

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS
WORKSHOP AGENDA REQUEST**

TO: Board of County Commissioners

FROM: Kate Dean, Commissioner, District 1

DATE: October 21, 2024

SUBJECT: Letter to WA Supreme Court regarding new caseload standards for indigent defense

STATEMENT OF ISSUE:

The Washington State Supreme Court is taking comments on proposed new caseload standards for indigent defense, increasing the cost of providing this critical service.

ANALYSIS:

Currently, Jefferson County pays 97% of the cost of providing defense to low income defendants in legal matters. Providing indigent defense is a Constitutional duty of the State, who contributes only 3%. Jefferson County shares the Association of Counties assertion that this is unconstitutional and has joined both litigious and legislative efforts to remedy this. While these efforts have so far been unsuccessful, the Supreme Court is considering new caseload standards that will greatly increase the cost of providing indigent defense. While the BOCC is unlikely to oppose the standards themselves, passing this cost on to Counties, particularly small, rural counties like ours, could result in poor outcomes. Already there is a shortage of defense attorneys in rural areas; this would create further demand statewide. Not having enough attorneys would stress an already over-extended system and could result in less attorney capacity for these defendants. And ultimately the Prosecutor would need to decide which cases to try based on availability of defense attorneys, not on which cases would provide the best outcomes for safety, justice, families, victims and our community. Additionally, taking more funds from the general fund would require cuts to other services the county provides.

FISCAL IMPACT:

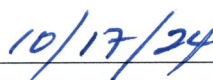
In 2024 Jefferson County provided \$920,076 to defend the indigent here; the state provided \$29,406. The Prosecuting Attorney's office estimates conservatively that the new caseload standards would increase this cost by 150%.

RECOMMENDATION:

Consider the attached draft letter, discuss any amendments, and approve/ sign/ send to the Court before October 31, 2024.

REVIEWED BY:


Mark McCauley, County Administrator


Date



Board of County Commissioners
1820 Jefferson Street
PO Box 1220
Port Townsend, WA 98368

Kate Dean, District 1 Heidi Eisenhour, District 2 Greg Brotherton, District 3

October 21, 2024

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

To the Clerk of the Supreme Court of Washington,

The Jefferson County Board of County Commissioners share the Washington State Supreme Court's commitment to providing fair and skilled legal defense for our indigent residents. We currently support 97% of the cost to do so and seek diversion, restorative and therapeutic options whenever feasible. We have reduced our jail population and fund an alternative-to-detention facility for juveniles. We work closely with our Sheriff and Prosecuting Attorney on progressive, preventative, community-based public safety.

In light of this, it is with concern that we face the proposed caseload standards under consideration by the Court. To be clear, it is not the caseload standards themselves we object to, but rather the State's refusal to adequately fund indigent defense, a Constitutional duty.

As a rural county with a high cost of living, it is extremely difficult to attract, recruit and retain qualified defense attorneys; finding twice the number we currently have is unimaginable. We conservatively estimate that the new caseload standards would increase our cost of indigent defense by over 150%, to be covered by our general fund, of which 2/3 is already committed to the justice system. We will be facing cuts to other programs that the general fund supports, such as youth recreation, family functional therapy or substance use prevention, which are "preventative factors" for high-risk behavior.

The State of Washington currently funds approximately 2-4% of the cost of indigent defense which, as the Court is well aware, is a right guaranteed by our Constitution. For example, in 2024 Jefferson County provided \$920,076 to defend the indigent here; the state provided \$29,406. Should the state decide to adequately fund this system, or provide qualified attorneys, instead of pushing it to Counties with extremely limited revenue sources, it might be possible to reduce caseloads as proposed if the legal capacity in the state otherwise existed. But without additional capacity from the state, Counties- particularly low population, economically distressed, rural counties-will be forced to choose between bad options.

With an inability to hire enough defense attorneys, prosecuting attorneys will be incentivized to charge fewer cases, providing less opportunity for early intervention through therapeutic courts or other remedial measures. Only the most serious cases might be charged, creating a culture of permissiveness around crime, which is demoralizing to communities. Offenders of lesser crimes may become offenders of more serious felonies. These are the very real potential outcomes in Jefferson County.

The defense attorneys that Jefferson County contracts with are competent, skillful, caring professionals that provide excellent representation to the indigent population. We recognize their hard work and recently negotiated a significant increase in their contract. We have no interest in short-changing the rights of defendants nor over-burdening their attorneys.

Should the Administrative Office of the Courts, the Legislature or your honorable Court decide to adequately fund indigent defense and new caseload standards, our concerns would be moot. But short of a clear and committed mandate for funding, we must oppose the new standards due to the detrimental effect they will have on our ability to provide adequate representation, and the other impacts to our county's ability to provide essential services to our residents.

We appreciate your taking comment on this important issue and implore you to consider the negative, unintended impacts to Counties like ours. We also encourage the Court to weigh the implications of the state failing to uphold its constitutional duty by failing to fund indigent defense and leaving it to economically burdened Counties to fulfill this critical work, resulting in a patchwork of unequal access to justice.

Thank you for your consideration,

Sincerely,

Kate Dean, Dist. No. 1

Heidi Eisenhour, Dist. No. 2

Greg Brotherton, Chair, Dist. No. 3