

September 12, 2024

Washington Supreme Court  
415 12<sup>th</sup> Ave. SW  
Olympia, WA 98504

**RE: Proposed Standards for Indigent Defense**

Dear Clerk of the Supreme Court,

We write to ask the Supreme Court to update Washington's Standards for Indigent Defense to make them consistent with the comprehensive, thorough, and evidence-based practice standards recently published by the RAND corporation. The newly released RAND standards reflect the current reality of attorneys providing indigent defense. Adopting the proposed changes to the Standards for Indigent Defense is the only way indigent clients will be afforded competent legal representation.

The current Standards for Indigent Defense are outdated and vastly underestimate the work necessary to adequately represent a person charged with a crime, facing loss of liberty, or deprivation of other constitutionally protected rights in 2024. The current standards were created in the 1970s, long before the regular use of DNA testing, cell phone location tracking, body worn cameras, in-car video, and many other technologies that further complicate criminal cases. With the advent of each new technology, providing competent representation requires public defenders to invest more time and develop greater expertise in rapidly changing, complex areas. However, under the current and outdated Standards for Indigent Defense, this is not feasible.

This is not an abstract concern on our part. Three of the below signatories to this letter are former public defenders who carried impossible caseloads and know—from personal experience—that the current standards are not sustainable. Even in King County, where caseloads are adjusted to account for hours worked on a case, many attorneys carry multiple full caseloads based on the standards articulated in the RAND study. It is not uncommon for a qualified attorney to represent six clients charged with murder, several dozen clients charged with class A and sex offenses, along with a smattering of clients facing other charges—all at the same time. This is a crushing caseload and prevents attorneys from meeting minimum standards of representation on every case in a timely manner. People wait in jail for years for a trial—including people that are then acquitted.<sup>1</sup>

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<sup>1</sup> Two of the undersigned attorneys represented a client who was acquitted of murder after waiting four years for his trial. This client was forced to wait in jail for the pendency of their case because it took four years to prepare the case for trial, due to work required on other cases and attorney attrition.



**Washington**

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In parts of the state where there are fewer resources, the situation is even more dire.<sup>2</sup> The ACLU of Washington has challenged public defense systems in Mt. Vernon,<sup>3</sup> Grant County,<sup>4</sup> and Gray's Harbor County,<sup>5</sup> and has seen the damage that inadequate public defense systems can create in people's lives. The new RAND study tells us, in no uncertain terms, that every public defense system in our state is below the minimum standard necessary to protect the rights of people charged with crimes.

The RAND study used a comprehensive approach to determining exactly what is needed to provide an adequate defense:

To create new national public defense workload standards, researchers conducted a comprehensive review and analysis of 17 state-level public defense workload studies conducted between 2005 and 2022 and then employed the Delphi method to facilitate the efforts of a panel of 33 expert criminal defense attorneys from across the country to come to a consensus on the average amount of time needed to provide constitutionally appropriate representation...

As a result, we have one of the first nationwide, comprehensive study of the minimum standard for trying a criminal case since the 1970s. Washington should lead the way and make this the minimum standard for every attorney representing indigent clients in the state.

Many of the other public comments on the Standards for Indigent Defense focus on the cost of implementing the RAND recommendations and the shortage of public defenders as reasons to reject these standards. First, we now have irrefutable proof that every public defense system in our state cannot meet minimum standards. We cannot ignore this because it is expensive or inconvenient. Second, the public defender shortage will not improve until we can stop the exodus of attorneys from public defense. The only way to do that is to adopt new, manageable standards.

The Court must take seriously the duty of setting the minimum standard for public defense in our state. We now know, based on the comprehensive RAND study, that the current standards are inadequate. The Court must adopt the RAND standards and ensure that no one charged with a crime in

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<sup>2</sup> Daniel Beekman, *WA's public defender system is breaking down, communities reeling*, (February 25, 2024), <https://www.seattletimes.com/seattle-news/politics/was-public-defender-system-is-breaking-down-communities-reeling/>.

<sup>3</sup> *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122 (W.D. Wash. 2013)

<sup>4</sup> *Best v. Grant County*, 04-02-00189 (2004).

<sup>5</sup> *Davison v. State*, 196 Wn.2d 285, 288, 466 P.3d 231, 234 (2020).

our state is deprived an adequate defense.

Thank you,

/s/ La Rond Baker

La Rond Baker, Legal Director

Jazmyn Clark, Smart Justice Policy Program Director

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American Civil Liberties Union of Washington

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: ACLU-WA Comment on Proposed Standards for Indigent Defense  
**Date:** Thursday, September 12, 2024 2:16:06 PM  
**Attachments:** [image001.png](#)  
[ACLU WA SID Letter.pdf](#)

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**From:** David Montes <dmontes@aclu-wa.org>  
**Sent:** Thursday, September 12, 2024 2:14 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** La Rond Baker <baker@aclu-wa.org>; Adrien Leavitt <aleavitt@aclu-wa.org>; Jazmyn Clark <jclark@aclu-wa.org>  
**Subject:** ACLU-WA Comment on Proposed Standards for Indigent Defense

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Good afternoon,

Attached is the ACLU of Washington's comment on the proposed Standards for Indigent Defense.

Thank you,

**David Ventura Montes**  
Staff Attorney  
Pronouns: he, him

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