

October 29, 2024

Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504  
supreme@courts.wa.gov

RE: Comments to proposed changes to Standards for Indigent Defense Standards

Dear Honorable Justices:

The City of Everett requests that the Supreme Court maintain the existing Standards for Indigent defense and not adopt the proposed changes for misdemeanors that would reduce the limit from 400 cases per year per attorney to 120 cases per year by 2027.

Indigent defendants charged with misdemeanors and gross misdemeanors in our Municipal Court receive a robust defense. The public defenders representing them continue to fulfill their constitutional, statutory, and ethical obligations under the current standards. This is not simply conjecture. Since 2015, The City of Everett has had an independent public defense overseer, who consistently found that we provide a robust public defense system that meets, if not exceeds, constitutional standards.

In contrast, the proposed standards are lacking any clear indication that the changes are needed for misdemeanors. The proposal assume that public defenders are currently breaching their legal and ethical obligations, and that courts and prosecutors are turning a blind eye. Each of those parties shares a responsibility to safeguard the right to a robust public defense. With all the evidence showing that municipal public defenders are meeting their constitutional obligations, the proposed standards appear to be an arbitrary and misguided attempt to either fix a problem that doesn't exist or to mask the intentions of advocates to decriminalize our communities—an effort that runs contrary to the will of our constituents who are loudly asking us to do more. This Court in its rulemaking authority should not be used to meet the goals of decriminalization advocates who have been unsuccessful through legislation. I will discuss more below on how these rule changes would undoubtedly force decriminalization contrary to the will of our community.

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The existing standards, originally adopted in 2012 after thorough and cooperative conversations between practitioners and representatives of the WSBA and the Court, have been successful in addressing concerns about effective representation by local municipal public defenders. After implementation, the City of Everett was able to comply with the standards through a combination of increased public defense spending and a reduction in case filings, primarily Driving While License Suspended in the Third Degree. We also implemented a more streamlined public defense appointment screening process, public defense oversight, and courtroom changes to provide more access and information to indigent defendants. Those standards continue to provide constitutionally guaranteed access to counsel.

Not only is evidence lacking for a need to change the standard, but, if adopted, the proposed standards would have significant and consequential negative impacts on municipal budgets, our ability to address public safety, and our public defender's ability to hire enough competent attorneys.

First, even if there was sufficient availability of public defenders, the budgetary impact associated with implementing the ratio required by the proposed standards would be enormous. It would force cities like Everett to choose between tripling our public defense spending or significantly reducing our case filings. Both choices would exacerbate inequities and further marginalize lower-income communities. Additionally, the ability of Cities across the state to absorb the additional costs will vary widely and have a disparate impact. Everett is not a rich city and tax policies limit our ability to raise additional revenue to address basic issues like public safety and the impacts associated with the proposed standards. We would be forced to make further cuts to services like libraries, parks, social workers, and human services grants that all provide pro-social benefits to the community—the kinds of services that help counteract criminal behavior.

Secondly, if we are unable to fulfill the unfunded mandate in these proposed changes, the City would be forced to reduce case filings, but this would have an adverse and inequitable impact on public safety. Already, municipalities have had to absorb many felony level cases that are being declined by County prosecutors due to their staffing and resource issues. Furthermore, since July 2023, municipalities are now responsible for prosecuting drug possession crimes previously treated as felonies. When we reduced our filing of Driving Suspended charges in 2012 following the previous changes to public defense caseload limits, there was broad community consensus that those crimes should be handled as infractions. That is not the case now. There are no “low level” crimes that can go unprosecuted without a consequence to public safety.

Our community repeatedly tells us that they want to see more cases prosecuted, but a natural consequence to any reduction in public defender caseload limits will be a decriminalization that will disproportionately impact in lower-income cities and lower income communities in those cities. Victims of crime will be subjected to a lack of justice, while offenders will be undeterred and will re-offend so long as they continue to face no consequences as a result of their illegal conduct. Residents of lower-income communities have equal right to be safe and secure in their homes, and if they unfortunately become victims of crime, they should also have an equal right



to have their harms redressed by a court by holding the offender just as accountable as their wealthier neighbors. The proposed standards will result in the de facto decriminalization of many crimes in our lower income communities in Everett and throughout the state. Given these foreseeable consequences, we are asking the court to require more evidence showing these changes are necessary—evidence that is so far lacking.

Lastly, the proposed changes would require hiring many more public defenders. To the extent there is a public defender problem in Washington, it is due to a public defender shortage. Reducing caseload limits as provided for in the proposed standards will only serve to exacerbate this problem. To meet the demands that would be required under the proposed standards, agencies would likely be forced to lower their expectations and hire individuals they would otherwise prefer to pass over. This presumes there are even enough candidates to fill the open positions state-wide. The proposed standards do not guarantee quality or effective representation will be provided by appointed public defenders; they simply ensure an arbitrary ratio of public defenders to indigent defendants is established. Certainly, the quality of public defense services will substantially drop if these rules are adopted.

There is much more that can be said to support our strong request to not adopt the proposed changes. In addition to those comments made by the Association of Washington Cities, the City of Kent has filed a letter with this Court on October 8 articulating in more detail many of these reasons against adopting. Rather than reiterate those here, we are putting our support behind that letter. At a minimum, this court should delay any implementation of proposed changes until a collaborative process including participation from municipal governments, courts, and public defenders can thoroughly review the need, if any, to make changes to the misdemeanor standards.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cassie Franklin', with a long horizontal flourish extending to the right.

Cassie Franklin, Mayor  
City of Everett, Washington