BELLINGHAM POLICE

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October 28th, 2024

Washington State Supreme Court

P.O. Box 40929 Olympia, WA 98504

Subject: Proposed Revised Standards for Indigent Defense and Caseload Limits

Chief Justice Gonzalez and Associate Justices:

I am writing to express my strong opposition to the recently proposed rule change concerning reductions in indigent defense caseload standards. Consequently, I request the Court reject the proposal.

First, I would like to note that I understand and appreciate the need for a healthy public defense system, both here in Bellingham and across Washington State. Public defense is a critical mechanism in protecting citizens' constitutional rights within a criminal justice setting. If there is a problem within the public defense system, then it is the responsibility of both the State and the Court to consider viable options on how to address the issues. However, a blanket reduction in caseload standards simply cannot be the solution Washington State considers.

The proposal to reduce caseloads by approximately 70% causes some serious public safety concerns to come to mind because (1) there is not a sufficient workforce to support such a reduction, (2) there is not money to supply the workforce needed, (3) the proposal eliminates other, more reasonable, approaches to addressing the problem, and (4) it ignores the needs and rights of victims of crime. **I am very confident the *only* guaranteed result (should the rule change be adopted by the Court) is a drastic increase in case dismissals and, therefore, criminals returning to our communities without any accountability.** This is not only profoundly unjust but may very well increase the workload for the officers in my department needlessly.

As a public servant and a long-time protector of victims, I fear this rule will cause more harm than good. Criminal accountability is a necessary function which local governments are tasked to provide. Accountability for those who commit crimes provides justice to the victims of those crimes and protects the remainder of society from the offender. Accountability also enables opportunities for treatment, recovery, reentry, and redemption, which are services and goals everyone—including proponents and opponents of this rule change—seems to agree are worthwhile. Allowing a rule to take effect when it would knowingly jeopardize victims of crime is unacceptable. There must be another solution. I ask this Court to be a part of finding that better, more workable solution – the one that doesn't sacrifice public safety along the way.

I respectfully ask this Court to reject the proposed rule change and work with stakeholders in finding a productive way to address the concerns underlying the proposal.

Sincerely,

Rebecca Mertzig

Chief of Police

October 18, 2024

Washington Supreme Court
Temple of Justice
Olympia, WA

To the Honorable Justices of the Supreme Court

The Washington Association of Prosecuting Attorneys, representing the thirty-nine elected prosecuting attorneys of Washington, urge you to reject the proposed caseload standards. Adoption of these standards would be calamitous for the citizens of Washington state.

The Court should require a caseload study.
The RAND study is a survey, it did not actually study public defenders at work to ascertain the time required to efficiently and effectively handle criminal cases in Washington. Rather, RAND gathered thirty-three public defenders from across the country and surveyed them on how much time they believe is necessary to do their jobs. Currently, Colorado is in the process of evaluating caseload standards as well. They started with a state audit[1], which called for a statewide caseload study, even though they have the RAND survey. "Further, the RAND standards published in 2023, while more recent, are not based on Colorado-specific data and do not account for OSPD's organizational and operating structure."[2]

Critics of a caseload study argue that not every public defense office in Washington is part of a county or city government, making it difficult to survey. While true, many offices are easy to survey. Those offices can and should be evaluated based on actual caseloads. Such a study should look at individual jurisdictions, their demand, their resources, their efficiency, and the likely impact of proposed changes on the full criminal justice system.

As can be seen from current comments, many defense attorneys outside of the Puget Sound area oppose the proposed caseloads. A caseload study would help to understand this contradiction.

A caseload study could also consider how efficiently courts are processing cases. In 2021, the National Center for State Courts produced a report evaluating court efficiency.[3] The report found that timely case resolution depends on "limiting the number of hearings and continuances per disposition and effectively managing the duration between scheduled court events, are the key to timely case outcomes." The

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[1] https://leg.colorado.gov/sites/default/files/documents/audits/2354p_office_of_the_state_public_defender.pdf - See page 29 for the audit report proposal for a caseload study.
[2] Id. At 27.
[3] https://www.ncsc.org/__data/assets/pdf_file/0019/53218/Timely-Justice-in-Criminal-Cases-What-the-Data-Tells-Us.pdf

pandemic expanded caseloads and extended the life of a criminal case. The longer cases take to resolve, the more cases a defense attorney needs to manage. Whether this is a temporary or lasting phenomenon is something that must be considered when evaluating case load standards.

There are not enough attorneys to fill the proposed caseloads

The Counties and the Cities are clear that they do not have the resources to pay for the increased costs required by the proposed caseloads. But even if they did, there are not enough attorneys to fill the expanded ranks. There are a multitude of reasons for the attorney shortage, including retirements of the "baby boomer" generation of lawyers, the "great resignation" triggered by the pandemic, and a lack of law school applicants (law school applications peaked in 2010 at just over 145,000 nationally and fell by 1/3 by 2016).[4] Regardless of the reasons, however, the shortage is undeniable and poses an insurmountable barrier to the proposed standards.

