



October 31, 2024

Washington State Supreme Court
PO Box 40929
Olympia, WA 98504

Re: City of Seattle comments on proposed changes to the Washington State Supreme Court's adopted Standards for Indigent Defense

Honorable Washington Supreme Court Justices:

The City of Seattle ("City") writes to express its concerns with the proposed amendments to the Standards for Indigent Defense in CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Safeguarding a defendant's constitutional right to effective counsel is paramount for a just, equitable, and compassionate society. We strongly support the intention behind the proposed amendments. However, we are concerned that the amendments as proposed do not fully take into account current efforts under way and potential impact in local jurisdictions such as the City. The proposed amendments are based on national research and recommendations, not a Washington State specific study. We respectfully request that the Court follow the recommendation in the RAND report and commission a neutral, state-specific study to determine standards that are tailored to the unique issues facing governments, defendants, and counsel in Washington. We detail some of that context below.

Seattle's Commitments

Seattle is committed to promoting a fair and equitable criminal justice system, with a strong focus on alternatives to traditional prosecution when appropriate. Through initiatives such as Law Enforcement Assisted Diversion (LEAD), we are working to divert individuals, particularly those suffering from behavioral health issues, substance use disorders, or poverty, away from the criminal legal system. These programs focus on providing services and support to individuals rather than relying solely on punitive measures. The City is also taking a dual public health and public safety approach to address the impacts of the fentanyl and synthetic opioid crisis, including investments in dedicated detox and inpatient treatment bed capacity for those with substance use disorder (SUD), a post-overdose Seattle Fire Department Responder team, and temporary lodging and intensive case management for people involved in the criminal legal system who are also experiencing housing and income instability, mental illness, and/or SUD.

In 2023, Seattle codified SB 5536 into our Municipal Code, but we also layered on additional policies that go further than the state law. While SB 5536 encourages pre-booking and pre-trial diversion to LEAD, Seattle policy establishes an even stronger presumption of pre-booking diversion. Seattle's LEAD case management providers provide outreach-based care and coordination, harm reduction, and resource navigation that includes, but is not limited to, substance use treatment, mental health care, legal system coordination, financial counseling, legal services, and referrals to shelter and permanent housing. The City has invested in our flagship LEAD program, which provided the popular and widely supported diversion model now being used statewide, since 2014.

Seattle has also made substantial investments in public defense infrastructure. In January 2023, we amended our Interlocal Agreement with King County Public Defense to reduce the stress on attorneys. These changes included:

- Reduced attorney caseload from 400 to 325
- Increased caseload flexibility factor from 3% to 10%
- Provided supplemental credit starting at 10 attorney hours per case and every 10 hours thereafter
- Increased the ratio of support staff to attorney from 0.5:1 to 0.82:1

Despite these efforts, workforce shortages remain a significant challenge, and the proposed amendments would intensify these difficulties.

Seattle has also recently announced our proposal to expand the Community Assisted Response and Engagement (CARE) Department's crisis care responder team, hiring additional responders and expanding citywide, seven days a week following the success of the dual dispatch pilot launched last October. Data from the pilot has shown – through hundreds of emergency dispatch calls – that CARE responders were able to safely assist community members in need rather than using a law enforcement response.

Financial Impact

The financial impact of the proposed rules also cannot be ignored. Initial estimates suggest the proposed changes could cost cities upwards of \$400 million annually. Seattle, like other cities, funds public defense services through its general fund, which is already under immense pressure. This annual budget cycle alone, the City faced a \$250 million deficit. The City has been forced to make difficult decisions and cuts in this challenging time. Enacting the proposed rules without additional financial support to the City would exacerbate these issues.

Recommendations

We respectfully request the Court consider the following next steps:

- State-Specific Research: We urge the Court to follow the recommendation in the RAND report to commission a neutral, state-specific study to determine standards that are feasible and sustainable within Washington's unique legal and financial context.
- If the Court chooses not to conduct a state-specific study, we request the Court differentiate between those revisions that may be implemented more immediately, such as training and qualification requirements for misdemeanor defenders, and case load requirements that would require a longer runway given workforce and financial constraints. We ask the Court to allow adequate time for cities to build the necessary workforce and secure adequate funding from the legislature for successful implementation.

Thank you for the opportunity to provide our input on these important revisions.

Sincerely,



Bruce A. Harrell
Mayor of Seattle