

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

REGULAR AGENDA REQUEST

TO: Board of Commissioners

FROM: Mark McCauley, County Administrator

DATE: July 15, 2024

RE: Discussion Regarding Proposed Caseload Standards for Indigent Defense Attorneys

STATEMENT OF ISSUE: The Washington State Administrative Office of the Courts (AOC) is proposing significant changes to caseload standards for indigent defense attorneys. The proposal radically reduces the number of felony and misdemeanor cases indigent defense attorneys can handle in any given year. The reductions are to be phased in over the next three years. The proposed standards are here: https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=6163

ANALYSIS: Counties have always struggled to shoulder the burden of the indigent defense program. The state provides small amounts to help fund the program. For example, in 2024 the state is providing \$29,406 to “help” cover a \$920,076 program. That equates to 3.2% of the program.

The caseload standards proposed will dramatically increase the county’s cost to fund the program since we’ll need many more attorneys – that may not even exist in our county – to meet the new standards.

The Washington Supreme Court is inviting comment on the proposed rules – comment period expires on October 31, 2024. You can find the official notice [here](#). The Supreme Court accepts comments online. To send or review comments, the link is [here](#). WAPA has suggested that counties submit comments. Our Prosecuting Attorney’s Office (PAO) believes comments from the Board would have the most impact. Staff would like to have a discussion with the Board regarding the proposed changes and what our comments should be. The PAO is participating in a Washington Association of Prosecuting Attorneys (WAPA) Zoom call on July 23, 2024 and would like to have our comments ready for that call.

For illustration purposes I have attached the comments submitted to date – as of July 10, 2024.

FISCAL IMPACT: This discussion has no fiscal impact. The new caseload standards, if adopted, will have a devastating impact on the county’s general fund.

RECOMMENDATION: Participate in the discussion and provide guidance to the PAO regarding what our comments should be.

REVIEWED BY:


Mark McCauley, County Administrator


Date 7/11/24

From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2 and my comments on them.
Date: Monday, June 17, 2024 1:17:07 PM

From: George Steele <GSteele@masoncountywa.gov>
Sent: Monday, June 17, 2024 1:11 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2 and my comments on them.

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I wish to offer commentary on the proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2.

I previously referred to the proposed amendments on CrRLJ 8.3 as insane. I now wonder if I wasted that word on that proposed amendment to CrRLJ 8.3, when the proposed changes to public defender case counts will, by comparison, make the proposed CrRLJ 8.3 look like a well-reasoned and moderate endeavor.

The proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2 are beyond insane. I want to be clear that I have long recognized and advocated for the value that public defenders provide in the operation of the criminal justice system. I have made my views known that sufficient compensation is owed. We are supposed to be a nation of law. We are supposed to comply with that law and that includes protecting the accused's rights, including the right to be represented. Having a robust public defense system is critical to insuring that defendants' rights are protected and the system remains honest.

I also agree with the current case count system or something close to it. We do not want to be in a situation where cities or counties refuse to supply sufficient public defense resources, creating a "greet and plea" system.

The problem that I have is that if the Supreme Court adopts the proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2, created by the WSBA, the affect will all but collapse the criminal justice system.

The primary problem with this proposed rule is that it goes far beyond restricting caseloads so that attorneys can provide the quality of services that indigent defendants have a right to expect. When these standards are fully implemented, public defenders are only going to be able to have eighty misdemeanor cases a year, as the vast majority of the misdemeanor cases are going to use up 1.5 case credits. Felonies will be even more drastic. What the WSBA and quite possibly the Supreme Court is doing is solving the problem of the supply of public defenders by drastically increasing the demand.

In my county, I have been told that these changes will require three times the attorneys needed than we currently have in public defense. I want to be clear; our public defenders provide quality services to indigent defendants. Mason County does not have anything close

to a "greet and plea" public defense system.

The standards the proposed rule seeks to impose will go beyond anything that any counties will be able to provide. Even if they were able to pay for it all, the created demand for public defenders will exceed the supply of attorneys willing to work in public defense. As a result, this rule will restrict the supply which will translate in counties having to drastically limit cases that can be charged and prosecuted which probably does not surprise the new rule's proponents.

