in indigent defense cases." *Id.* (citing *A.N.J.* and *Wilbur v. City of Mount Vernon*, discussed at page 25, below).

These issues are by no means new. More than 30 years ago, the Court of Appeals itself reversed a trial court's denial of a motion to withdraw by three public defenders who lacked the

capacity and expertise to represent clients on appeal. *City of Mount Vernon v. Weston*, 68 Wn. App. 411, 415-16 (1992). The appellate court held that trial court's refusal to acknowledge those ethical limitations was "untenable." *Id.* at 416.

The current case presents a real and recurring dilemma: How should courts protect the right to counsel when no attorneys who can ethically take on new cases are available? This Court has already begun to answer that question. Through its June 2025 Order, the Court chose a structural solution, recognizing that defenders cannot fulfill constitutional obligations when overwhelmed beyond capacity, and that protecting the right to counsel requires investing in the systems that support it.

II. The Defender Capacity Crisis Calls for Structural Solutions, Not Ethical Compromises

Washington is not alone in facing a defender capacity crisis. Other jurisdictions have confronted the same question before this Court: how to safeguard the right to counsel in a system where the volume of casework substantially exceeds the

capacity of available defense lawyers. Rather than ordering attorneys to take on more cases than they can ethically bear, courts and legislatures in other states have crafted solutions that balance the constitutional guarantee to effective representation with the ethical constraints and professional independence of public defenders. These procedural reforms show that alternatives exist beyond forcing public defenders to exceed binding capacity restraints.

A. Judicial Reforms in Other States Have Catalyzed Long-Deferred Systemic Changes

The power of courts to reform the system is critically important, but it is also practically limited. Courts cannot hire more lawyers, allocate more funds, or tell prosecutors or others which cases to pursue.

Nevertheless, courts have the authority to design certain solutions, and have done so in other jurisdictions. Such measures may be limited or temporary, created to meet the needs of the moment. Significantly, judicial reform of this kind

can spur other government actors to make changes necessary to redress systemic conditions underlying the capacity crisis.

One such measure, used in Massachusetts, is the "Lavallee protocol." In *Lavallee v. Justices in Hampden Superior Court*, the Massachusetts Supreme Court recognized that systemic underfunding had led to the outright denial of counsel for defendants entitled to court-appointed representation— which violated the state constitution. 442 Mass. 228, 230-32 (2004). The protocol the court implemented ultimately required release from custody after seven days and dismissal of charges after 45 days if, by the expiration of those periods, no attorney could be assigned to a case despite good-faith efforts. *Id.* at 232, 246-48.

The *Lavallee* court recognized that its remedy was temporary, designed to allow "the legislative and the executive branches to devise a response to the right of indigent criminal defendants to counsel that fully protects the public safety." *Id.* at 245. The court explained that "[o]rdering such relief

recognizes the public's strong interest in bringing serious criminals to justice swiftly, but it also recognizes society's vital interest in the fair conduct of criminal proceedings. The resources that are available on any given day in a particular court must be prioritized and deployed in a manner that provides optimal protection to the public." *Id.* at 246-47.

Under the Lavallee protocol, various stakeholders affected by the dismissal mechanism have the right to participate; this includes district attorneys, the attorney general, the public defender organizations, and the courts. *Id.* The protocol requires the clerk of the county court to prepare a weekly list of unrepresented criminal defendants, which an administrative judge then uses to schedule status hearings for cases in which the seven-day custodial period or 45-day overall period has elapsed. *Id.* The judge also decides whether there has been a "good faith effort" by a committee charged with securing public defense representation. If no counsel is available, the protocol directs the judge to release the defendant

(after seven days) and dismiss charges without prejudice (after 45 days). *Id.*

Sixteen years after the *Lavallee* decision, the Massachusetts Supreme Court affirmed the continued use of the protocol when circumstances warrant it, and again embraced the principle behind that reform mechanism. *Carrasquillo v. Hampden County District Courts*. 484 Mass. 367 (2020). The *Carrasquillo* court stated that "[b]ecause the assistance of counsel is so fundamental to the protection of a defendant's rights, the appointment and appearance of a defense attorney to represent an indigent person must take place as promptly as possible. We explained why at length in *Lavallee*." *Id.* at 379. The *Carrasquillo* court then struck down a trial court's order requiring public defenders to accept all new cases, holding that this unlawfully infringed on the defense agency's statutory authority to manage caseloads. *Id*. at 396. The court also set forth procedures for public defense organizations seeking to invoke the Lavallee protocol in the future.

Most significantly for this case, the *Carrasquillo* court expressly warned against compelling public defenders to take on additional cases, stating that such a solution "improperly shifts the burden of a systemic lapse in the public defender system to the very defendants the system was intended to protect," and that "this burden is not to be borne by defendants." *Id*. at 389 (citing *Lavallee*) (citations omitted).

