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**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Suggested Amendments to Standards for Indigent Defense Services  
**Date:** Friday, September 13, 2024 4:11:47 PM

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**From:** Covert, Darcy <dcovert@kingcounty.gov>  
**Sent:** Friday, September 13, 2024 4:09 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Suggested Amendments to Standards for Indigent Defense Services

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Hi,

I am writing to voice my strong support for the adoption of the proposed amendments to CrR 3.1.

I fell in love with public defense during my 1L summer internship. I graduated from a law school where only a few people every year go on to practice indigent defense and almost none stay for any meaningful period of time. I applied only to public defender offices for full-time employment, and I joined the King County Department of Public Defense in 2020. I had interned in two other well-respected public defender offices and decided to come to DPD largely because of its reputation for having manageable enough caseloads that its lawyers could provide very high-quality representation.

The first time I questioned whether this was a career I could stick with was when I moved to felony practice in 2022 and saw how many of my talented and dedicated colleagues were leaving our office and how desperate they were to do so. The lawyer whose caseload I took over because she was leaving cautioned me: This is not a job you maintain if there is anything else significant going on in your life. Every person I spoke with on their way out told me they loved this work and had thought they would do it forever, but that they had reached a point where it wasn't personally or professionally feasible for them to stay at DPD. Many took jobs with lower salaries and work about which they were considerably less enthusiastic. A small number left to do criminal defense elsewhere, whether privately in King County or for a public defense agency in a different state. Many had been public defenders in other states for years before coming to Washington. They all said they didn't think they could provide effective assistance to their clients, much less balance that with showing up for their loved ones, because of their caseloads.

Before law school, I had a job where I worked 80-100 hours per week, typically 6 days per week, on large financial transactions. Being a public defender in King County is far more exhausting. Our clients are some of the most marginalized persons in society. They often come

to us already jaded and skeptical of government employees generally, and of public defenders specifically. We regularly meet with them to review discovery in their cases and discuss case trajectory and options with them. We spend much of our days in hearings that typically do not substantively advance our cases, including arraignments, hearings to address alleged violations of pre-trial release conditions, omnibus hearings, restitution hearings, and trial readiness hearings. This requires us to spend evenings, early mornings, and weekends watching body-worn video and reading medical reports, consulting with experts, doing legal research, writing motions, preparing for trial, visiting clients at the jail, and returning phone calls we missed while we were in court. We do that work only for prosecutors to often decide on the eve of trial to disclose new witnesses or evidence, amend charges, make a new plea offer, or dismiss the case. We are the only actors in the criminal system who do not have the ability to meaningfully manage our caseloads—because we are merely agents who act on behalf of, rather than making decisions for, our clients.

Lowering caseloads is a necessary first step for addressing the indigent defense crisis. The State should increase its public defense funding. (Despite being grossly underfunded, public defense offices are the most resource-efficient providers of indigent defense services, and there is considerable empirical evidence [including a [2012 RAND study](#)] suggesting that public defenders provide better representation than do court-appointed private attorneys.) More funding would, among other things, allow smaller jurisdictions that currently severely undercompensate their public defenders to attract more lawyers. But as evidenced by the many people who have left DPD to do lower-paying work, better funding is unlikely to attract enough people to this job throughout the state if caseloads remain unmanageable. This is especially true because—as critics of these amendments recognize—the indigent defense crisis is driven primarily by too few people wanting to do this work, rather than insufficient funding for the number of people required to do it. Lower caseloads will attract more people to this work and allow them to stay longer.

The most common argument I have heard against these amendments is that they will lead to there being too few public defenders to handle the number of cases there are, which will in turn result in fewer prosecutions and more case dismissals. That is disingenuous. No one seems to dispute that public defenders have too many cases; these critics just don't think the appropriate solution is to give public defense offices the authority to do something about it. Instead, they urge you to let some other entity solve this problem and assure you whatever that solution is will be better for everyone.

Although the only thing you are being asked to do is vote on these amendments, your choice is not the only one to be made about how to address the indigent defense crisis. Prosecutors can change their filing and negotiation standards if they are indeed concerned about there being too few public defenders. Judges can enforce discovery and speedy trial rules against prosecutor offices and thereby force them to more quickly resolve cases. Prosecutors and judges could have done those things at any point in the last several years, as they watched public defenders leave in droves. But they chose not to. Instead, they have berated us—often in open court in front of our clients—because we are not able to resolve our ever-growing number of cases as quickly as they want us to. Meanwhile, office of 15-20 line public defenders has lost as many people in only the last couple years alone. Complaining now of the effect these amendments might have on these other entities as if they have had no agency throughout the first several years of this crisis and would have none even if the amendments were adopted is insincere.

There are already too few public defenders to manage the number of cases being prosecuted. That is just less obvious now than it might be if these amendments were adopted, because public defenders are currently allowed to be assigned more cases than they can handle. The result is that our clients carry the burden of the public defender shortage although they did not create it and cannot remedy it. These amendments would help public defenders adequately represent their clients while laying the problem of ensuring that each defendant has a lawyer where it belongs: at the feet of those institutions and persons—executives, legislators, judges, and prosecutors—who have let this problem fester but in fact have the power to address it.

Indigent persons in Washington do not currently receive the level of representation to which they are entitled because their lawyers have too many cases. One of your stated missions is to uphold the constitution. Ensuring that even society's most marginalized persons are receiving the effective assistance of counsel and that their lawyers have the capacity to identify and litigate violations of their other constitutional rights is necessary to the delivery of justice. It is your responsibility to address the ways in which high caseloads keep public defenders from effectuating their clients' constitutional rights. Rather than standing by and hoping the legislature will approve increased funding, private lawyers will agree to and adequately represent indigent defendants, prosecutors will triage their cases, or trial court judges will hold prosecutors to their obligations, you should adopt these proposed amendments.

Thank you.

**Darcy Covert** (she/her)

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