This rule mandates services such as mitigation specialists, which counties will have to find some way to fund. This rule will require more services that do not have much to do with defending someone in court, which is the basis of the Constitutional right to counsel.

If this rule is adopted, expect the following:

There will be severe limitations on the number of criminal cases that can be filed as there will be no attorneys available to represent these defendants. The head of our public defense office believes the reduction will be in the seventy to seventy-five percent range for both Superior Courts and courts of limited jurisdiction. I slightly disagree with him as what will happen when these standards are adopted. You can expect that prosecutors will eliminate filings on everything except the most serious of felonies. They will have no choice. That means that DUI's, misdemeanor assaults, misdemeanor everything, Assault Thirds, not to mention other felonies that are less serious, will not be filed. I would not be surprised if many lower level felony sex cases likewise will not be filed. If there are no attorneys available to take these cases, they cannot be pursued, hence they really cannot be filed. It gets worse.

These rules also require standards for public defenders to achieve. They have to attain certain benchmarks of experience to handle cases that are more serious. I have no problems with such requirements; as funny as "My Cousin Vinny" was to watch, having a person's first criminal case be a death penalty murder case, as depicted in the film, is beyond ludicrous. However, assuming prosecutors only charge the most serious cases, how would any thinking person believe that newer attorneys would ever have the opportunity to handle less serious cases and build experience, when those cases will not be charged in the first place? The answer is they will not have those opportunities which will shrink the supply of qualified attorneys even more.

These rules will be a punch in the gut to everyone; however, they will strike medium and smaller jurisdictions even more. This rule artificially inflates demand for public defenders beyond the supply of attorneys available, even if unlimited money existed to pay for all of what will be required.

This rule will drastically reduce the use of legal interns to take cases. We have a working system under Rule 9. I started off my career as a legal intern. I learned a lot and handled full case loads as a prosecutor; many of my law school classmates did the same in the public defender's office. All of us were supervised as needed. As I said, we handled full case loads. Using legal interns will become less of an option for public defender offices under these case credit standards even as we guarantee that there will not be enough public defenders. The result will be even less capacity for cases to be heard in the court system.

This rule will probably result in a shortage of prosecutors as well. I believe the current case count standards create a rough parity of work levels, as opposed to cases, between prosecutors and public defenders. On average, more time is spent on preparation per case by the defense, at least in my opinion and my experience. These new case credit standards will drastically invert that situation making it much more difficult for prosecuting attorney offices to attract deputy prosecutors, when they can earn the same income for far less work.

In short, these new standards are going to wreck the criminal justice system if they are adopted. This is a result that I have to believe comes as no surprise to those who are proponents of the rule changes. For many of them, it may very well be the point.

I strongly urge you not to adopt these insane proposed rules. If you are going to amend the rule, please do not go beyond the first year changes and do not make decisions on implementing the rest of the changes until one sees how this is working out. At least in that case, it will be possible to re-think this insanity before the criminal justice system in this state is wrecked.

I want to make clear that these comments are my own and are not offered on behalf of any organization or other person.

Sincerely,

George A. Steele

From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Changes in case loads for indigent defense
Date: Thursday, June 13, 2024 1:09:48 PM

From: Gunner Fulmer <gfulmer@co.walla-walla.wa.us>
Sent: Thursday, June 13, 2024 10:16 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Changes in case loads for indigent defense

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Honorable Washington Supreme Courts,

I am writing regarding proposed case load standards that you will be looking at for defense attorneys and indigent defense. Changing caseload standards for our attorneys will have dramatic financial consequences for our County.

As you are probably aware, counties in Washington State are having an extremely hard time finding attorneys to work in our courts and the costs of indigent defense has increased over the years, leaving counties to fund a large majority of these court costs. In 2012, Walla Walla County spent \$654,392.03 on indigent defense, and in 2022, Walla Walla County had expenditures of \$1,043,087.07 on indigent defense. As you can see costs have increased dramatically over a 10-year period for our county. These costs do not include State assistance. These costs come directly out of the Walla Walla County budget.

