

### **Comment on proposed indigent defense caseload caps**

To the Honorable Members of the Washington State Supreme Court

Honorable Justices:

The last 30 years have seen significant change to Walla Walla County - primarily with regard to the cost of living, which now approaches Seattle/King County levels. The cost of a three-bedroom, two-bath house has skyrocketed from roughly \$70,000-90,000 to \$500-700,000 - prices well out of reach for most working families in this area, given stagnant wages. While the rising cost of living is not unique to Walla Walla County, it has affected our county's ability to attract both qualified deputy prosecutors, and qualified indigent defense attorneys for Superior Court contracts.

There are a total of 11 attorneys who have a contracted portion of the indigent public defense caseload (adult criminal cases, probation violations, involuntary mental health commitments, juvenile, dependency, district/municipal court) as their primary source of income. Six of them are full-time public defenders. They are responsible for paying all their own overhead, including but not limited to, office rent [which has tripled in the last 15 years], office equipment and case management software, staff salaries and equipment, bar dues, malpractice insurance, health insurance for themselves and their families, office supplies, legal research engine fees, and so forth.

Our defense bar is currently highly skilled, very experienced, and adequately compensated for their expertise. Many of them have been in public defense for more than 10 years.

However, with the proposed rules looming before the Court this fall, two of these skilled, experienced attorneys have already announced they have taken new employment outside of indigent defense representation, and a third attorney is actively seeking alternate employment options. The remaining attorneys are discussing "next steps" for them outside public defense, if these rules pass. This will effectively gut public defense in our rural county. Historically, the private bar in our county has not applied for portions of the contract given the difficult, stressful, time-consuming work of full-time public defense. Many qualified local defense attorneys have opted instead to keep open space on their caseloads to accommodate paying clients.

If the proposed rule amendments take effect, Walla Walla County will not be able to compensate its indigent public defenders sufficiently to keep them. The County will also be tasked with having to hire several additional defenders from an already small pool, for less work. The proposed indigent defense caseload caps, means public defenders will be unable to pay their overhead, while maintaining their take-home pay. This will result in

public defenders looking outside our county to make a living wage, and indigent defendants with no legal counsel.

This proposal also ignores the fact that Washington State will still have numerous criminal statutes in effect that should necessitate the filing of criminal charges when the Court has found probable cause. “Filing fewer cases” means that prosecutors would functionally be asked to ignore those laws, and implicitly participate in the destruction of the very same criminal justice system we swore an oath to uphold.

This proposal is not only short-sighted, but likely dangerous to communities who have elected prosecutors with an expectation that they will uphold the law. This proposal will upend the criminal justice system and will do so at the expense of indigent defendants and victims of crime.

The proper venue for criminal justice reform is the State Legislature – the body elected to represent all the citizens and enact laws on their behalf, coupled with State funding to implement those laws – rather than rules originating from proposals put forth by a small group of lawyers which is then imposed on those citizens with no plan in place to assure a successful continuation of the criminal justice system, i.e. providing monies and essential resources to afford the added cost of the proposed changes. The proposed standards under consideration before this Court do not provide balance to the criminal justice system. Rather, they *do* provide real risk to the community at large (current and future victims of crime) who will suffer the loss of an effective and working criminal justice system. Such a result generally ends in a bad outcome for the community – both victims and offenders. When a proposal such as this threatens to break down the criminal justice system, something else must be available to replace it.


The above-described effect of the proposed amendments would result in criminal charges being dismissed by our courts for lack of defense attorneys to defend the accused, as we have seen happen already in several counties in our State. Our law-abiding citizens will bear the brunt of this decision.

The legislature has better tools at its disposal to accomplish sweeping change as the proposed rule amendment contemplates– and critically, the ability to adequately *fund* such proposals.

While larger counties may be able to tap additional revenues to work within the proposed rule amendments, small counties, like Walla Walla, cannot. This puts additional strain on an already over-stressed system to “do more with less.”

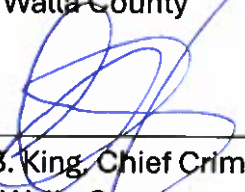
Criminal justice work is too important to tinker only with one aspect, without reforms across the board to ensure public safety is maintained, and the system continues to function to serve all citizens.

We urge the Court not to approve this proposed rule amendment, in light of the many ways it would undermine the functioning of an already under-funded criminal justice system.




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Gabriel E. Acosta, Prosecuting Attorney  
Walla Walla County



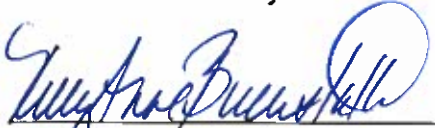
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April B. King, Chief Criminal DPA  
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**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Comment on proposed amendments to Standards for Indigent Defense Services  
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**Attachments:** [Comment on proposed amendments to Standards for Indigent Defense 09.23.2024.pdf](#)

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**From:** Kelly Buerstatte <kbuerstatte@co.walla-walla.wa.us>  
**Sent:** Monday, September 23, 2024 4:27 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Gabe Acosta <gacosta@co.walla-walla.wa.us>; April King <aking@co.walla-walla.wa.us>; Michelle Mulhern <mmulhern@co.walla-walla.wa.us>  
**Subject:** Comment on proposed amendments to Standards for Indigent Defense Services

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Good afternoon,

Attached, please find a comment regarding the proposed rule amendments concerning Standards for Indigent Defense Services.

Sincerely,

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