



**City of
Wenatchee**
Office of City Attorney

October 31, 2024

Washington State Supreme Court
415 12th Ave SW W
Olympia, WA 98504

Re: Comments Opposing Proposed CrRLJ 3.1 Standards.

Justices of the Washington State Supreme Court:

The City of Wenatchee is writing to express opposition to the Washington State Bar Association's proposed changes to the representation standards under Criminal Rule for Limited Jurisdictions 3.1 ("Proposal"). The City acknowledges the need to address challenges within the indigent defense system; however, the Proposal would not improve legal representation for indigent defendants. The Proposal does not address the root causes of issues around attorney caseloads, and if adopted, would severely reduce representation by counsel rather than providing higher quality representation.

Foremost, the Proposal's dramatic changes to the annual maximum caseload limit will restrain access to effective assistance of counsel for many indigent defendants. Rural cities and counties, such as Wenatchee, already deal with a profound shortage of defense attorneys for indigent clients. (Please see public comment submitted on October 25, 2024, by Kottkamp, Yedinak & Esworthy, the City of Wenatchee Public Defense Firm.) Slashing the maximum caseload by between sixty and eighty percent for this class of attorney would require a huge increase in the number of defense attorneys just to maintain the current level of representation for indigent clients. This is simply not possible for rural cities and counties.

Not only will the Proposal exacerbate the attorney shortage for rural areas, but it will also create distressing complications for prosecutors and law enforcement. Because prosecutors must consider the limitations imposed by the Sixth Amendment, including speedy trial and access to counsel for indigent defendants, a shortage of defense attorneys effectively caps the number of criminal charges that can be adjudicated at any given time. Of course, this artificial cap bears no relationship to the actual rate of crime or the effort of law enforcement to penalize criminal violations. The result would be the prosecution of only a fraction of the crimes that law enforcement identifies, which already underrepresents levels of criminal activity. With only a fraction of the current resources available, prosecutors would be forced to make difficult decisions about which sorts of crimes should be prosecuted. Inevitably, city and county prosecutors would reach different decisions on these questions, leading to uneven and unpredictable application of criminal laws throughout the State. In some areas prosecutors might identify the most violent or malicious crimes for prosecution and ignore "lesser" offenses,

whereas in other jurisdictions prosecutors might charge crimes that are easier to prove, ignoring serious but challenging cases. None of this represents an improvement for the already strained criminal justice system in rural areas.

Finally, the Proposal would create impossible fiscal challenges for cities. Cities are at the mercy of both State and county level funding opportunities, and counties can shift much of the burden of prosecution and defense to cities by declining to charge felonies, which then forces the cities to file gross misdemeanor or misdemeanor charges in order for a defendant to be prosecuted. In addition, the State has already shifted a significant portion of a county's criminal caseload by reducing the crime of possession of a controlled substance to a gross misdemeanor. See RCW 69.50.4013. For example, in Chelan County (where Wenatchee is located), in 2019 when unlawful possession of a controlled substance was a felony, they filed 337 controlled substance violations compared to 22 filed in 2023 when possession of a controlled substance became a gross misdemeanor. Consequently, the cities are required to pursue these charges even though the State did not provide any additional funding to the cities to do such.

Any attempt to improve access to justice for indigent defendants must acknowledge the budget limitations of the jurisdictions responsible for protecting their constitutional rights. Just as in the case of *McCleary v. State of Washington*, cities are trying and failing to uphold their citizens' constitutional rights while the State holds the resources that could actually address the crisis. This Court should consider requiring the allocation of State funding to small and rural cities rather than the imposition of limits on attorney caseloads to address access to justice for indigent defendants.

The City further joins the City of Kent's public comment dated October 8, 2024, and specifically adopts following arguments that appear in the public comment:

- Submission of the Proposed Standards by the WSBA is Contrary to Representations Made by the Washington State Judicial Branch and its Office of Public Defense (OPD).
- The Proposed Standards Presume the Court's Current Standards are Ineffective.
- The Proposed Standards are Arbitrary and Should be Rejected.
- The Proposed Standards Fail to Accurately Represent Misdemeanor Prosecution.

~~The City urges this Court to take these concerns into consideration and reject the proposed changes to the Standards under CrRLJ 3.1.~~

Sincerely,



Danielle Marchant
City Attorney