Changing case load standards would require Walla Walla County to seek more attorneys, which would come at a cost that the county cannot sustain. The proposed case load standards as of 2027 would increase the number of indigent attorneys by 57% in Walla Walla County. I have spoken with several of our current defense attorneys who have stated they will not continue to work under the umbrella of the county doing defense work if these changes are made. Currently, several of the attorneys do nothing but defense work under the county umbrella, but, when cases get reduced, they will not be able to make the wages they currently bring in. This change will force them to go back to private attorney work. The other option would be to increase the pay for each case (or case credit) that they cover to offset the reduced case load. Walla Walla County does not have the budget to utilize that option. I believe most every county in the state of Washington does not have the budget to utilize that option.

Washington State needs to step up and start helping counties in the very near future or this system is going to collapse as we can't keep covering the increases. Please keep all counties in mind while making this decision as it affects us and our citizens greatly.

Respectfully,

Gunner Fulmer
Walla Walla County Commissioner

District 3

(Cell) 509-730-3295

(Desk) 509-524-2505

Our Mission: To Provide Walla Walla County with Leadership, financial stability, and the ability to listen to the concerns of our constituents and the courage to take action if needed. To represent all areas throughout Walla Walla County, bringing equitable solutions to constituents concerns.

From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: WSBA Recommended Revised Standards for Indigent Defense and Caseload Limits
Date: Monday, April 15, 2024 3:55:29 PM
Attachments: Indigent Defense - City of Aberdeen.pdf

From: Ruth Clemens <rclemens@aberdeenwa.gov>
Sent: Monday, April 15, 2024 12:29 PM
To: steven.gonzalez@courts.wa.gov
Cc: Yu, Justice Mary <Mary.Yu@courts.wa.gov>; OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; Douglas Orr <dorr@aberdeenwa.gov>
Subject: WSBA Recommended Revised Standards for Indigent Defense and Caseload Limits

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Good afternoon Chief Justice Gonzalez and all Justices of the Washington Supreme Court,

I am sending this email on behalf of Mayor Douglas Orr from the City of Aberdeen.

Please let me know if you have any questions or concerns.

Sincerely,

Ruth Clemens
City Administrator
City of Aberdeen
(360) 537-3233



April 15, 2024

Chief Justice González
Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Subject: WSBA Recommended Revised Standards for Indigent Defense and Caseload Limits

Dear Chief Justice González:

I am the Mayor of the City of Aberdeen. I write to echo and emphasize the concerns expressed in the Association of Washington Cities' ("AWC") March 26, 2024, Memorandum to the Washington State Supreme Court Justices regarding the above-referenced matter.

The City's general fund, from which public defense funds are paid, simply is not robust enough to absorb the significant financial burden should the Washington State Bar Association Board of Governor's recommended changes to the Washington Standards for Indigent Defense be adopted. As AWC indicated in its Memo, City funding sources are limited, both statutorily and constitutionally. Further, during a period of time in which our nation's economy is suffering from high inflation costs and a sluggish economy, many of the City's residents simply do not have the means to pay any tax increases the City could legally impose.

To timely meet the proposed caseload standards recommended by the WSBA Board of Governors also constitutes a significant challenge to Aberdeen due to the current dearth of qualified public defenders available for hire. It is highly unlikely Aberdeen could retain three times the number of public defenders for which Aberdeen currently contracts.

While the City appreciates the WSBA Board of Governors' concerns related to the current state of Washington Standards for Indigent Defense, adoption of their recommendations, especially under the currently proposed timeline, will cause an undue burden and hardship on the City and its residents. I respectfully request that the Board of Governors' proposed changes be denied, or at a minimum delayed until funding and recruiting considerations can be addressed in such a manner that does not unfairly impact municipalities such as Aberdeen.



Thank you for your consideration of this request.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Orr', with a long horizontal flourish extending to the right.

Douglas Orr, Mayor
City of Aberdeen

Cc: Associate Chief Justice Yu
Honorable Justices of the Washington State Supreme Court