

October 30, 2024

The Honorable Steven C. Gonzalez
Chief Justice
Washington Supreme Court
243 Israel Road SE, Town Center Building 3
Olympia, WA 98504

Re: Indigent Defense Caseload Standards

Dear Chief Justice Gonzalez:

I appreciate the opportunity to provide this Court with Snohomish County's perspective on the proposed changes to CrR 3.1, CrRLJ 3.1, and JuCr 9.2, the indigent defense caseload standards. While understanding the needs of our public defenders and the clients they serve, Snohomish County has grave concerns about the fiscal impacts of the proposed court rule.

Snohomish County supports and values the work of our public defenders and greatly appreciate their service and dedication to indigent defendants and respondents. Snohomish County has had a proud 50-year relationship with the Snohomish County Public Defender Association to provide indigent defense services. We also have long-standing relationships with private attorneys who have continue to accept public defense cases along with their private work. We see their commitment to the accused, their passion for social and racial justice, and their essential role in assuring a fair and just criminal legal system. We also acknowledge the challenges of serving overly-policed and often traumatized communities and have taken efforts to assure salary parity for our public defenders, as well as providing additional funding for training.

Despite our collective commitment to public defense, due to the financial constraints placed upon counties, the proposed changes to public defense caseloads would negatively impact our ability to fund our criminal justice system. If implemented, the new Standards would consume additional resources, requiring us to shift funding away from other critical system components, such as the Sheriff's Office, Prosecuting Attorney's Office, Superior and District Courts, and other areas of county.

1. Cost of Lowering Caseload Standards

The trial court indigent defense caseload standards put forward by the Washington State Bar Association (WSBA) for adoption by the Supreme Court pose a significant challenge to Snohomish County's budget, potentially stressing our county's finances to the brink of failure. If adopted, we would require state funding to cover the cost of the new standards while ensuring other essential services are not impacted. In addition to funding the revised public defense standards, we hear concern from our Prosecutors about the impact revised public defense caseloads can have on their workload. As you know, changing one part of the justice system can have impacts on other system stakeholders, whose concerns should be taken into consideration.

While acknowledging that the Court does not have the power of the purse, I propose that the state's Office of Public Defense (OPD) convene a work group to develop a model to determine of the cost of implementing the Standards on counties and cities. This model could serve as a framework for future funding requests as caseloads grow and change. OPD has expertise in this area; it uses modeling to estimate costs for attorneys and social workers for the parent, appellate, and Blake representation program. More importantly, as the state agency with subject matter expertise, I believe OPD can attract a diverse group of experts, legislative staff, and other relevant stakeholders to develop a reachable cost estimate. This estimate would educate policy makers on the fiscal impact the proposed caseload standards would have on county and city budgets and the broader justice system.

2. State Funded Indigent Defense

The historic underfunding of public defense by the State has helped perpetuate the crisis in public defense. Counties incur public defense costs solely as an agent of the state. Under the Washington State Constitution, all criminal charges under the RCWs are brought in the State's name by prosecutors acting as state officials when serving this function. They are adjudicated by State courts and are State officials under the constitution, geographically located within each county. While the State provides some funding for law enforcement, prosecutors, and courts, it provides none for public defense; by funding upstream services, the State creates even greater demands on locally funded public defense services. County government has no control over the decisions of prosecutors, judges, or public defenders because they are serving a state function. It is fundamentally the responsibility of Washington State to fund quality public defense when cases are lawfully prosecuted in its name.

As a result, I would like to begin a discussion of policy and fiscal impacts of the State directly funding trial court indigent defense. The State's participation in conversations about public defense are essential given the State's involvement in providing rehabilitative services that, if fully funded, can reduce the circumstances that lead to criminal cases.

3. Workforce Issues

Increasing the number of public defenders remains an integral part of all these conversations. The State expanded the right to trial court indigent defense to include children in dependency actions, tenants in unlawful detainer actions, and some drug possession/use cases. The Courts have created new rights for resentencing in the areas of youthfulness and drug possession. These changes, coupled with increased workloads, have increased demands on the system and resulted in challenges hiring and retaining public defenders. The proposed indigent defense caseload standards would exacerbate this critical workforce challenge.

OPD is uniquely positioned to assess the State and local indigent defense workforce needs. A statewide evaluation of county and city public defense services is essential before setting any standards. I suggest greater emphasis be placed on the resourcing of this service. That emphasis may mean engaging with the Washington State Bar Association, higher education institutions, and others to determine how to increase the supply of public defenders. While the law student rural public defense program created in 2SSB 5780 is a good start, indigent defense workforce development is a statewide problem requiring a more comprehensive solution.

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In conclusion, I am gravely concerned that a new unfunded mandate from the state would cause irreparable harm to Snohomish County's ability to fulfill its basic responsibilities, including for the justice system. I urge the Court to consider the impacts of any decision by undertaking the studies referenced above **before** making any decision about caseload standards. I hear the concerns of our public defenders and am committed to assuring their clients receive quality representation; reform is needed; however, I believe moving forward without understanding the impacts of caseload standards would be reckless.

If it would be helpful to have a conversation about Snohomish County's position and our current financial constraints, please do not hesitate to contact me. Snohomish County is eager to be a partner in providing effective and responsible public defense.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dave Somers', with a long horizontal line extending to the right.

Dave Somers
Snohomish County Executive