



PIERCE COUNTY COUNCIL

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October 30, 2024

Washington State Supreme Court

PO Box 40929

Olympia, WA 98504

Via email to: supreme@courts.wa.gov

Re: *Comments to CrR 3.1, CrRLJ 3.1, JuCR 9.2 STDS - Proposed Rule on Standards for Indigent Defense*

Honorable Supreme Court Justices:

While we recognize that the current Standards for Indigent Defense are outdated and underestimate the work necessary to adequately represent a person charged with a crime, the proposed new caseload standards are flawed and cannot be implemented within the required timeframe without serious consequences to the criminal justice system and essential services provided by Pierce County. Therefore, ***Pierce County respectfully asks the Court not to adopt the proposed rules before it today.*** We request further collaboration and preparation prior to mandated caseload reductions.

Current State Indigent Defense in Pierce County

To provide some background, Pierce County's indigent defense attorneys are county employees, except when a conflict requires the use of external panel attorneys. We understand that our attorneys are not an unlimited resource. We manage caseloads to account for case complexity and assume our attorneys have 1,800 hours annually available for direct representation. Pierce County offers competitive wages; indigent defense attorneys are on the same pay scale as prosecuting attorneys. They receive the same benefits as all Pierce County employees. They are also free to organize and, while they did so for one year, the union was later dissolved.

Our turnover rate for all reasons—resignation, retirement, and termination—has not exceeded 5% over the past five years. In sum, we believe Pierce County is a good employer that enables our indigent defense attorneys to carry a reasonable caseload and provide effective assistance of counsel.

Fiscal and Staffing Challenges for Pierce County to Meet Proposed Standards

To meet the new standards by 2025, Pierce County will need to add 28 full-time equivalent (FTE) staff to our Department of Assigned Counsel which will cost the County anywhere between \$9.8 million to \$11.6 million. By 2028, the total additional staff would grow to 184 FTEs, at a cost estimated between \$34.6 million to \$42.6 million annually in addition to the current budget. This includes 92.5 FTE support staff, 5 FTE conflict office attorneys, 7.7 FTE juvenile attorneys, 59.5 FTE adult attorneys, and 19.3 FTE external panel attorneys. ***In essence, the number of attorneys and legal support staff needed in Pierce County would triple by 2028.***

Our estimates are based on assumptions that slightly differ from the proposed new caseload standards. We apply the case supervisor and legal assistant support standards across all years, rather than beginning in 2028, to align with our current management practices and standards that attorneys should be adequately supported. Our estimates also represent the total cost for each new employee—not just salary and benefits, but also the cost to house, equip, train, license, and support each attorney.

We advise against extrapolating our estimates to other jurisdictions, as each one manages and delivers indigent defense services in its own unique way. How closely a jurisdiction aligns with the proposed new caseload standards depends largely on its current starting point. However, even for jurisdictions like Pierce County that are effectively managing indigent defense services, the cost remains significant.

The Need for a Washington-State Specific Study

How can a county like Pierce require such a dramatic increase in staffing? We believe the answer lies in the fact that the RAND report conclusions have little bearing to Washington state. The RAND report represents a subjective group assessment of their experience and the review of studies from 17 other states. For that reason, the authors of the RAND report acknowledge the report creates a benchmark but recommends “a specific state or local workload study for public defense resource planning.” Such a study would benefit jurisdictions in need of additional resources and assist local policymakers in assessing system needs. ***The gap between the present state and the projected future state for Pierce County is simply too large to assume the RAND study’s standards should be adopted without further investigation. Therefore, a Washington state needs study is necessary to assess our state’s indigent defense needs.***

Based on the comments and testimony presented to this Court, public defenders in some counties manage reasonable workloads, while in others, the workloads are overwhelming. Certain jurisdictions face public defender shortages, while others do not. There must be factors beyond caseload standards driving these disparities. A Washington state needs study could help policymakers and the Court better understand the full scope of changes required to improve indigent defense, including solutions beyond merely adjusting caseloads.

Revenue Limitations and Competing for Resources

Could Pierce County do more to improve indigent defense services and reduce attorney workloads? Of course—but the same can be said for nearly every service Pierce County provides. We could do more for homelessness and housing, mental health, substance abuse, and violence prevention—the list goes on. However, county revenues are either capped or earmarked for specific uses. Every county service competes for limited financial resources, including other constitutional obligations such as speedy trial, adequate jails and correctional health care, constitutional policing, elections, and tax assessment.

Local governments in Washington state do not possess inherent taxing authority. Counties must obtain the authority to impose taxes and fees through statutes enacted by the State Legislature. Pierce County has taken advantage of state-authorized revenue opportunities that support the criminal justice system, such as the criminal justice sales tax, the mental health and therapeutic courts sales tax, and the juvenile detention tax. Additionally, Pierce County diverts \$32 million from its County Road Fund to supplement law enforcement. However, the use of these revenues is prescribed by the State Legislature, and only a fraction can be allocated to indigent defense. Consequently, the bulk of the cost of the new caseload standards will fall on the county's General Fund, which is already largely consumed by criminal justice costs. Currently, the criminal justice system accounts for 26% of all county expenditures and 76% of the county's General Fund budget.

The property tax is the primary source of unrestricted revenue for counties and their General Fund. For Pierce County, new property tax revenue is estimated to be \$4.2 million for 2025. Our general unrestricted sales tax is projected to increase by \$6.7 million. Together, this gives Pierce County \$10.9 million in new unrestricted revenue to sustain all county functions and services that do not have dedicated funding. ***Every penny of Pierce County's new unrestricted revenue will be required to cover the cost of the new caseload standards in 2025.*** When the full effect of the caseload standards is implemented in 2028, Pierce County will have no other choice but to implement devastating budget cuts to other programs such as criminal justice diversion programs, juvenile prevention programs, homelessness and eviction assistance, food assistance, and senior programs.

