Justices of the Washington State Supreme Court,

I am writing in support of the proposed court rule amendments to codify the WSBA's recently passed criminal caseload standards for public defenders. I am currently a public defender practicing in Washington, but I have also practiced as a public defender in California, which gives me some additional perspective to public defense in other states. I wish that I could appear in person to advocate for the codification of these standards, but I am currently in trial so I cannot attend in person. Instead, I'm taking the time to write this at 9:45pm on a Tuesday, after I just finished my work preparing for trial tomorrow and the additional prep work needed to make sure my other cases are covered while I'm in trial. I say that not to engender undue sympathy, but because I think it's important for the Justices to hear these kinds of concrete examples of the life of a public defender in Washington right now.

I want to focus my first comments on the arguments from opponents to these standards about costs, delays, and the fears being raised about an impending crisis if these standards are adopted. I am particularly disturbed by the recent trend of judges who are abandoning their neutrality and using these types of arguments to publicly advocate against adoption of these standards.

The truth is the system is already in crisis – it is massively expensive and inefficient to prosecute and incarcerate as many people as we do in this country. It's just that the costs of our current crisis are born so disproportionately by indigent defendants and those of us who struggle to advocate for them that the other system actors don't recognize them as costs. The cost is overwhelmingly born by our clients who sit in custody for far longer than they should have to because their attorneys are too busy to advance their cases; the cost is born by our clients who go through three different attorneys on a case because their lawyers keep quitting; the cost is born by our clients who have no meaningful right to speedy trial even though it is supposed to be constitutionally guaranteed; the cost is born over and over and over again by public defenders who massively overstretch themselves to try to meet the needs of our too-many clients and our too-many cases; and the cost is born by public defenders offices who must be constantly recruiting and training and re-assigning and trying to limit the fall-out from astounding attrition rates in our profession. These costs are real, and they are system wide. Just because they are born by the poor people accused of crimes and their advocates – rather than county government budgets, prosecutors, or alleged crime victims – does not mean they are not costs and are not worthy of concern and drastic action.

Of course it is true that hiring additional defenders will cost money. However, The Supreme Court did not condition the right to an attorney on a government's ability to afford one when it decided *Gideon v. Wainright*. They rightly placed the obligation to find funding to pay for a public defender at public expense on the government seeking to take away an indigent person's liberty. I shudder to think about what would have happened had the issue in *Gideon* been put before a policy committee of some kind instead of the Court. The exact same arguments would have been made there that opponents of these revised standards make here: it will cost too much, there's no time to plan, this is an unfunded mandate, this is happening too fast, etc. And yet: such drastic judicial action was necessary in *Gideon* because it involved an inviolate constitutional right. The same is true here and now.

Additionally, I know there is a concern about being able to find lawyers who want to be public defenders and fill those positions. I can only speak from my experience, but in my law school and in the multiple public defense offices throughout the country I have interned with or worked for, being a public defender was a sought after and competitive position. Young lawyers want to work on the side on the

accused. However, the material conditions and challenges of the job present a huge barrier. By changing the material conditions of public defense and reducing some of the enormous strain and cognitive load by defenders, I anticipate two things will happen: 1) attrition will decrease, so that will mean offices can grow instead of desperately trying to use new hires to simply replace, and 2) some that have left the profession might return. Of course this is speculation – but so is the fearmongering speculation of the opponents who say it will be impossible to fill the positions. It will never be possible to affect the upstream supply of new lawyers coming out interested in public defense, so using that as a reason not to enact change now is a false goal post to dangle and delay change indefinitely, because it can never be satisfactorily attained. The truth is we do not know exactly what the impact will be, but that does not make this change less necessary now. The best way to recruit new defenders is to materially improve the conditions of current defenders.

Additionally, it is my belief that these standards would *reduce* the delays within the system that we currently see. I can think of far too many cases of mine that dragged on far longer than they needed to because I just did not have time to get the witness interviews done, sit down and review massive discovery files, send a negotiation email, or take the basic substantive steps necessary to advance the case. One case in particular comes to mind that continues to weigh on me all these months later: my client remained in custody for close to three months before I was able to conduct the witness interview that resulted in dismissal of the case. With fewer cases and more time to devote to each case, I am positive that I will be able to move my cases along much faster. I am not alone in thinking this. Defenders who have time to devote to their cases will improve system efficiency, not detract from it. I am also deeply troubled by the assertion that defenders having the amount of time to devote to each of our cases that has been nationally recognized as necessary for effective assistance of counsel will somehow cause system collapse. If that is the case, then what do we call what is happening now? A broken system that depends on overworked and ineffective defenders? A system like that has already collapsed – but again, it has collapsed *for our clients*, and so everyone else in the system it does not appear as collapse.

Furthermore, declining to adopt these standards because of a fear of impact on *prosecutors* is extremely misguided. Prosecutors are already the most powerful actors in the system. Prosecuting agencies have total control of what kinds of cases to file and how many cases to file, unlike defenders. If there is some different filing decision-making that needs to happen during adjustment periods, that would not be unprecedented – we've seen recent examples of altered filing practices during COVID, for example. There is already a built-in triaging system of rush filing practices, so it's not as if prosecutors are not already routinely engaged in that kind of analysis. Furthermore, there is no right to effective assistance of counsel for the state, so these revised standards should not impact prosecuting staffing needs at all. And again, even if it does require some changes or cost on the prosecution side, that would essentially just balance out the overwhelming costs the defense side is currently bearing.

My division has lost six criminal defenders in the last ten months and I am aware of two more with imminent plans to leave. This is not sustainable. When I moved from California and took my current position, I was shocked at the extremely high number of serious cases defenders were routinely expected to carry here. I am not exaggerating when I say that my former colleagues in California see my current caseload and the caseload of many of my colleagues, in terms of number and type of cases, and ask how it is possible not to be IAC on all of them. And I do not have a good answer for them.

Thank you for taking the time to read about my experience, and I ask that you strongly consider the perspectives of defenders, who are so routinely overlooked and dismissed in our system – much like our clients. We are the ones who best know the demands of our job, what it takes to do it well, and the fierce advocacy our clients so deserve.

Sincerely,

Katherine Buckley

From:	OFFICE RECEPTIONIST, CLERK
To:	Martinez, Jacquelynn
Subject:	FW: Public Comment on Caseload Standards for Indigent Defense
Date:	Thursday, September 19, 2024 8:08:44 AM
Attachments:	Comment to WA Supreme Court on caseload standards.docx

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From: Buckley, Katherine <kbuckley@kingcounty.gov>
Sent: Wednesday, September 18, 2024 5:23 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Public Comment on Caseload Standards for Indigent Defense

Please find the attached Public Comment in support of the proposed rules adopting the WSBA standards for indigent defense.

Many thanks,

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