There are also recent efforts to increase the number of individuals who qualify for a public defender at the same time there is a drawing of public attorneys to other similar types of work.

- The legislature recently expanded the definition of "indigent" under RCW 10.01.160[5].
- The legislature increased obligations for the Office of Public Defense, which has grown in the past several years:
    - Concerning postconviction access to counsel[6];
    - Concerning public defense services for person NGRI[7]; and
    - Concerning juvenile access to attorneys when contacted by law enforcement[8]
- There are now dozens of lawyers representing tenants facing eviction at public expense[9]

Although these programs are laudable, they all draw lawyers from the shallow and shrinking pool and they decrease the supply of public attorneys at the same time they increase the number of people eligible to receive an attorney at public expense.

As more attorneys retire, a smaller number of younger people will have to take up the duties of retirees. All system actors will have to learn to do more with less. However, the new caseload standards propose to require lawyers do less with more. While less work for the same wage may make public defense a more attractive vocation for some, and may help with retention, higher wages will not triple the number of attorneys.

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[4] https://www.abalegalprofile.com/legaled.html, accessed 9/18/24.
[5] Laws of 2022, Chapter 260 (HB 1412 (2022))
[6] Laws of 2023, Chapter 261 (SB 5046 (2023)),
[7] Laws of 2023, Chapter 120 (SB 5415 (2023))
[8] Laws of 2021, Chapter 328 (HB 1140(2021)).
[9] Laws of 2021, Chapter 115 (SB 5160 (2021)).

The proposed caseloads will disproportionately impact certain areas of the state. The shortage of attorneys in the rural areas of this state is not new, nor is it unique to Washington. Ten years ago, only two percent of small law practices were in small towns and rural areas, despite twenty percent of the population residing in such areas.[10] According to the WSBA, of the 34,193 attorneys in Washington, 89.9% are in western Washington, and over 50% are in King County.[11]

Benton, Franklin, and Yakima Counties suffer greatly from attorney shortages. Prosecutors are restricted in their ability to file serious felony charges by a shortage of defense attorneys. During public comments to the WSBA Board of Governors in March on this proposal, then Benton County Public Defense Director, Charles Dow, testified that he would have to hire nearly every attorney in Benton County to satisfy the proposed rules.[12] That includes hiring all the attorneys at the prosecutor's office and judicial officers. As Larry Ziegler was preparing to leave Franklin County, then as Public Defense Director he expressed concern about the ability of Franklin County to hire enough bodies or pay for them. The ACLU recently filed a lawsuit against Yakima County for failing to appoint defense counsel, because of the lack of attorneys.[13]

This Court created the Washington Bar Licensure Task Force four years ago, partly to address this crisis.[14] Since then, this Court has lowered the passing score for the Bar exam, and new pathways to licensure are forthcoming.[15] Additionally, the Washington State Bar Association has a pilot program allowing nonlawyers to deliver some legal services to free up practitioners.

The Washington Legislature has also addressed the issue. In 2024, they passed SB 5780[16], giving state funds for an internship program for public defense and prosecution in rural and underserved areas.

The counties have taken steps to attract more attorneys to public defense. For example, Yakima County recently increased the salaries for public defenders to

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[10] Lisa Pruitt, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. Rev. 466 (2014).
[11] https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20190801.pdf?sfvrsn=ae6c3ef1_263
[12] Charles Dow at approximately, 1 hour and 40 minutes, https://www.youtube.com/watch?v=QyNe9q1ZYng&list=PLh11oFW23b5gkl2PNmmdBB2P_6A4DMNOC&index=11
[13] https://www.aclu-wa.org/news/aclu-washington-sues-yakima-county-failing-appoint-attorneys-indigent-people-charged-crimes
[14] https://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.LicensureTaskForce
[15] https://wabarnews.org/2024/07/10/alternate-pathways-your-questions-answered/#:~:text=Lowered%20the%20minimum%20passing%20score,Bar%20Exam%20in%20July%202026.
[16] Laws of 2024, Chapter 293

$100,000 - $175,389/year.[17] Grays Harbor County recently increased their compensation for public defenders by 25%.

In short, all branches of government are working on increasing attorneys who work outside of the large metro areas, but those efforts will take time. Without enough attorneys, new caseload standards are not a solution to the current problem.

De-facto Decriminalization

Lowering caseloads will increase the number of communities where defense attorneys no longer have the capacity to take clients. Courts will be forced to dismiss cases when defendants lack counsel, which is de facto decriminalization. There are some, both in and outside of the criminal justice system, who support this rule because they believe it will result in a type of criminal abolition.[18] If people want to decriminalize serious crimes, that decision must be made directly by the people and its representatives, not indirectly by rulemaking through the judicial branch.

