



October 30, 2024

Washington State Supreme Court
PO Box 40929
Olympia, WA 98504

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

Dear Honorable Justices:

The City of Walla Walla 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.

We 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. 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 and low-income, like Walla Walla. 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. The City of Walla Walla concurs with the comment letter submitted by Walla Walla County's Prosecuting Attorney and Deputy Prosecuting Attorneys.

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. The City of Walla Walla currently contracts with three firms to provide public defense. When the city issued a RFP for indigent defense in 2021, the city received three proposals and those three firms provide the public defense for municipal court. If the recommendations are implemented, the City would be faced with a lack of available attorneys.

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 revenue needed.

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

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

² *Id.*

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

future.

If faced with these cost increases, cities will be forced to make budget cuts to services designed to keep people out of the criminal justice system through positive programs and activities such as Library services and Parks & Recreation programs.

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.

Conclusion

The City of Walla Walla 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.

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,



Elizabeth F. Chamberlain, AICP
City Manager

cc: City Council

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

² *Id.*

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