



October 29, 2024

Washington State Supreme Court
PO Box 40929
Olympia, WA 98504

Re: Comments to proposed changes to the Washington State Supreme Court's adopted standards for Indigent Defense

Dear Honorable Justices:

The City of Fife respectfully requests that the Washington State Supreme Court reject the requested amendments to the Standards for Indigent Defense in CrR 3.1, CrRLJ 3.1, and JuCR 9.2.

The City supports a defendant's constitutional right to effective assistance of counsel. In the face of significant workforce challenges across the criminal justice system, cities are working to solve the issues and ensure that every adult misdemeanor defendant has effective assistance of counsel as contemplated in *Strickland v. Washington*. However, the proposed revisions to the state's Standards for Indigent Defense will not solve current issues, but will result in new and greater challenges.

The proposed changes are based on a national study that requires further local analysis before adoption of statewide changes.

The proposed changes to the state's Standards for Indigent Defense are predicated on a 2023 national study completed by the RAND organization. The RAND report was funded by Arnold Ventures, an organization that is not a neutral entity, but rather is expressly focused on advocating for particular policy reforms and does their work by providing funds for research studies then used to advocate change with policymakers. The report notes that the views expressed in the report are solely the opinions of the authors, and have not been approved by the American Bar Association.

Furthermore, the RAND report itself says that the results of the study are "primarily applicable to locations or for purposes where jurisdictionally focused workload standards have not already been produced." The report continues to state that, "the most accurate weighted caseload model is developed specifically for an individual state or jurisdiction." In response to the study, other states (including Colorado and Maryland) are calling for local, rigorous study and analysis.

Washington courts have been operating under current caseload standards for approximately ten years, but we do not have evidence that these standards are not adequately protecting the rights of indigent defendants. If there are issues under the existing standards, they cannot be properly addressed without identifying what the actual issues are in Washington State.

Based on the RAND report, the proposed changes arbitrarily reduce caseload limits for misdemeanor public defenders by two-thirds. However, the RAND report utilized opinions from state trial level attorneys, none of whom appear to practice misdemeanor defense or prosecution in Washington municipal or superior courts. These out of state attorneys opined that it takes an average of 13.8 to 22.3 hours to effectively defend a person charged with a misdemeanor crime. However, the appropriate experts to consult to make this assessment are not out of state trial level attorneys who primarily prosecute felonies. Instead, the appropriate experts to consult are municipal court public defenders, judges, and prosecutors-those who particularly and exclusively specialize in misdemeanor prosecution and defense in Washington municipal and district courts.

There is an inadequate workforce to meet the proposed standards

To implement the proposed caseload standards, jurisdictions will require at least three times the number of public defense attorneys, in addition to additional support staff, social workers, and investigators. The workforce required is not, and will not, be available within the timeframe envisioned by the proposed standards.

As noted throughout the recommendations from the Council for Public Defense, nationally we are experiencing a significant shortage of public defense attorneys. If the Court adopts the standards as proposed, local jurisdictions will have approximately 30 months to triple the number of defense attorneys. This functionally amounts to hiring roughly 100 attorneys statewide every month for 30 months, with no retirements or resignations. This is double the number of graduates from all three Washington state law schools annually. Even if the legislature appropriated an unprecedented amount of funds, the required workforce simply will not exist. As a result, cities statewide would be hampered in their ability to address misdemeanor crimes consistently and effectively, including crimes like domestic violence, drug possession, and DUI.

Cities support a concerted legislative effort to increase the workforce pipeline for public defenders, prosecutors, court staff, social workers, investigators, and other key personnel. However, even if the legislature takes significant steps in the 2025 legislative session towards these goals, the recommended caseload standards as proposed are not feasible.

The proposed standards are financially infeasible for cities

Based on initial estimates, implementation of the recommended revisions to the Standards for Indigent Defense could increase the City of Fife's public defense budget by over 60%. Cities pay public defense costs out of their general fund budgets. Funding sources for a city's general fund are statutorily and constitutionally limited, in addition to being constrained by residents' ability and willingness to pay. The State currently funds only a small fraction of public defense costs. Given the current state budgetary forecasts, this is unlikely to change in the near future. If faced with these cost increases, the City of Fife may be forced to make budget cuts to other services designed to address the root causes of criminal behavior and keep people out of the criminal justice system or to look at budget cuts in other areas, such as parks and recreation programs, that have been shown to decrease juvenile crime rates.

The proposed recommendations will exacerbate current challenges with harmful consequences

The criminal justice system requires coordination and functioning of all moving and interdependent parts, including prosecutors, defense attorneys, judges, court administrators and staff, victims' advocates, investigators, social workers and even external resources like substance use and behavioral health treatment providers.

Without adequate funding and workforce available to meet the proposed standards, it is inevitable that more criminal cases will be dismissed due to a lack of defense counsel, including misdemeanor DUI and domestic violence cases. Crime victims will go without an opportunity for judicial resolution, and will not have access to the victims' advocate services that would otherwise be available to them.

Exempt misdemeanors

If the Court is inclined to adopt the proposed revisions to the Standards for Indigent Defense in their entirety, we ask the Court to exempt misdemeanors from the revisions, or at a minimum, delay implementation as to misdemeanors for several years to allow time to build the necessary workforce and time for the legislature to appropriate the needed funding increases.

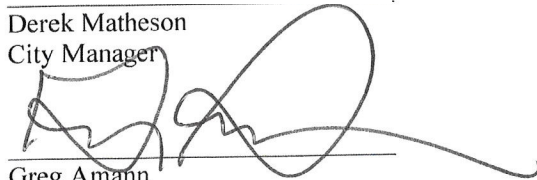
Conclusion

The City of Fife appreciates the work done by our public defenders, particularly in the face of resource constraints across the criminal justice system. Cities are engaged in this issue and are an active part of the solution. We also know that the current recommendations will not solve the issues. At best, the recommendations are financially and logistically infeasible, and at worst, they will create harmful consequences. We ask that you do not adopt the proposed changes.

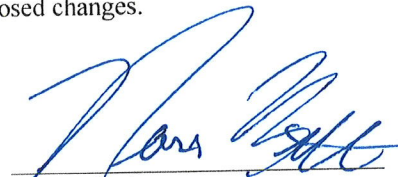
Sincerely,



Derek Matheson
City Manager



Greg Amann
City Attorney



Ross Brittain
City Prosecutor