Other courts have adopted reform mechanisms similar to the Lavallee protocol. A Maine court did so very recently in *Robbins v. Billings*, ordering stakeholders to create lists of unrepresented defendants and holding ongoing hearings pursuant to which defendants were released after 14 days in custody and charges dismissed after 60 days if no representation could be secured. 2025 WL 1018447, at *20–22 (Me. Super. Ct. Apr. 9, 2025). The *Robbins* court relied on *Lavallee* and *Carrasquillo*. *Id*. at *19-20.

Significantly, the *Robbins* court also emphasized that judicial reforms such as dismissal protocols can catalyze

broader systemic improvements. *Id.* at *20. The *Robbins* court noted that *Carrasquillo* had triggered other structural reforms in Massachusetts, developed by government actors other than the courts. These reforms included expanded staffing, increased private counsel compensation rates, and improved oversight—all spurred by the urgency of judicial intervention. *Id.* In the wake of those reforms, the *Robbins* court noted, "the condition of indigent defense in Massachusetts has improved." *Id.* Indeed, the *Robbins* court noted that the number of unrepresented indigent defendants in Hampden County fell nearly to zero after *Carrasquillo* was decided. *Id*.[5]

A case in Missouri reflects a similar pattern of legislative reform triggered by judicial events. The plaintiffs in *David v. Missouri* represented a class of people who had been placed on

[5] As result of these reforms and their consequences, the Massachusetts Supreme Court determined in a 2022 order in *Carrasquillo* that the Lavallee protocol was no longer needed in Hampden County. *Carrasquillo v. Hampden Cnty.*, 2022 WL 2902767 (Mass. June 30, 2022).

waitlists for public defense representation as a result of staffing limitations; plaintiffs alleged that this violated their right to counsel. *David v. Missouri*, No. 20AC-CC00093, slip op. at 2-3 (Mo. Cir. Ct. Feb. 6, 2023). After a bench trial but before the trial court had ruled, the legislature increased funding for public defense, and the waitlists emptied. *Id.* at 19-21. The court nonetheless issued a ruling in the plaintiff's favor, holding that the statute that had permitted waitlists in the first place was unconstitutional as it had been applied. *Id*. at 18.

In *Betschart v. Oregon*, as in the Maine and Massachusetts cases, the federal district court adopted dismissal procedures, ordering the release of defendants who had been held for more than seven days without appointed counsel. 2024 WL 1561744, at *13–14 (D. Or. Apr. 10, 2024). The Ninth Circuit affirmed the district court's injunction, holding that the Sixth Amendment requires timely appointment of counsel and does not permit extended detention based on a state's resource limitations. 103 F.4th 607, 613-14 (9th Cir. 2024); *see also*

Kuren v. Luzerne Cnty., 637 Pa. 33, 94, 146 A.3d 715 (2016) (criminal defendants properly state a claim that county's underfunding of public defender's office makes widespread Sixth Amendment violations likely).

These courts have all recognized that overburdening public defenders to preserve the rights of their clients is contradictory and constitutionally impermissible. The right to counsel is not satisfied when a defender lacks the resources needed to provide appropriate representation. Rather than allow such constitutional violations to persist, these courts adopted reform procedures, including dismissal protocols.

Such judicial reforms in turn can spur and have spurred other branches of government to make needed changes in the system at large. Judicial pressure may be required to initiate long-deferred reforms in underfunded defense systems. As the Massachusetts Supreme Court noted in connection with the Lavallee dismissal protocol, a judicial solution is likely to be "only a temporary remedy … not a panacea for resolving the

underlying shortage of defense counsel. To do that requires more systemic change." *Carrasquillo*, 484 Mass. at 391. But judicial action is the necessary first step.

B. Washington Courts Have Inherent Authority to Compel Constitutional Reforms.

Courts in Washington, like the courts in the states just discussed, have recognized that the constitutional response to challenges in the public defense system is to mandate institutional accountability. In *Wilbur v. City of Mount Vernon*, the United States District Court for the Western District of Washington found that defenders were providing little more than "meet and plead" representation as a result of overwhelming caseloads and a complete lack of supervision. 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013). Referring to its "broad authority to fashion an equitable remedy for the constitutional violations at issue in this case," the federal court imposed structural remedies—contract renegotiation, supervisory oversight, and ongoing compliance monitoring—to restore and ensure ongoing constitutional adequacy. *Id*. at 1134-

1137. In stirring language, the court stated that "[t]he notes of freedom and liberty that emerged from Gideon's trumpet a half a century ago cannot survive if that trumpet is muted and dented by harsh fiscal measures that reduce the promise to a hollow shell of a hallowed right." *Id.* at 1137.

