

October 10, 2024

Washington State Supreme Court
PO Box 40929
Olympia, WA 98504
Via email to: supreme@courts.wa.gov

Re: Comments to proposed changes to the Washington State Supreme Court's adopted standards for Indigent Defense

Dear Honorable Justices:

The Washington State Association of Municipal Attorneys (WSAMA) respectfully requests the Washington State Supreme Court reject the proposed amendments to the Standard for Indigent Defense in CrR 3.1, CrRLJ 3.1, and JuCR 9.2.

The proposed changes will create a catastrophic budget impact for cities and ultimately produce a less efficient criminal justice system. If the Court were to accept these amendments, WSAMA urges that these proposed changes at least exempt misdemeanor and gross misdemeanor crimes.

Before adopting any changes that impact misdemeanor and gross misdemeanor crimes, WSAMA recommends that at a minimum the following must occur: (1) conduct a study by a neutral party of specifically Washington State misdemeanor and gross misdemeanor indigent defense caseload; (2) create a process for formulating proposed changes that includes representatives from different roles in the criminal justice system and representatives from a diverse group of Washington cities – most importantly including cities that are rural, already facing attorney shortages, have a large BIPOC or refugee communities, and, various tax bases; (3) address workforce shortages to ensure adequate criminal defense attorney workforce exists; and, (4) secure ongoing funding from the state for cities' general fund budgets to ensure the ability to hire additional public defense attorneys.

Biased Study

The proposed standards are based on RAND's "National Public Defense Workload Study." RAND is a nonprofit institution that conducts research around the world. RAND claims it has a high-quality research process with inclusion as one of its standards for research projects, specifically, inclusion of a "variety of important perspectives throughout the research process in order to objectively balance them in a fair manner."¹ Yet, RAND did not follow its own inclusion standard for this study. This study consisted of assembling a group of criminal defense attorneys from across the nation and asking for their subjective opinions about how much time it would or should take to handle different types of criminal cases. Prosecutors, judges, and victims were not included in the study. In addition, this study relied heavily on the work of Stephen F. Hanlon, whose website states that he "is leading

¹ RAND, <https://www.rand.org/about/standards.html>



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a national movement to reduce the workload of public defenders.”² The proponents of this rule change are relying on the research of Mr. Hanlon who has a clearly stated objective of reducing the workload of public defenders, not conducting unbiased research.

Municipal Budget Catastrophe

If adopted, the defense standards will create a budget crisis for cities. Cities pay public defense costs out of their general fund budgets. Funding sources for a city’s general fund budget are extremely difficult to increase as there are statutory and constitutional constraints on the ability to raise funds. *E.g.*, RCW 84.55.010. Association of Washington Cities estimates that costs for cities will increase to \$400 million dollars annually.³ There is no “magic dial” for cities to simply crank to increase revenue for general fund budgets. Cities with a weak tax base, limited tax revenue streams, and in rural locations – that often have lower income and culturally diverse residents – will face a cataclysmic budget situation.

Without further study, these changes will inevitably force cities to make draconian budget cuts to programs that ironically are the primary tactic used to tackle the root causes of criminal behavior and prevent people from ever entering the criminal justice system. For example, if the proposed amendments passed, cities would be forced to cut police department community outreach programs, parks and recreation programs, preschool programs, before and after school programs, playgrounds, parks, swimming pools and splashpads, summer lifeguards, summer programs, summer camps, teen programs, sports programs, sports fields, festivals and community events, resource fairs, holiday events, senior centers and senior events, etc. The seismic effects of these cuts would undoubtedly ripple into other areas of cities’ general fund budgets such as police officer positions, police equipment, transportation safety, building facility upkeep and improvements, administrative support staff, and staff positions that are not funded by utility or enterprise funds. Resources and programs for communities and residents may also be cut, as funding is diverted to public defense costs, which means cities would struggle to provide even basic services to their residents.

Crime knows no boundary, yet budget impacts will be exacerbated by unique geography and tax base issues impacting certain cities and communities. Low tax bases, crime rates, and availability of attorneys vary substantially in different parts of the state and from one city to another. Rural cities and counties already have criminal justice systems suffering from attorney shortages. Cities most impacted will be rural, lower income, higher crime rate, and often have the largest population of BIPOC communities, refugee and asylum seekers, and other vulnerable populations.

