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October 15, 2024

Clerk of the Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

Sent via email to [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

*Re: Proposed changes to standards for public defense*

Dear Justices of the Supreme Court,

Thank you for seeking comments to the Washington State Bar Association's and Council on Public Defense's proposed amendments to the adopted standards for public defense. After carefully reviewing them, I strongly urge you to reject the proposed amendments. To the extent the Court is interested in making changes to the current standards for public defense, I encourage it to first call for and review the results of a Washington criminal justice workload study. I believe such a study will allow for a more wholistic address of challenges facing not only public defenders, but the broader criminal justice system.

**A. Reasons for which this Court should reject the proposed amendments**

*i. The RAND study fails to consider Washington's unique needs*

The Court should have the opportunity to review the results of a Washington criminal justice workload study before making changes to the adopted standards for public defense that will fundamentally alter the operation of the criminal justice system.<sup>1</sup> Stakeholders who work within the criminal justice system and citizens who rely upon it to keep them safe deserve no less.

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<sup>1</sup> Other decisionmakers at the state and local level will similarly benefit from a Washington criminal justice workload study.

While the RAND Corporation's *National Public Defense Workload Study* raises several good points, it was conducted as a national study and was never intended to address Washington's unique public defense needs. Moreover, the study's results are primarily applicable to locations or for purposes where jurisdictionally focused workload standards have not already been produced, in situations where earlier work did not adequately consider applicable ethics rules and practice standards, or in situations where existing studies may be outdated or otherwise flawed. This Court previously adopted standards for public defense. To the extent the Court believes the current standards should be revisited, the RAND study identifies that having a specific state or local workload study remains the ideal approach for public defense resource planning. A Washington criminal justice workload study focusing not only on the work of public defenders, but all criminal justice stakeholders will allow for a more wholistic address of criminal justice system needs.

ii. *Adoption of the proposed amendments will undermine the rule of law*

The Court has already received comments and testimony revealing that Washington is experiencing an attorney workforce shortage. I am not aware of any functional plan that has been developed to address the shortage. Given the shortage, it is foreseeable that jurisdictions around the state will not be able to hire the number of defense attorneys that will be required under the proposed amendments during the 2025 – 2027 phase in period. I believe the shortage of defense attorneys will invite a series of predictable outcomes that will undermine the rule of law.

Beginning not later than July of 2025<sup>2</sup>, the criminal justice system will begin to lose capacity to hold people accountable for a broad array of criminal conduct due to a shortage of defense attorneys. In the superior court setting most murders, serious violent assaults, and violent sex offenses will continue to be prosecuted to the steady exclusion of less serious assaults and sex offenses, drug offenses, property crimes, and crimes against society. In the district court setting driving under the influence, domestic violent offenses, and some assaults will continue to be prosecuted to the steady exclusion of drug offenses, property crimes, traffic offenses, and crimes against society.<sup>3</sup> By July of 2027, the criminal justice system will cease to operate at a level commensurate with public expectations and public safety needs.

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<sup>2</sup> Although the first phase implementation of the proposed standards would not occur until July of 2025, some jurisdictions are already experiencing criminal justice system capacity challenges based on a shortage of defense attorneys.

<sup>3</sup> Adoption of the proposed amendments will compromise the continued operation of therapeutic courts because the crimes traditionally referred into these programs include less serious assaults, drug offenses, and property crimes.

Adoption of the proposed amendments will deny crime victims, as well those wrongfully accused, access to justice because cases in which they would otherwise be involved will cease to be filed by prosecutors or alternatively, dismissed by the courts. Accordingly, these individuals will not be able to avail themselves of the remedies otherwise available through the criminal justice system.

As people learn the criminal justice system can no longer be relied upon to hold offenders accountable, some will become less inclined to report crime to law enforcement. Reduced crime reporting will eventually compromise the accuracy of data reflecting criminal activity in Washington. Inaccurate data will work to the detriment of legislative, judicial, and executive branch decisionmakers at the state and local levels.

The de facto decriminalization of all but the most serious of crimes will ultimately result in an increase in vigilante "justice." Vigilante justice is not new to our country nor to our state. It was with us in our infancy and has arisen in the nation, periodically and regionally, to subvert our justice system.

I believe the above outcomes are predictable. I believe they are also preventable through rejection of the proposed amendments.

**B. If the Court is interested in revisiting the adopted standards for public defense, then it should first call for and review the results of a comprehensive Washington criminal justice workload study**

Washington should follow and build upon the RAND study's suggestion by commissioning a criminal justice workload study just as Oregon, Idaho, and numerous other states have already done. The study should incorporate feedback not only from public defenders, but from other criminal justice stakeholders including judges, prosecutors, crime victim advocates, law enforcement, and the public. Each of these groups has a voice that deserves to be heard in relation to decisions that will fundamentally alter the operation of our state's criminal justice system. Such a study will help to inform legislators at the state and local level regarding budgetary impacts and allow an opportunity to plan accordingly.

For the foregoing reasons, I respectfully urge the Court to reject the proposed amendments and instead call for and review the results of a Washington criminal justice workload study before making changes to the current standards for public defense.

Sincerely,



Mark Nichols  
Prosecuting Attorney/Ex-Officio Coroner

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Proposed changes to the standards for public defense  
**Date:** Tuesday, October 15, 2024 8:08:42 AM  
**Attachments:** [Comment ltr to WA Supreme Court 10.15.24.pdf](#)

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**From:** Nichols, Mark <mark.nichols@clallamcountywa.gov>  
**Sent:** Tuesday, October 15, 2024 7:50 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Proposed changes to the standards for public defense

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Greetings.

Please find attached my comments regarding the proposed changes to the standards for public defense. I would appreciate if you would please forward this to the Justices of the Supreme Court for consideration as part of the record.

Best,

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