The current state of indigent defense is not due to a lack of commitment to improving services, but rather a reflection of the limited resources available to counties. For calendar year 2024, Pierce County received \$650,504 from the state for an office that costs roughly \$24 million to operate. State funding for indigent defense has stagnated, falling from 15% (2004) to 3% (2023) of total spending. Although the proposed rules call for an increase in indigent defense attorneys, the State Legislature has neither provided the necessary funding nor granted counties the authority to generate revenue to meet this demand. While the proposed rules require an expanded indigent defense workforce, little has been done to cultivate the necessary supply of attorneys. Pierce County cannot support a standard it lacks the capacity to implement without causing serious harm to programs and services that help prevent entry into the criminal justice system.

Request for Collaboration, Study & Planning Prior to Adopting New Standards

Pierce County respectfully asks the Court not to adopt the proposed rules before it today. The proposed rules are a blunt instrument, and its negative consequences will ripple throughout the criminal justice system. However, we are not asking the Court to abandon its efforts to improve indigent defense. Instead, we request that the Court partner with us in advocating to the State Legislature for actions that will build a foundation for sustainable caseload reductions. The State Legislature is an indispensable partner to achieve this goal.

1. ***Seek state funding to conduct a Washington state study on indigent defense needs.*** Some critics have questioned the neutrality and objectivity of both the RAND report and the Washington State Bar Association's Council on Public Defense. We believe another issue is that their approach has been too narrow. The proposed rules impact the entire criminal justice system, but only a small group was consulted. For a change this big, it's important to include input from a wider, more diverse group of people.

The RAND study should be just one part of the solution, not the only basis for new caseload standards. We need to bring in diverse perspectives to assess Washington state specifically—our laws, our courts, and our needs. Only with this kind of analysis can we truly understand what is required to improve indigent defense and provide the court with alternatives to consider. While we expect that a reduction in caseloads will be one conclusion of a needs study, we are not yet convinced the RAND study's caseload standard is the solution for Washington state.

2. ***Increase the indigent defense workforce.*** There is a significant shortage of public defense attorneys across the country, including in Washington state. If the Court adopts the proposed standards, Pierce County will need to hire 20 new attorneys within a year, which is a 25% increase in our Department of Assigned Counsel. At the same time, other jurisdictions will also be trying to hire more staff.

Not much has been done to prepare for this increase. Although the State Legislature has provided some funding for a rural law student program and expanded training and recruitment efforts, more support is needed to grow the profession. Other sectors facing similar workforce shortages, like K-12 education, nursing, and behavioral health, first assessed their needs and then developed short- and long-term strategies. These strategies included partnerships with colleges, scholarship and loan repayment programs, internships, work-based learning, continuing education, and alternative pathways to licensure.

We urge the Court to create a workforce strategy based on the findings of Washington state's study on indigent defense needs. In practical terms, it is impossible to meet any new caseload standards without first expanding the workforce.

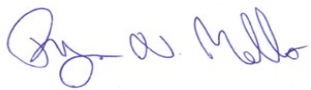
3. ***Increasing state funding of indigent defense.*** Increased state funding is one of the most immediate and effective strategies to alleviate caseload pressures. While we have seen positive developments in civil representation—such as state-funded support in eviction cases, dependency actions, and civil commitments—scant attention is given to criminal indigent defense. The Court must act as a strong ally with counties and cities in the State Legislature, reinforcing the message that the responsibility for ensuring constitutional representation lies with the state. This includes a request for the Court to include in its non-revisable budget additional funding to address urgent needs in some jurisdictions.
4. ***Create a realistic phased implementation plan.*** We need a solid phase-in plan that emphasizes real actions to produce results, not just a timeline. As Oregon found, improving indigent defense requires more than changing caseload standards. Without improvements to funding, delivery models, compensation, training and support, and core staffing, new caseload standards will simply create more strain on the criminal system.

A three-year timeframe is unrealistic, particularly given our current workforce deficiencies and fiscal constraints. Oregon’s plan to reduce representation deficiencies outlines a six-year strategy, recognizing that it is essential to have qualified individuals ready to fill vacancies to eliminate public defender shortages. Oregon’s plan also points out that focusing exclusively on recruiting attorneys has the highest cost and requires the longest timeframe to achieve. Instead, hiring a mix of case support staff—like paralegals and social workers—could solve the public defender shortage more quickly. Yet, the proposed caseload standards prioritize attorneys with required staffing occurring in 2028.

While we appreciate the intention behind the phase-in of the new caseload standards, it still feels akin to pushing a child into the deep end of the pool to see if they can swim. Far more preparation is required to ensure a smooth transition, and greater consideration should be given to what changes are phased in and when. Additionally, we believe the phasing should incorporate clear performance metrics to gauge success and allow for the option to pause further changes until the expected outcomes are achieved.

In conclusion, Pierce County respectfully requests that the Court refrain from adopting the proposed rules. However, we do not urge the Court to abandon this effort. The right to effective assistance of counsel is a critical access to justice issue. That said, with further input from the broader criminal justice community, we believe a more balanced and comprehensive solution can be developed—one that includes caseload reductions and other actions that will enable counties and cities to implement these changes without compromising other essential services.

Sincerely,



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