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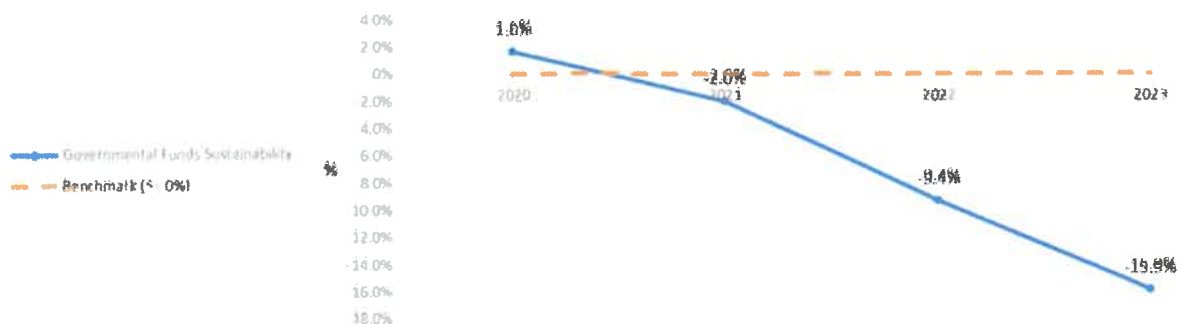
October 30, 2024

Clerk of the Supreme Court
Washington State Supreme Court – Rules Committee
Post Office Box 40929
Olympia, Washington 98504

Re: Public Comment on Standards for Indigent Defense
A System in Crisis: Public Defense in Washington State

Honorable Chief Justice Gonzales, Members of the Washington State Supreme Court, and
Clerk of the Supreme Court:

Like every county in Washington State, Franklin County FUNDS AND DELIVERS virtually all of the Public Defense programs and services for Franklin County Superior and District Courts. We do so with almost no program or Similar to other counties in Washington State, the Franklin County Operating Budget has a "Structural Deficit"; meaning, that despite a growing economy our **recurring expenses continue to increase faster than recurring revenues**. In fact the Franklin County 2025 Preliminary Current Expense Budget is currently estimated at \$50.5 million in expenditures and \$48.8 million in revenue, or a structural deficit of \$1.7 million or 3.3%. This deficit is **before** considering any new programs, services or new staff requests (including additional courtroom security), cost of living adjustments (COLA), employee step pay increases, and increases in the cost of health care for our workforce. Below is a chart, from the Washington State Auditor's Office, that graphically displays the acceleration of Franklin Counties' Structural Deficit.



To provide further context, the Franklin County 2025 preliminary budget for our Office of Public Defense, using the current caseload standards, is \$2.1 million in expenditures (9.1% increase), and only \$84,500 in revenue from the State of Washington, or 4% of our expenditures to fulfill the State of Washington's constitutional responsibility. We can assure you this: absent a pathway to have a funding solution from the State for any new caseload standards approved by

the Supreme Court, Franklin County will simply be unable to provide public defense services to many individuals charged with committing crimes.

PROPOSED RULES: *Standards for Indigent Defense Services*

With this Franklin County information as the context for our comments, we share with you an acknowledgement and awareness of the deepening crisis facing public defense representation in our state. In fact, in a dissenting opinion current Chief Justice Gonzales (*Davison et al. v. State of Washington et al.*, 96766-1), opined “*The State has known for a long time that delegating primary responsibility for public defense to local governments has often led to the systematic deprivation of effective assistance of counsel.*” This is a crisis that is borne from benign neglect by both the Executive and Legislative Branches of Washington State. While we wholly respect the role of an independent judiciary we ask that in this case you work collaboratively with your administrative and legislative partners on appropriate and timely solutions. We believe we share a collective responsibility to work together to find a pathway to assure there is adequate public defense services and appropriate funding to implement new caseload standards.

We have already noted our serious concerns regarding Franklin County’s ability to implement the Washington State Bar Association’s (WSBA) recently adopted *Standards for Indigent Defense Services* (“Rule Changes”) that you are now currently considering for adoption. As you are well aware, we believe that the public defense system and scheme that Washington State has devised, does not meet the State’s constitutional obligations. Leaving this responsibility to 39 counties to both fund and operate, with virtually no funding support, creates tremendous inequities in public defense services.

Rather than adopt any caseload changes at this time, we ask you delay a decision to a future date certain. In the mean time we ask the Court to work collaboratively with other system partners, including the Legislature, our 39 Counties, the WSBA, Superior and District Courts, prosecuting attorneys, victims, and others to address the myriad of issues facing the justice and public defense system and bring comprehensive solutions that have broad support, bring accountability for performance, operational improvements and increase desired outcomes.

We also do not believe that making a dramatic change to *Standards for Indigent Defense Services* will do nothing to bring solutions to these two other documented facets of the public defense crisis:

- Washington State is nearly last in state public defense funding.
- The current academic and marketplace is not producing the necessary supply of qualified defense attorneys that cities and counties can recruit, train, and retain in order to provide constitutionally mandated representation for the citizenry.

With this public defense and justice system crisis laid bare for all to see, adopting the WSBA’s proposed *Standards for Indigent Defense Services* has the potential to cause a catastrophic failure of a very fragile public defense and justice system in the State of Washington. Quite frankly, adopting WSBA’s proposed *Standards for Indigent Defense Services*, would be reckless. It is time for a pragmatic approach to re-configure the Washington State Public Defense System so it is equitable across the state both in services and funding.

Adopting WSBA's proposed *Standards for Indigent Defense Services* is a reflexive response that might look like it is a fix to one element of a complex system that actually puts the entire system in peril. The Supreme Court should reject any single solution to the issues facing the public defense system in Washington State that is not appropriately sequenced with other improvements and solutions that are needed. As such, Franklin County asks the following actions be taken:

- The Supreme Court should not adopt WSBA's proposed *Standards for Indigent Defense Services* at this time; and should not consider the Rule Changes again until there is a comprehensive plan in place that addresses the criminal justice system impacts in Washington State as a whole.
- The Supreme Court, or a closely associated group like that of the Board of Judicial Administration or Interbranch Advisory Committee, initiate a task force with broad stakeholder engagement to thoroughly examine Washington's public defense and justice system and provide system wide-level recommendations to the Court, Legislature, and Bar Association for further action.

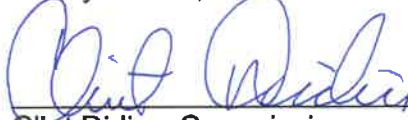
The theme of this letter is **crisis**. We all acknowledge that there a crisis in the Public Defense System in Washington State, independent of the WSBA's proposed *Standards for Indigent Defense Services*. However, adopting WSBA's proposed *Standards for Indigent Defense Services* will in fact worsen the crisis, financially cripple counties like ours, and further weaken our ability to find collaborative solutions to improve and create an effective and financially stable public defense and justice system here in Washington State.

Sincerely,

BOARD OF COUNTY COMMISSIONERS



Rocky Mullen, Chairman



Clint Didier, Commissioner



Stephen Bauman, Commissioner

cc: 8th, 14th, 15th, & 16th District Legislative Delegation
The Honorable Shawn Sant, Franklin County Prosecutor
Josh Cuevas, Interim Director, Office of Public Defense, Franklin County