



Washington Association of
**SHERIFFS &
POLICE CHIEFS**

3060 Willamette Drive NE
Lacey, WA 98516
360-486-2380 (Phone)
360-486-2381 (Fax)
www.waspc.org

October 31, 2024

Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504

Subject: Reject Proposed Revised Standards for Indigent Defense and Caseload Limits

Chief Justice Gonzalez and Associate Justices:

The Washington Association of Sheriffs and Police Chiefs (WASPC) respectfully requests the Court wholly reject the proposed revised standards for indigent defense and caseload limits for public defenders.

We understand and appreciate the many issues raised by this proposal. Public defenders provide a valuable service to their clients – one that is constitutionally required. It is undisputed that indigent defendants are entitled to be represented by a public defender, and clearly state and local officials should work together to ensure that this right is secure. However, any proposal that sacrifices public safety or diminishes the rights of crime victims to have their perpetrators brought to justice cannot properly be considered a just or fair solution.

As an organization sharply focused on improving public safety, WASPC is committed to ensuring all Washingtonians have what they need to not only feel safe, but to be safe. WASPC works diligently to support policies and practices that target crime reduction, support for crime victims, promotion of community trust, and advocate for accountability and rehabilitation. This relies on the existence of a well-resourced and well-staffed criminal justice system, including public defenders.

We have significant concerns that the adoption and implementation of this proposed rule will have a disproportionate effect on access to justice in Washington and that, as a consequence, many fewer cases will be brought to justice. Such a result would undermine our goal of a safer Washington State.

I. Adoption and implementation of the proposed rule will result in a systemic lack of accountability.

During the public hearing on September 25th, 2024, the Court heard multiple accounts of fiscal impacts and about how impossible it would be to achieve the proposed reduction in caseload standards. Cities and counties alike shared that their existing budgets (even those supplemented with increased taxing authority) would not begin to cover the resulting costs of the proposed standards. They would essentially be required to triple the quantity of public

Leading collaboration among law enforcement professionals to enhance public safety.

defense services and, even if they succeeded in securing the funding, there would be no escaping the mass shortage of attorneys available and willing to do this work.

We urge you to consider the implications of public safety of this scenario. When cities and counties predictably fail to hire enough public defenders to make up for the 70% reduction in their local defense services capacity, the predictable result would be a dramatic rise in criminal acts that escape accountability and a disproportionate impact to victim safety. A caseload reduction of nearly 70% does not trigger a 70% reduction in crime. Nor does a 70% reduction in caseloads standards trigger a 70% reduction in call volume. And without a doubt, it certainly does not trigger a 70% reduction in the number of individuals harmed through victimization. There are human faces attached to this complicated issue, and we implore you to consider their plight even as you work to ensure defendants' right to counsel is honored.

As this proposed rule change progresses, we fear that the predictable result will be a significant drop in the number of available public defenders and a cascading effect of courts that have little choice but to dismiss cases due to a lack of counsel. This creates a troubling spiral leading to a systemic lack of accountability.

As an additional consequence of the anticipated public defender workforce shortage created by the proposed rule, there will be a pronounced imbalance in the cases that can logistically be managed, leaving little choice but for cities and counties to prioritize only the cases with the highest needs and the highest potential consequences. While cases involving murder and aggravated assault and other very violent crimes would predictably continue to be resourced and prosecuted, there simply won't be enough resources for the defense of those where there is "only" an accused burglary, auto theft, or any other mid-tier felony, much less misdemeanors.

Given that Washington is not the first state to consider addressing a public defender shortage, we should look to the dire effects of this shortage in other jurisdictions. Recently a case in the Ninth Circuit was considered in light of a shortage of defense services and the failure to provide timely counsel.

