

Indigent defense comments 10/21/24

As a county commissioner and a board member of the local budget authority, I object on many levels to the proposed changes in case load standards for indigent defense as recommended by the Washington State Bar Association and currently under consideration by the Washington State Supreme Court.

The Washington State Bar Association is a professional trade association, allowed in this instance to proscribe the rules by which they will be employed and paid without any input, negotiation or push back from the people who pay for their services, the taxpayers and their local representatives. Before any one-sided set of rules can be implemented, there needs to be a task force assembled to include criminal law practitioners, legal scholars, non-lawyers, citizens at large and local elected officials who have budget authority and funding responsibility.

While there is no doubt that reform is needed in reshaping the process of appointing and paying for indigent defense attorneys, there is also no doubt that the counties, regardless of size and location, are incapable of providing and paying for indigent defense as required of the states by the U.S. Constitution's 6th amendment. Asotin County's indigent defense cost in 2023 was \$850,000 for which the state contributed \$30,000, roughly 3.5%. The share the state is paying is common across the state, as is the burden of each county.

In 1963 the U.S. Supreme Court ruled in *Gideon v Wainwright* that: "States must provide counsel to anyone accused of a crime."

The Washington Legislature has failed to fund the indigent defense services required of them by the U.S. Constitution, instead passing on those costs almost entirely to the local governments. Counties cannot afford to pay for those services now under the current case load limits, let alone when the new proposed standards lower the felony case numbers from 150 cases a year to 47 per year, phased in over three years. And that's in a scenario where 1 crime is one case credit, when the crime could account for up to 7 case credits as in a murder charge. That attorney would have a limit of far less than 47.

At a minimum, complying with the new case load rules under consideration by the Washington State Supreme Court, the number of attorneys needed will triple and costs which include new required investigators will soar even higher.

This one-size-fits-all formula will be an unmitigated disaster if implemented.

At the very least, the WSBA's recommendations, if adopted in their current form, should be implemented over a 10-year period of time.

The suggested task force study should include as a top priority the creation of a fair funding formula from the State of Washington to pay for the indigent defense counsel required of the State of Washington by the U.S. Constitution. At a very minimum, the State of Washington should be paying at least 70% of the actual indigent defense cost, not the roughly 3.5% they are currently paying. It is the responsibility of the legislature to pass laws creating the funding mechanisms necessary to fulfill their obligation to pay for indigent defense council.

Due largely to this lack of funding for mandated services, indigent defense attorneys are not paid anywhere close to their private counterparts for services provided. As a result, there are not nearly enough local attorneys willing to do indigent defense. Costs of counsel vary in range between counties just as the cost of living and the consumer price index vary in range. This task force we suggest should be able to determine a statewide rate and then adjust each county's rate as a reflection of that county's comparison to the average cost of living and consumer price index.

Finding attorneys willing to work in the less glamorous surroundings of rural counties brings an even greater challenge. While the cost of living is generally lower, so often are the excitement level, night life and cultural entertainment opportunities. Rural counties are a great place to raise a family but not nearly as exciting to what usually are newly minted attorneys in pursuit of criminal law experience.

If the state itself would provide indigent defense counsel to fulfill its constitutional responsibilities, they could attract defense attorneys who could move back and forth within a state system of representation according to their current lifestyle needs. If rural, regional indigent defense

offices were set up to serve courts in adjacent counties, resources could be focused on needs as they change.

There has to be a better way to fulfil the state's constitutional responsibilities to our citizens than the system currently in place where how good your defense is depends on where you live and if you can afford to pay for your own attorney.

Guaranteeing representation for all who cannot afford it is a foundational principal and a constitutional right. Those who perform this essential societal service should be respected and compensated fairly. For this to happen, the State Legislature must fund the majority of this cost.

If this new set of standards is adopted by the Washington State Supreme Court and put into effect as planned, judges will be forced to release most of those individuals charged with crimes because there will be no legal indigent defense available. Only those accused of the most heinous crimes and presenting the most dangerous risk to society will be provided defense when there are simply no defense attorneys available to represent them.

You simply cannot blow up the case load limit standards and walk away.

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Please include these comments on behalf of Asotin County.

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