

September 23, 2024

Sent via email to RulesComments@courts.wa.gov

Chief Justice Steven C. Gonzalez
Associate Chief Justice Charles W. Johnson
Justice Barbara A. Madsen
Justice Susan Owens
Justice Debra L. Stephens
Justice Sheryl Gordon McCloud
Justice Mary I. Yu
Justice Raquel Montoya-Lewis
Justice G. Helen Whitener
Washington Supreme Court

Re: Proposed Changes to Indigent Defense Standards

Dear Honorable Justices:

We are writing to comment on the proposed changes to indigent defense standards and the impacts these will have on local government and on criminal justice in Washington. For context, the attorneys signing this letter are members of the firm's Municipal Department. Collectively, we have worked for more than three dozen different cities as attorneys, both civil and criminal, and one of our attorneys worked for 20 years as a policy maker for the City of Bellevue. As result, we are deeply grounded in local government and can see the dire impacts this rule will have in cities throughout Washington if adopted as proposed.

We write to urge you to not adopt the proposed standards but to instead convene all stakeholders to discuss setting appropriate defense standards. The stakeholders should include local jurisdictions who were not at the table when these (or the prior) standards were developed. The proposed defense standards are not needed because the current caseload standards adequately protect misdemeanor defendants today. Instead, these standards will create severe stress on all cities and make it impossible to charge all appropriate cases as local jurisdictions will not be able to find enough defense attorneys to do the work, even if they have unlimited resources to pay for that service (which no city has). Our clients are currently having difficulty finding adequate indigent counsel (not due to caseloads, but due to fewer attorneys choosing that focus). These standards will exacerbate the problem, making it not feasible to continue to administer justice for most jurisdictions. This will hurt victims and create social problems in the community. Often the criminal justice system is a mechanism for helping offenders change course and become successful members of communities. By taking away the ability to

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intervene when a person is committing crimes, you will harm the perpetrators as well as the victims.

The standards are particularly unreasonable for misdemeanors that so often are resolved without trial. If the proposed standards are adopted, there are simply not enough attorneys to do the work, let alone attorneys who make criminal law their practice area. In some counties, even if every member of the bar started doing defense work, there would still not be enough attorneys to do the work under the proposed standards. Our current defendants are well-served by defense counsel. Thus the new standards are not necessary to provide a solid defense. Justice is being served today under current standards and the rights of defendants are being protected.

Given the impacts that the proposed felony standards will likely have on counties (who are also struggling to fund core services), we would expect counties to have an increased rate of declining to file felony charges even on solid case. This will then fall back to the cities to charge the lower-level misdemeanor.

If cities cannot provide public defenders to individuals charged with misdemeanors, they will not be able to file cases, or the cases will be dismissed. There is no doubt that this will have a more significant impact on cities with a weak tax base and rural counties. Crime won't magically go away if cities are unable to charge defendants; rather, it will lead to fewer crimes being charged which in turn is likely to further embolden offenders as there would be no consequences for committing crimes in that jurisdiction. As a result, we anticipate that the impacts of the proposed rules will be more severe than what was experienced post-Blake (an explosion of drug use and crime), and during the time that legislation prohibited pursuits (an explosion in auto thefts, auto related deaths and felonies). That will be damaging for the entire state of Washington.

Furthermore, the proposal changes current standards too much, too fast, and does not include either a funding strategy or an implementation plan. Creating a substantial caseload reduction plan without a strategy to find, educate, train, and hire the required number of attorneys will lead to dire consequences for public safety across Washington, particularly as we are in a time with increased crime rates. As you are no doubt aware, most cities are struggling to fund core services, while at the same time the state and federal government are adding more responsibilities and costs onto cities. Given that property tax has not kept up with inflation, all cities are continually struggling to do more with less. These proposed standards will create a significant fiscal and operational burden on cities and will result in cities having to choose between cutting core services (including mental health and homeless services) or woefully underfunding criminal justice (that is assuming they can even find enough defense attorneys to hire, which is unlikely).

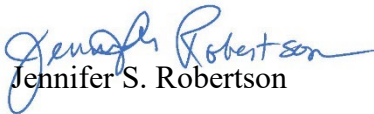
The State needs to step up to be part of this solution. With one of the lowest levels of state funding for public defense in the nation, Washington needs to commit to providing funding for this purpose before *any* new standards are adopted. To do otherwise, is akin to defunding the criminal justice system in Washington.


We urge you to:

1. Go back to the drawing board on the proposed standards and reconvene a work group that includes all stakeholders (including cities) in the process so that the updated standards will be reasonable and achievable; and
2. Refuse to adopt the rules without a longer timeline for implementation and a plan (including funding) for hiring all of the new defense attorneys. This should involve the Legislature's commitment to fund criminal defense.

Thank you so much for your commitment to justice and to the people of Washington.

Sincerely,


Jennifer S. Robertson


Katherine F. Weber


Charlotte A. Archer

s/Daniel Shin
Daniel Shin


Maili C. Barber

s/Eric C. Frimodt
Eric C. Frimodt

From: [Ward, David](#)
To: [Martinez, Jacquelynn](#)
Cc: [OFFICE RECEPTIONIST, CLERK](#)
Subject: FW: Indigent Defense Standards - Proposed Rule
Date: Tuesday, September 24, 2024 8:22:17 AM
Attachments: [Comment Letter re Proposed Indigent Defense Rules 9-23-2024\(10929496.1\).pdf](#)
[image002.png](#)

From: Jennifer S. Robertson <jrobertson@insleebest.com>
Sent: Monday, September 23, 2024 10:04 PM
To: AOC DL - Rules Comments <RulesComments@courts.wa.gov>
Subject: Indigent Defense Standards - Proposed Rule

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Dear Honorable Justices,

Please find attached a comment from six attorneys at my firm on the proposed new rule.
Thank you.

Sincerely,
Jennifer



Jennifer S. Robertson | Shareholder

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