Harm to Victims

Victims of violent crime are already hesitant to report. Nationally, only 31% of sexual assaults, 62% of robberies, and 63% of assault and battery crimes are reported to police.[19] In Washington, victims have the constitutional right under article 1, section 35, to be involved in a criminal case. When cases are either not filed or dismissed due to a lack of public defenders, victims lose their day in court. This proposal will increase injustice for victims. When the criminal justice system does not respond to criminal conduct, there is an increase in aggrieved citizens who take matters into their own hands. By failing victims, we push our society closer to a land of vigilantism.

Conclusion

The Washington Association of Prosecuting Attorneys supports increased capacity for public defenders and all other criminal justice actors. However, the proposed caseloads can only be implemented if there are sufficient resources and attorneys. We ask the Supreme Court to reject the current proposal, require a statewide study to evaluate each community's actual needs and the resources available to satisfy those obligations. There are long-term goals that would also reduce the demand on the criminal justice system, including addressing the root causes of crime, such as poverty, lack of access to education and increased access to mental healthcare. Only the legislature can grant this relief, and any such investment will take time to address the problem. In the meantime, constricting the supply of attorneys to meet increased demand for their services will only result in more injustice. This Court should decline to adopt the new caseload standards.

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[17] https://www.yakimacounty.us/DocumentCenter/View/38066/Reso-189-2024-Attorneys-07-01-2024-Pay-Plan-and-Recruitment-Enhancement-Program

[18] See a forthcoming law review article, which calls for public defenders to work to abolish the criminal justice system. See Southerland, Vincent, Public Defense and an Abolitionist Ethic (May 12, 2024). New York University Law Review, Forthcoming, Available at SSRN: https://ssrn.com/abstract=4825695.

[19] https://rainn.org/statistics/criminal-justice-system

Signed,

Joseph Brusic, WAPA President, Yakima County
Joseph Brusic, WAPA President, Yakima County (Oct 18, 2024 15:03 PDT)

Joseph Brusic, WAPA President, Yakima County

Larry Haskell
Larry Haskell, WAPA Secretary, Spokane County (Oct 21, 2024 07:02 PDT)

Larry Haskell, WAPA Secretary, Spokane County

Tony Golik, WAPA Past President, Clark County
Tony Golik, WAPA Past President, Clark County (Oct 20, 2024 16:42 PDT)

Tony Golik, WAPA Past President, Clark County

Shawn Sant, WAPA Board, Franklin County (Oct 25, 2024 12:02 HST)

Shawn Sant, WAPA Board, Franklin County

Adam Kick, WAPA Board, Skamania County
Adam Kick, WAPA Board, Skamania County (Oct 18, 2024 16:04 PDT)

Adam Kick, WAPA Board, Skamania County

Dolly Hunt, WAPA Board, Pend Oreille County
Dolly Hunt, WAPA Board, Pend Oreille County (Oct 18, 2024 15:33 PDT)

Dolly Hunt, WAPA Board, Pend Orielle County

Ryan Jurvakainen, WAPA Vice President, Cowlitz County
Ryan Jurvakainen, WAPA Vice President, Cowlitz County (Oct 22, 2024 11:33 PDT)

Ryan Jurvakainen, WAPA Vice President, Cowlitz County

Mary Robnett, WAPA Treasurer, Pierce County
Mary Robnett, WAPA Treasurer, Pierce County (Oct 18, 2024 15:10 PDT)

Mary Robnett, WAPA Treasurer, Pierce County

Chad Enright

Chad Enright, WAPA Board, Kitsap County

Michael Dorcy, WAPA Board, Mason County
Michael Dorcy, WAPA Board, Mason County (Oct 20, 2024 17:33 PDT)

Michael Dorcy, WAPA Board, Mason County

Greg Zempel, WAPA Board, Kittitas County
Greg Zempel, WAPA Board, Kittitas County (Oct 18, 2024 15:15 PDT)

Greg Zempel, WAPA Board, Kittitas County

Russell Brown

Russell Brown, WAPA Executive Director

From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Concerns about public safety
Date: Monday, October 28, 2024 3:32:01 PM
Attachments: LettertoSupremeCourt.doc
WAPA Board - Letter to the Supreme Court October 2024 signed.pdf

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From: Mertzig, Rebecca K. <rkmertzig@cob.org>
Sent: Monday, October 28, 2024 3:28 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Lund, Kim J. <kjlund@cob.org>; G.CC (City Council) <g.cc@cob.org>; Keller, Janice L. <jkeller@cob.org>; Good, Michael E. <megood@cob.org>
Subject: Concerns about public safety

Attached is my letter to the Washington State Supreme Court regarding the proposed public defender rule change. I have also attached the letter sent by the WA Association of Prosecuting Attorneys.

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