



Island County Board of Commissioners

P.O. Box 5000, Coupeville, WA 98239

Ph: Whidbey 360-679-7354 | From S Whidbey 360-321-5111 | Camano 360-387-3443

Email: bicc@islandcountywa.gov | www.islandcountywa.gov

October 30, 2024

Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
Via email supreme@courts.wa.gov

Re: Washington State Bar Association Proposed Revised Standards for Indigent Defense and Caseload Limits

Honorable Justices of the Washington State Supreme Court:

Island County is concerned about the Washington State Bar Association's proposal to significantly change indigent defense case load standards and limits in Washington State. The proposed changes will have extremely detrimental financial implications on our County, along with all other counties. This is a significant issue for Island County as it was required to expend additional funds in 2023 due to our contracted public defense firm having lawyers resign and tremendous difficulty in obtaining conflict counsel. Due to the increase in the need for conflict counsel in our relatively small County, we anticipate expending more than double the amount in 2024 than we did in 2023. While Island County agrees that some of the recommendations might provide an impetus for lawyers to work in the public defense field, the additional costs would be quite prohibitive.

Island County sees the providing of a defense attorney for indigent defendants as the State's constitutional responsibility. Still, that obligation has been ignored to the point we are now in crisis. Island County fully understands that the State has assigned this constitutional responsibility to the counties by statute. Island County, however, submits that such an assignment without proper funding violates the State's constitutional obligation. Island County views the public defense obligation as similar to the obligation the State has to pay for the education of the State's children. This Court found that the State met its constitutional obligation regarding education by appropriately funding our schools. The Court should consider such an order regarding public defense should the legislature refuse to fund public defense at a level appropriate to meet its constitutional duty.

Over the past 10 years (2012 – 2022), Island County has expended between \$800,000 and \$900,000 in indigent defense annually. During that same time period, the State has reduced its annual contribution from \$60,000 to \$50,000. In 2023, some of the issues WSBA's proposal seeks to

address were experienced in Island County. Our contracted public defense firm had difficulty hiring and retaining attorneys so the current caseload limits were reached resulting in the need for additional conflict counsel. The cost of retaining conflict counsel was 83% higher than our budgeted amount. Out of over \$1,000,000 expended, the State paid Island County less than \$55,000.

Island County is currently experiencing the same issues but to a much greater extent. After exceeding \$1,000,000 in expenditures in 2023, Island County estimates that its 2024 public defense expenditures will exceed \$1,300,000. This is an almost 40% increase in just two (2) years. We anticipate the WSBA's proposal will result in an increase in public defense expense to more than double by 2028, if not sooner. While Island County recognizes the WSBA's attempt to rectify a very difficult situation regarding the number of attorneys willing to participate in indigent defense, WSBA made these recommendations without any thought to the significant financial impact they would have on the counties as the providers of public defense services. Only this Court can resolve the disparity between the WSBA's recommendation and the inadequacy of State funding.

In addition to the increased cost, Island County sees no evidence to suggest that attorneys will be inclined to practice criminal public defense. In fact, data suggests that prosecuting attorney offices around Washington State have seen a decline in applicants for open criminal prosecution positions. Without a more robust means of ensuring an increase in attorneys willing to practice criminal law, the WSBA recommendations will be impossible to fulfill and the inability to prosecute criminals will be hampered from both the prosecution and public defense perspectives.

Our experiences in 2023 and 2024 resulted in the identified concerns about attorney shortages, delays in bringing matters to trial, and impacting timing on pretrial matters. It is very difficult for Island County to find qualified counsel for murder, rape, and child molestation cases where delays could force the courts to release defendants who are a risk for committing additional serious crimes. These shortages have required Island County to pay additional fees to conflict counsel to ensure defendants are timely and adequately represented. Because Island County is a relatively small community, we also face conflict situations based on multiple defendant cases, cases where defendants and victims are involved in cases but one is already represented by our contracted public defense firm and where our contracted public defense firm does not have sufficient numbers of attorneys to take a case as it would force them to exceed the current guidelines.

Given the proposed changes, Island County estimates that the amount it will expend with contracted public defense counsel and conflict counsel would be increased by an estimated 70%, which is \$700,000. Currently, Island County does not anticipate the State resolving this funding issue, so the County would be required to budget significant amounts that are not currently available. Island County would appreciate the Supreme Court work with WSBA and delay implementation of this change to the indigent defense caseload standards and limits and joining the Washington State Association of Counties in its pursuit of State funding to meet its constitutional obligations for funding indigent defense.

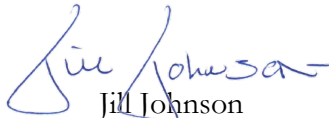
While we understand the rationale behind the proposed changes, without significant judicial or legislative changes and assistance, it is unclear how Island County can provide critical public defense needs under the proposed changes. We appreciate the work the WSBA undertook to arrive at the proposed changes and appreciate your considering our concerns and request. It is simply untenable for any County to shoulder the increased costs that would result from implementing the proposed changes. The State must step forward with financial assistance before these changes are adopted.

Thank you for considering our request.

Respectfully,



Melanie Bacon
Island County Commissioner
District One



Jill Johnson
Island County Commissioner
District Two



Janet St. Clair
Island County Commissioner
District Three