



October 31, 2024

Washington State Supreme Court
PO Box 40929
Olympia, WA 98504

Subject: Comments on the proposed changes to the Washington State Supreme Court's adopted Standards for Indigent Defense

Dear Honorable Justices:

We write to respectfully request the Washington State Supreme Court reject the proposed amendments to the Standards for Indigent Defense in CrR 3.1, CrRLJ 3.1, and JuCR 9.2.

The City of Mercer Island is committed to providing effective assistance of counsel as guaranteed by the 6th and 14th amendments to the US Constitution, and we recognize that those in need of a public defender are often some of the most vulnerable members of our community. However, the proposed changes to the Standards for Indigent Defense are infeasible without systematic changes that address public defense funding and the shortage of public defense attorneys.

Budget Concerns

Implementation of the proposed Standards for Indigent Defense would require cities in Washington State to roughly triple the amount of public defense attorneys they employ, which is estimated to cost an additional \$400 million annually. This will result in a budget crisis for cities throughout the state. Initial estimates indicate the City of Mercer Island will need to double its number of public defense attorneys to meet the proposed standards. The proposed elimination of the flat fee per case contract model is also a concern for the City, as this will further increase the cost of each case.

Funding sources for city general fund budgets are extremely difficult to increase due to statutory and constitutional constraints on general fund revenues. The City's general fund is unable to absorb the cost of the Washington State Bar Association's proposal without new revenue sources or elimination of other vital programs.

A plan for state funding of public defense is critical to the success of any changes to the Standards for Indigent Defense. Washington State funds only 3% of public defense services statewide, leaving cities and counties to fund the remaining 97%. This decentralized approach has led to disparities and inefficiencies in the system depending on local government budgets. Cities and counties have varying access to resources and diversion programs, and crime levels also vary significantly based on location. A state funding plan for public defense is necessary to ensure the same programs and resources are accessible statewide.

Workforce Shortages

Budget concerns aside, most cities are unlikely to find and retain three times the public defenders they currently employ under the proposed timeline. The proposal under consideration does not address the shortage of attorneys in Washington State. The timeline is unrealistic considering the supply of public defense attorneys in the region will remain the same while the demand for public defense attorneys is tripled. Municipalities in the region will be left to compete with one another to secure public defense contracts to remain compliant with the proposed standards. This will only exacerbate the issue and increase the cost of public defense in the region. Additional planning is needed to expand the supply of public defense attorneys in Washington State, including the creation of more pipelines for new public defense attorneys, increased access to internships, and availability of student loan forgiveness programs for contract attorneys.

Adoption of the proposed standards without measures to address funding and workforce shortages will lead both cities and counties to become increasingly selective about the types of crimes they prosecute. In other words, "lower level" cases will inevitably be dismissed due to budget and workforce constraints, leaving crime victims without judicial resolution and sending a message to criminals that they can break the law without facing consequences. Charges for more serious crimes will also be more likely to be reduced as a means to control public defender case credits and expenses. The potential effects of selective prosecution of felonies at the county level are especially concerning. A reduced number of felony case filings and a higher probability of reductions of felony charges to misdemeanor charges has the potential to exponentially increase misdemeanor caseloads at the municipal court level.

Additional Analysis

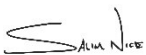
The RAND study referenced in the proposal is a national study that is not specific to Washington State and was conducted by an organization that is not a neutral entity. The report itself states, "the most accurate weighted caseload model is developed specifically for an individual state or jurisdiction." Further analysis by a neutral entity is necessary to determine caseload standards that are unique to Washington State.

Conclusion

We appreciate the concerns of the WSBA and public defense attorneys and agree that the workload of public defense attorneys should provide for effective assistance of counsel. However, the current proposal would have drastic effects on the criminal justice system and the proposal is infeasible for cities to implement. More time is needed to conduct further analysis, address budget and workforce constraints, and determine a path forward with input and coordination from all stakeholders. Cities request an opportunity to be part of the rulemaking process to ensure that any proposed changes be evaluated alongside real-world restrictions on cities' general fund budgets.

The City of Mercer Island is committed to working collaboratively to address these issues and we appreciate the opportunity to provide written comment on the proposed Standards for Indigent Defense.

Sincerely,



Salim Nice
Mayor



Jessi Bon
City Manager



Jeff Gregory
Municipal Court Judge