

Jerome Delvin, *District 1*  
Michael Alvarez, *District 2*  
Will McKay, *District 3*



Jerrod MacPherson  
*County Administrator*  
Matt Rasmussen  
*Deputy County Administrator*

## Board of County Commissioners

October 1, 2024

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

### Re: Crisis – Public Defense in Washington State

Washington State Supreme Court:

We write you today to share our serious concerns specifically about the Washington State Bar Association's recently adopted *Standards for Indigent Defense Services* ("Rule Changes") which have been forwarded to the Supreme Court for consideration; and, on the wider and deepening crisis facing public defense in our state more generally. We ask that the Court reject these WSBA recommended Rule Changes, and that the Court work with the WSBA and the Legislature to address the wider public defense issue in Washington realistically and responsibly as our collective highest priority.

The challenges facing public defense in Washington and around the country even *before* WSBA's Rule Changes were developed are well documented and we won't detail them here. To summarize, in addition to Washington – a relatively rich state – being nearly last in state public defense funding, the 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. Most people inside and outside of the profession would agree that public defense is one of the most unforgiving and lowest-paying ways to practice law.

With this difficult situation laid bare for all to see, WSBA's approach with its Rule Changes is apparently to solve a supply issue by creating more demand. Just in Benton County alone, at the current and expected rates of prosecutions in our community, we will have to hire almost 100 additional defense attorneys over just a few years to comply with the new caseload standards. Of course, it's not just the attorneys – which as noted are not in the pipeline to begin with – but also the clerical staff, equipment, and office space which are also not in our fiscal pipeline. WSBA's reaction to the current public defense situation is a reckless response to a wicked problem.

Unless there is about to be some magical and drastic *decrease* in criminal activity across society that only WSBA can foresee, the immediate response and corresponding impacts for counties like ours is clear – in order to comply with the new caseload standards brought on by these Rule Changes, public defense costs will double, triple, or more in short order with no offsetting accompaniment of new revenue as counties across the state hire literally thousands more attorneys and support staff. Remember though, as noted above, all these new attorneys that

we are supposed to hire do not exist in the first place. We are not even able to maintain full staffing *now*.

As usual, it will be the smaller, rural counties that will be disproportionately affected by the sea change brought on by WSBA's Rule Changes, and by disproportionately we mean disproportionately *bad*. If these standards are fully implemented as proposed it is going to be hard enough for a mid-sized county like ours with a relatively strong tax base and a stable and diversified local economy. It is difficult for us to imagine how this is going to play out for the small counties. How about at the other end of the spectrum? Will it be as bad for the state's largest and wealthiest county? In her recent memo to county leadership, King County Prosecuting Attorney Leesa Manion said she has "serious concerns" about WSBA's Rule Changes, and that if adopted by the Supreme Court these caseload standards will "bankrupt King County's General Fund." If that is the catastrophe facing *King County*, what is this going to mean for the rest of us?

As if the proposed Rule Changes were not bad enough on the merits, consider the compounding effect of the timeline. If WSBA has its way, we are supposed to have these Rule Changes fully implemented by 2027. This is simply not realistic.

All of this leads us to wonder about the Bar Association's motivations. If WSBA's goal is to break the back of the system, it will probably succeed. If the Rule Changes are implemented as currently proposed, one of or a combination of at least three unfortunate things will happen:

- Prosecutions will be reduced to only the most serious offenses – victims will be left to deal with the fallout.
- The accused will spend more time in custody without counsel – this burden costs everyone more.
- Courts will begin dismissing cases on due process grounds – this is actually already happening in Benton County.

Keep in mind that Washington is already and consistently one of the most under-policed states in the Union. Combined with the recent *Luthi* decision and the impending caseload standards brought on by these Rule Changes if they are allowed to stand, the criminal justice system in this state will soon be gutted into free-fall.

As the old adage goes, "A failure to plan, is a plan for failure." WSBA's reflexive response to attempt to fix one part of a larger system that is in crisis is indeed a plan for failure that will ripple and reverberate throughout that larger system. As such, Benton County's position is the following:

- The Supreme Court should not adopt the Bar Association's Rule Changes proposal 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 in Washington state as a whole.
- The Supreme Court should take the lead in developing that comprehensive plan by working with the Legislature to convene and fund a task force of practitioners from all corners of the legal profession, victims, local governments, the law schools, and others

to thoroughly examine Washington's criminal justice system and make sober, system-level recommendations to the Court, Legislature, and Bar Association for further action.

The theme of this letter is **crisis**. The crisis will not be created by Rule Changes because it is already here. WSBA's proposal will *deepen* the crisis, and they will financially cripple counties like ours who are already struggling with this crisis.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

DocuSigned by:

*Jerome Delvin*

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Jerome Delvin, Chairman

DocuSigned by:

*Michael Alvarez*

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Michael Alvarez, Commissioner

DocuSigned by:

*Will McKay*

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Will McKay, Commissioner

cc: 8th, 14th, 15th, & 16th District Legislative Delegation  
Eric Eisinger, Benton County Prosecutor  
Larry Ziegler, Benton County Interim Public Defender  
Gordon Thomas Honeywell Governmental Affairs

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Benton County Board of Commissioners Letter Re: Crisis – Public Defense in Washington State  
**Date:** Thursday, October 3, 2024 9:54:33 AM  
**Attachments:** [Letter to WA State Supreme Court Rules Committee - Crisis – Public Defense in Washington State.pdf](#)  
[image002.png](#)

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**From:** Amanda Pearson <Amanda.Pearson@co.benton.wa.us>  
**Sent:** Thursday, October 3, 2024 9:40 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Eric Eisinger <Eric.Eisinger@co.benton.wa.us>; Larry Zeigler <Larry.Zeigler@co.benton.wa.us>; jweiss@gth-gov.com  
**Subject:** Benton County Board of Commissioners Letter Re: Crisis – Public Defense in Washington State

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Good morning,

Please see the attached letter that was signed at the Benton County Commissioners' meeting on Tuesday 10/1.

Thank you,

