From:	OFFICE RECEPTIONIST, CLERK
To:	Martinez, Jacquelynn
Subject:	Fw: Public Comment on Suggested Amendments to CrR 3.1/CrRLJ 3.1/JuCR 9.2 Standards for Indigent Defense Re: Appellate Caseloads
Date:	Monday, November 18, 2024 10:54:23 AM

From: David Gecas <DGecas@kitsap.gov>
Sent: Sunday, November 17, 2024 4:33 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Public Comment on Suggested Amendments to CrR 3.1/CrRLJ 3.1/JuCR 9.2 Standards for Indigent Defense Re: Appellate Caseloads

Public Comment on Suggested Amendments to CrR 3.1/CrRLJ 3.1/JuCR 9.2 Standards for Indigent Defense Re: Appellate Caseloads.

To Whom it May Concern,

When I was a district court prosecutor, indigent defense attorneys sometimes told me their caseloads were too high. I told them my caseloads were higher than theirs, and that they outnumbered me. They told me I could reduce caseloads by charging fewer cases. I told them they could reduce caseloads by telling their clients to behave better.

Prosecutors often have higher caseloads than indigent defense attorneys, partly because some defendants hire their own lawyer, and some are pro se. See e.g. Adam M. Gershowitz & Laura R. Killinger, The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants, 105 Nw. U. L. Rev. 261, 301 (2011) ("Across the country, many prosecutors are tasked with handling five or even ten times as many cases as guidelines recommend for public defenders.") The solution should not increase caseload disparities that already exist, or unfairly prejudice either side.

While it is true prosecutors can reduce caseloads by dismissing or not filing cases, prosecutors arguably violate separation of powers if they unreasonably refuse to enforce the legislature's laws. And counties may be exposed to liability if the "failure to enforce" exception to the public duty doctrine applies. More importantly, adequate prosecutor resources are necessary to protect people and property.

High caseloads are not the only challenge prosecutors face. For example, prosecutors face many of the same challenges defenders face to keep positions filled with qualified employees. Other challenges disproportionately burden prosecutors. For example, some judges give the same sentence to a defendant who sets a case for trial as they give if the defendant accepts responsibility without setting the case for trial. These judges want to avoid penalizing defendants for exercising their constitutional right to a trial.

As reasonable as that sounds, it removes the "bargain" from plea bargaining and gives defendants an incentive to set cases for trial, even if they intend to eventually plea. There are not enough judges, prosecutors, or courtrooms for every defendant to have a trial. See e.g. *People v. Engram*, 50 Cal. 4th 1131 (2010). If the sentence will be the same either way, then defense attorneys may set cases for trial simply to see if the state's witnesses appear, or hoping the prosecutor will be less prepared

if forced to prepare for many trials at once, or hoping the court will dismiss for speedy trial expiration. Everyone in the defender's office may know which trial or trials are likely to go, if any, and only prepare for those. But the prosecutor will not know which trials are going and will have to prepare for them all. And the state's witnesses, and the jurors, will need to appear even if the defense knows some or all those defendants are likely to plea. Prosecutors often have many jury trials set on the same day or back-to-back days.

Defense attorneys increasingly use the Public Records Act (PRA) in ways that unfairly disadvantage prosecutors. The PRA, unlike the discovery rules, was not designed for adversary proceedings, and does not have reciprocity or fairness to both sides written into it. Rather, the PRA allows anyone to place an almost unlimited burden on public agencies, for free. The PRA allows defendants to require the prosecutor to read through thousands of pages of records, looking for required redactions, while the defendant can use the time to prepare for trial. Courts often describe the PRA as a strongly worded mandate, but it is not a strongly funded mandate. The PRA, unlike the discovery rules, does not allow the court, or prosecutor, to limit the scope of the request. Even if the PRA was largely self-funded, like FOIA, GR 31.1, and records acts in other states (where the requester gets the first hour for free but must pay $40/hr for additional time) indigent defendants may still try to pass the cost back to the county as a cost of their defense.