



Kitsap County Prosecuting Attorney

Chad M. Enright



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October 18, 2024

RE: Proposed Indigent Defense Case Load Standards

Protecting the health and safety of people in our community is one of the primary duties of those in law enforcement. As representatives of our community and the law enforcement agencies who serve them, we wish to express our concerns about the collateral consequences of imposing the new proposed indigent defense standards across the entire state. We are joining many public defenders in Kitsap County, and around the state, who are urging you to not impose the proposed changes because of the impact they will have on local governments and on public safety.

We also hope that you will consider seeking additional data and information about the current state of indigent defense that is specific to Washington State and advocate for solutions that won't involve substantial impacts on public safety. Unfortunately, the proposed plan to dramatically reduce indigent defense caseload standards is a blunt solution that appears focused on resolving problems in urban counties and that lacks specific data about Washington State. More importantly, the process by which these changes are being sought lacks a thoughtful community debate on an issue that impacts more than public defenders.

First, we recognize and appreciate the valuable work that public defenders do across this state. They play an important role in ensuring that the rights of all people are protected. We know how hard they work and how dedicated they are to their communities. The criminal justice system cannot succeed without them. Locally, our Kitsap County public defenders are known for providing outstanding representation to their clients. They are an important part of the criminal justice system.

But we also recognize the reality of the current environment in Washington State. We know that Washington is experiencing an attorney shortage. Law enforcement officers in our community have witnessed shortages in both our Kitsap County Office of Public Defense and the Kitsap County Prosecutor's Office. We have seen an increase in delayed charging decisions by our prosecutor's office and an increase in cases where the prosecutor declines to file criminal charges based solely on their lack of resources and inability to fill open attorney positions. Unfortunately, this proposal does not resolve those staffing shortages. In fact, it appears to intentionally make them significantly worse.

We believe it is important that the rights of all people, including those accused of committing crimes, are protected. Every criminal defendant is entitled to a good defense. But it appears that within the last year only four criminal cases in the entire State of Washington have been overturned for ineffective assistance of counsel. Further, proponents of this rule have not necessarily argued that the rule is required to protect the rights of indigent defendants. Rather, they argue that the rule changes are

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necessary to attract more people to public defense. Others have argued that the rule is necessary to effectively decriminalize conduct by limiting the ability of prosecutors to file criminal charges. We appreciate the candor of these proponents, but we are obviously concerned about the way they are seeking decriminalization through court rule, rather than through earnest legislative debate and action.

Please recognize that in attempting to improve the lives of public defenders through this court rule, you are potentially impacting the lives of those who will inevitably be victims of crime. The voice of crime victims seems to have become more and more faint in recent years in Olympia. But we hear their concerns every day. Victims feel ignored and feel that their rights and their perspectives are no longer valued.

In recent years here in Kitsap County, we have had several instances where victims of crimes have used deadly force because they had lost faith in the criminal justice system's ability to hold people accountable. This isn't a hypothetical situation. We have seen deadly force used in response to mail theft, vehicle theft, and other crimes that we refer to merely as "property crimes." But these crimes are very important to those who are victims. Please consider the impacts this decision will have on them. We have unfortunately experienced tragic consequences when people have lost faith in our ability to protect them and hold people accountable for their actions. We've seen acts of "vigilante justice" in our community that have put people's lives at risk. We've also seen instances where lives were lost in Kitsap County because people used deadly force in response to property crimes.

Given the attorney shortage in our community, it's likely that these proposed standards would reduce the number of cases that prosecutors can file by a third or even half of current levels. Dramatic changes like this should not be done without strong evidence showing that they are absolutely necessary. The RAND survey that proponents rely upon does not appear to even include data from Washington State. It's alarming that our state would consider these changes without strong evidence directly from our state. Although some have suggested these standards will encourage lawyers to turn to public defense, that theory seems more anecdotal than backed by factually supported evidence. Again, these are dramatic changes that will have substantial collateral consequences. We believe there should be strong evidence to support these changes, especially when they are being made outside of public debate and the legislative process.

Many proponents of this rule suggested to the Washington State Bar Association (WSBA) that they should not consider the consequences that this rule will have on local government or the impact that this rule will have on public safety. They suggested that the WSBA should limit their analysis to the impact the decision will have on public defenders. Many of these proponents have made similar arguments to you. We are asking that you consider the consequences for our entire community. While your decisions on individual cases might prohibit you from considering the collateral consequences your decisions might have on communities, you should view your role as rule-makers more broadly. By choosing to take on this request, the public expects you to consider the rights and concerns of everyone in the community, not just public defenders.

We are joining many public defenders across Kitsap County and the State of Washington who are urging you to not impose this rule change. Some public defenders in Kitsap have suggested that proponents are seeking to "break the system" rather than reform it. Clearly, public defenders in King County and other larger counties have provided you with emotional testimony about their current working conditions. But the testimony you have already heard from smaller counties shows that our issues and concerns are very different. Please consider the impacts this decision will have on communities across the state, not just the state's urban core.

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Providing a safe and healthy community is one of the primary duties of government. We've chosen not to "defund" parts of our justice system because our communities have recognized the collateral consequences that are intertwined with that policy. Here, you should not ignore the very real impacts that your decision will have on our state. Given the current economic condition of local governments, as well as the ongoing attorney shortage in Washington State, this proposed rule does not benefit our community. You should seek data and research specifically from Washington State that can better define the problem and allow state and local governments to tailor an appropriate remedy. Until then, you should decline to impose this blunt solution to a problem that does not appear to exist in all communities across the state. The consequences to our communities are real.

Thank you for your consideration.

Chief Ron Harding

Chief Ron Harding (Oct 28, 2024 08:23 PDT)

Ronald J Harding
Chief of Police
Poulsbo Police Department

M.B.

Matt Brown
Chief of Police
Port Orchard Police Department

Chief Tom Wolfe

Chief Tom Wolfe (Oct 24, 2024 10:32 PDT)

Tom Wolfe
Chief of Police
Bremerton Police Department

M.W.

Chief Mark Williams (Oct 29, 2024 21:16 PDT)

Mark Williams
Chief of Police
Suquamish Police Department

Chad Enright

Chad Enright
Kitsap County Prosecutor