Judge Bumatay wrote in the dissent:

I do not say this lightly—the injunction the majority affirms here is both reckless and extreme. It orders the State of Oregon to release from jail all criminal defendants not appointed state-funded counsel within seven days of their initial appearance. Given the complexities of the situation and the shortage of public defense counsel, the result of this order is that more than a hundred criminal defendants will be immediately released from jail. And those being released are not sitting there for some petty offense. Just look at the charges of the named Petitioners here—they are accused of rape, kidnapping, strangulation, assaulting a police officer, public indecency, and burglary. All will now be released into Oregon's communities. But this is not the end of it.

Betschart v. State of Oregon, No. 23-3560 (9th Cir. 2024).

While there are distinctions between the issues presented in each state, we have significant

concerns that the forced reduction in caseloads would require a strategy with far-reaching effects, primarily that of letting hundreds of criminal defendants go without accountability in a system that strains to provide them with counsel. Such a failure would not be so different than it was in our neighboring state.

Foreseeably, a lack of counsel will transform itself directly into a lack of accountability for those who commit criminal offenses. At its core, the function of a government is to ensure the safety of the public. This proposal does not serve the safety of the public. It jeopardizes public safety.

II. Crime victims should not be casualties of the proposed rule change.

Crime victims have been notably absent in discussions regarding this proposal, even though the Washington Legislature has extended rights to crime victims and has asserted that those rights should be honored protected and upheld in a manner no less vigorous than the protections afforded to criminal defendants. RCW 7.69.010 provides:

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a significant role, including enhanced accessibility, in the criminal justice system. The legislature further intends to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; ensure that all victims and witnesses are afforded access to justice to participate in criminal justice proceedings, including the opportunity to participate and attend court hearings in person or remotely, including by video or other electronic means as available in the local jurisdiction; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored, protected, and upheld by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

In a criminal justice system that provides public defenders to indigent defendants, it is critical to remember that crime leaves behind victims in its wake, and that justice is not solely a process for the accused. Justice is integral to a system intended to expose the truth through due process of law. It is how our government provides justice for those who have been the victim of crime. Unfortunately, Washington law enforcement agencies hear all too often from crime victims that the criminal justice system values the rights of criminals over justice for crime victims. Adoption of this proposal, in our view, would further validate that lack of faith in the judicial system and incentivize those who consider themselves victims to seek their own justice.

Subduing the voices of crime victims and encouraging vigilantism is not a strategy the Court should consider resolving the indigent defense crisis. Such a proposal is neither just, nor

reflective of the spirit of the state constitution.

In the last several years, Washington has experienced a drastic increase in crime rates, to include an alarming number of violent crimes, as well as lower-level crimes. Each of these cases has at least one victim to account for. And based on the above, we *know* that cities and counties will not be able to meet the demand of indigent defense services.

The Washington State Constitution and the spirit of the law it carries requires protection of victims and their right to justice in the courts. [Article I Section 35](#) states: “To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.”

The Washington State Constitution also cites a victim’s right to notice, right to attend trial and other proceedings, and to make statements. These rights assume that the victim will have their day in court. This assumption goes so far as to even allow for a victim's representative “to appear to exercise the victim’s rights.”

With an inadequate workforce and insufficient funding, justice will be lost amidst a crisis in which cases are dismissed and victims further marginalized. Should this be the end result, the spirit of the state constitution and its commitment to the victim’s rights will be lost.

III. The Court should reject the proposal and seek other solutions.

We reject the notion that public safety and victims’ rights must be sacrificed to ensure that the constitutional rights of indigent criminal defendants are respected. We can, and we must, protect both.

We urge the Court to reject this proposal and instead study whether indigent defense caseloads in Washington State result in actual constitutional deprivation of rights of indigent criminal defendants. If the Court finds this to be the case in Washington, we suggest that the Court work alongside all criminal justice system partners and the Legislature to craft and fund a solution that upholds the constitutional rights of the accused while ensuring that there is justice for victims.

Respectfully Submitted,



Chief Darrell Lowe
President, WASPC



Steve Strachan
Executive Director, WASPC