Like the federal court, Washington courts have used their inherent powers to bring about systemic reforms. In *State v. Perala*, after the county's sole contract public defender resigned, the superior court appointed counsel for felony defendants and awarded fees for their defense. 132 Wn. App. 98 (2006). The Court of Appeals affirmed, holding that trial courts have inherent authority to take such actions when necessary to secure the constitutional right to counsel. *Id.* at 118-19. The court explained that "[w]hile separation of powers principles generally require that only the legislative entity may allocate public funds, the need for judicial independence and proper court functioning may sometimes necessitate that the courts compel funding." *Id*. at 118.

The same principle applies here. When systemic breakdowns threaten constitutional rights, courts must stand firm in protecting those rights, catalyzing reforms by other branches of government.

C. State and Local Legislative and Administrative Reforms Can Expand Capacity

The responsibility for resolving systemic public defense shortages, as noted, does not rest with the judiciary alone. While courts may craft safeguards to protect constitutional rights in the short term, the legislative and executive branches at the state and local levels are responsible for designing, funding, and managing the long-term systemic reforms necessary to create a constitutionally sufficient and long-lasting public defense system.

Several jurisdictions have adopted reforms that illustrate the possibilities open to state legislatures. Under the Managed Assigned Counsel programs in Texas, independent oversight bodies supervise contract defenders, provide training, and

maintain ethical caseloads.[6] Under the Office of Public Advocacy in Alaska, a secondary appointment system kicks in when primary defenders reach capacity, creating a built-in safety valve. Alaska Statutes § 44.21.410.[7] Oregon and South Dakota have expanded law school pipeline programs and launched rural fellowships to address staffing shortages and related geographic issues.[8]

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[6] Texas Indigent Defense Commission, Primer on Managed Assigned Counsel Programs (Sep. 2017), https://www.tidc.texas.gov/media/vzzbiub3/managed-assigned-counsel-primer.pdf.

[7] The Alaska Supreme Court recently confirmed that capacity-based conflicts of interest must trigger OPA appointment to ensure defendants receive prompt and effective counsel under constitutional standards. *Office of Pub. Advocacy v. Superior Court*, 566 P.3d 235, 248-49, 252 (Alaska 2025).

[8] *See* Lauren Dake, *Oregon state lawmakers approve budget bill to help stem public defense crisis*, OPB (Jun. 24, 2025), https://www.opb.org/article/2025/06/24/oregon-public-defense-lawyers-defender-law-politics-attorneys-crime/;
Ethan Bronner, *No Lawyer for Miles, So One Rural State Offers Pay*, N.Y. Times (Apr. 8, 2013), https://www.nytimes.com/2013/04/09/us/subsidy-seen-as-a-way-to-fill-a-need-for-rural-lawyers.html.

Washington itself has begun to explore similar reforms. In March 2025, the legislature appropriated $20 million for public defense investment and passed Senate Bill 5782, which mandates a statewide evaluation of public defense services.[9] The Washington Office of Public Defense also launched a Rural Public Defense Fellowship and expanded authorization to broaden the pool of eligible attorneys and increase representation in underserved areas.[10]

CONCLUSION

The obligation to provide counsel to every eligible person does not require abandoning ethical safeguards. Jurisdictions across the country have responded to capacity crises with creative structural interventions—not by compelling individual attorneys to violate professional standards.

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[9] Wash. State Ass'n of Counties, The State of the State Budget for Counties (Mar. 2025), https://members.wsac.org/news/advocacy/71/71-The-State-of-the-State-Budget-for-Counties.

[10] *Id.*

This case presents an opportunity for the Court to reinforce that trajectory. Judicially compelled overload is neither necessary nor constitutionally permissible. To repeat Judge Lasnik's stirring words from more than a decade ago, "[t]he notes of freedom and liberty that emerged from Gideon's trumpet a half a century ago cannot survive if that trumpet is muted and dented by harsh fiscal measures that reduce the promise to a hollow shell of a hallowed right." *Wilbur*, 989 F. Supp. 2d at 1137.

The Court should reverse the ruling below and hold that trial courts may not require public defenders to accept case assignments when doing so would exceed binding caseload limits.

Dated: September 29, 2025

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CERTIFICATE OF COMPLIANCE

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/s/ Robin Wechkin

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DECLARATION OF SERVICE

I affirm, under the penalty of perjury that on September 29, 2025, this document was electronically submitted through Washington State's Appellate Court Portal.

Signed in Issaquah, Washington, this 29th day of September 2025.

/s/ Robin Wechkin

Robin E. Wechkin (WSBA No. 24746)

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