

# King County Superior Court

Judge Melinda Young  
*Chief Criminal Judge*

Judge Sean O'Donnell

Honorable Charles W. Johnson, Chair  
Honorable Mary I. Yu, Chair  
Washington State Supreme Court Rules Committee  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504

Re: Standards for Indigent Defense: Proposed Amendments to CrR 3.1, JuCR 9.2

Dear Justice Johnson and Justice Yu:

A crisis in public defense has pushed Washington's justice system to a tipping point. Public defenders have repeatedly called out the job's demands: too many cases, high stress and low pay. Their concerns are understandable. The job has great civic importance but is undervalued. Current caseload standards are outdated and do not account for the complexities of today's criminal cases with video, DNA, and social media evidence. The proposed changes to the indigent defense standards promise relief. But the implications are profound.

There is no plan to hire the new lawyers that will be needed or to deal with the resulting shortfall in legal representation for people accused of crimes. A substantial caseload reduction without a strategy will lead to unacceptable consequences for public safety.

Crime rates will not drop to accommodate public defenders' lower caseloads. Instead, the result from this capacity gap will mean fewer crimes are prosecuted and cases are dismissed. Crime victims will be left to deal with this fallout.

The public defense crisis has already begun. There currently are not enough public defenders in Washington's rural areas. In one Eastern Washington case, a judge ordered an accused rapist released because there was no lawyer. In Yakima, some defendants are not being arraigned on charges because of the public defender shortage. This is before any proposed caseload reduction.

Oregon is Exhibit A for failed planning. Its criminal justice system is in disarray because of a self-inflicted public defender capacity shortage. Defendants without assigned lawyers have been released from custody. There are significant delays resolving cases. Oregon's legislature has addressed this debacle with millions in new spending. The situation has yet to improve.

Hiring more public defenders is a logical response, but it is more difficult than it sounds. Too few lawyers choose a career in public service. Counties and cities face budget shortfalls across Washington. Reducing caseloads does not mean more lawyers will become public defenders or that local governments have funds to hire them.

**Here are some alternatives:**

First, the Supreme Court should not adopt the WSBA proposal without a plan. It should convene a task force with criminal practitioners, lawyers from different practice areas, legal scholars, non-lawyers, victims and management experts, to examine the WSBA proposal and prepare for its implementation. They should analyze caseload reduction impacts on prosecutors, courts and jails. A thorough vetting with multiple viewpoints is healthy and will lead to greater support for a major proposal like this one.

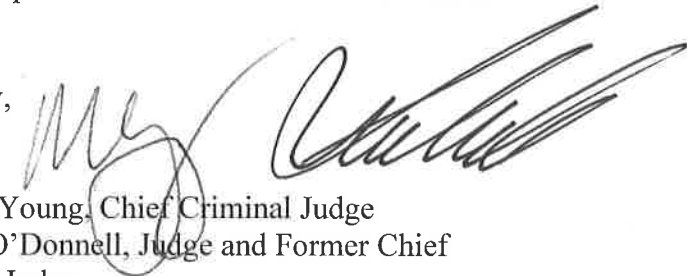
Second, the governor and Legislature should reevaluate the state's commitment to public defense. Washington is nearly last nationally in state public defense funding. Cities and counties bear most costs associated with criminal justice but are not equipped to shoulder increased public defense costs on their own.

Third, there should be consideration to enlisting private counsel to defend low level felonies and misdemeanors, pro bono. Given WSBA's dramatic proposal to reduce caseloads by 70%, it could help solve the problem by creating incentives for private attorneys to take cases, with appropriate training and support.

Finally, prosecutors should reevaluate their practices — how cases are charged, how they are negotiated and how quickly they can be resolved. Triage will need to occur to accommodate reduced caseloads. These are important policy issues that will require thoughtfulness and public input. These decisions should not be based on a crisis after the fact.

The consequences of implementation of the proposed standards now will be severe for public safety and the justice system.

Sincerely,



Melinda Young, Chief Criminal Judge  
Sean P. O'Donnell, Judge and Former Chief  
Criminal Judge