



September 24, 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 North Bend respectfully requests 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.

Cities support 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*¹, that the attorney meets an "objective standard of reasonableness" under "prevailing professional norms."²

The proposed revisions to the state's Standards for Indigent Defense will not solve current issues, but rather, these standards will result in new and greater challenges than before.

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 study³ 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." Washington state currently has caseload standards in place.

¹ *Strickland v. Washington*, 466 U.S. 668 (1984)

² *Id.*

³ RAND report: www.rand.org/pubs/research_reports/RRA2559-1.html

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 can, and should, proceed along the same route with a neutral researcher. These issues are too important to rush in haste to a solution.

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.

This is most likely to occur in geographical areas of our state that are rural, low-income, and/or experiencing high crime rates. Justice must be equal to all, regardless of geography. But rural areas, and areas with lower tax revenue and higher crime rates, struggle the most to recruit and retain public defense attorneys. Modifying the caseload standards will not address this. Instead, the solution lies in concerted workforce efforts to increase access to internships, student loan forgiveness programs for contract attorneys, and other programs designed specifically to increase the workforce in rural and underserved areas.

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 cost cities upwards of \$400 million dollars annually. Cities cannot afford this cost, and do not have the tools to raise the needed revenue.

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, cities will be forced to make budget cuts to therapeutic courts, community courts, diversion programs, and other services designed to address the root causes of criminal behavior and keep people out of the criminal justice system. Cities may also be forced to look at budget cuts in other areas, such as parks and recreation programs, that have been shown to decrease juvenile crime rates.

Lastly, the budget impacts will exacerbate justice-by-geography issues. Revenue, crime rates, and availability of attorneys all vary substantially from one city to another. Those cities that will be impacted the most will be those that are rural, lower income, with higher crime areas, and often have the largest population of BIPOC communities, refugee and asylum seekers, and other vulnerable populations. In other words, the communities that will be hit the hardest are those that already are facing the most significant challenges.

Better alternatives exist to address the challenges

A Washington-state specific study:

The RAND report highlighted national issues and has prompted other states and local governments to call for a location-specific study to determine the appropriate weighted caseload standard for their jurisdiction.⁴ Rather than making a decision on the WSBA recommendations in haste, cities support careful consideration of a state-specific standard by a neutral researcher, as recommended by the RAND report itself.

Approve only the portions of the proposed recommendations that are feasible and achievable within current revenue and workforce limits, and which will improve public defense:

The proposed caseload limits have been the focus of much of the attention related to the WSBA's recommendations, however, some components of the proposed revisions are feasible and would strengthen Washington's public defense services. For example, cities support the training and qualification requirements for misdemeanor public defenders.

⁴ Colorado, Maryland, and Los Angeles County have called for a jurisdiction-based study

While the staff ratios envisioned in the proposed standards may not be workable everywhere, we support the idea of providing adequate social workers, investigators, and support staff for attorneys. Cities have had conversations with OPD about possibly having a statewide network of social workers, for example, to provide support in rural and underserved areas. These types of reforms are positive steps forward but may not happen if the rigid requirements of the proposed revisions are adopted.

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 adult 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

Cities appreciate 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.

We appreciate the opportunity to comment on the proposed revisions to the Standards for Indigent Defense, and we welcome any questions you may have.

Sincerely,



Mary Miller

Mayor

City of North Bend

CITY OF NORTH BEND

920 SE CEDAR FALLS WAY
NORTH BEND, WA 98045

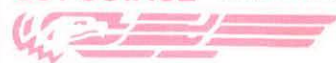
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PO Box 40929
Olympia, WA 98504

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