Inefficient Criminal Justice System

When cities are forced to divert a large chunk of their general fund budget to public defender costs, the criminal justice system will suffer and become inefficient. Cities will have to choose which crimes to prosecute due to fiscal and labor market constraints, resulting in decisions like choosing to prosecute only violent crimes or repeat offenders. In other words, a city would be forced to consider ceasing prosecution of “lower level” crimes such as driving while license suspended,

² Hanlon, S. About Us, <https://lawyerhanlon.com/about/>

³ AWC Draft Comments Letter, https://wacities.org/docs/default-source/legislative/090624indigentdefensecommentssupremecourt.pdf?sfvrsn=5b6e294f_2



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trespass, theft, prostitution, patronizing a prostitute, drug use and drug possession, disorderly conduct, reckless driving, first offense driving under the influence, first offense domestic violence, and first offense violation of a no contact or protection order. This Hobson's Choice would lead to diminution of public safety.

When cities are forced to cut prosecuting "lower level" crimes, lawless pandemonium will result. Criminals will run rampant with little to no consequences as cities lack adequate funding to properly pursue criminal charges. Frustrated victims will likely take the law into their own hands and vigilantism will increase.

Conduct a Neutral and Washington State Specific Study

WSAMA strongly urges that instead of embracing a proposed rule premised on a faulty study with no connection to our state, the Court should instead convene a Washington state specific study by a neutral party focusing on misdemeanor and gross misdemeanor defense workload. The RAND study states that it is intended to be used to *assist* in evaluating public defender workloads.⁴ It further states that a "specific state or local workload study remains the ideal approach for public defense resource planning..."⁵

Complete Community Outreach From a Diverse Group of Washington Cities and Criminal Justice Stakeholders

Representatives from a diverse group of cities and stakeholders in the criminal justice process must be heard during formulation of the proposed rules. Unlike the RAND study, the Washington state specific study should include a diverse group of representatives from all parts of the criminal justice system, including prosecutors, judges, and victims, in addition to defense attorneys. Moreover, Washington is composed of a vast range of cities with unique circumstances. Revenue streams, crime rates, community demographics, and attorney availability varies significantly from one city to another. Some cities have low tax revenue, some cities are in rural areas already suffering from a criminal attorney shortage, and some cities are already struggling with high crime rates. Cities that may be most impacted by this proposed change often have the largest population of BIPOC communities. The voices of these unique cities and situations must be considered and valued when formulating proposed rule changes.

Address Attorney Shortage

The workforce limitations must be addressed before any proposed changes go into effect. Rural cities and counties are already suffering from a lack of attorneys that is jeopardizing the criminal justice system. If the proposed changes go into effect, cities will have to triple the number of defense attorneys handling cases. This means statewide there will be a need for an additional 3,000 defense attorneys to be hired over a 30-month period, nearly double the number of graduates of all three state law schools annually.⁶

⁴ Nicholas M. Pace et al., National Public Defense Workload Study. 2023, pg. vii.

⁵ *Id.* pg. x.

⁶ AWC Draft Comments Letter

Secure Funding for Proposed Changes

Cities lack the capacity and tools to absorb \$400 million to the general fund budget annually in increased public defense costs. To avert dangerous and extreme budget cuts, work must be done with the state legislature to secure funding for cities before any proposed changes go into effect.

Conclusion

WSAMA appreciates the honorable work done by public defenders and agrees their workload should ensure effective assistance of counsel. But the proposed changes will not improve the criminal justice system. Instead, they will lead to the inevitable defunding of important community support programs and harm the most disadvantaged communities. Cities must be a part of the rulemaking process, and any proposed changes must consider the real-world restrictions on cities' general fund budgets.

We appreciate the opportunity to comment on the proposed revisions to the Standards for Indigent Defense.

Sincerely,



Debra Casparian
WSAMA President
For the WSAMA Board of Directors

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Comments on Proposed Changes to the Public Defense Standards
Date: Thursday, October 10, 2024 10:11:51 AM
Attachments: [WSAMA Letter Re Public Defense Changes.pdf](#)

From: Casparian, Debra (Legal) <dcasparian@cityoftacoma.org>
Sent: Thursday, October 10, 2024 9:54 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on Proposed Changes to the Public Defense Standards

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Please see the attached. Thank you.

Debra E. Casparian
WSAMA President

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