



**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**
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MEMORANDUM

TO: The Justices of the Washington State Supreme Court

FROM: Larry Jefferson, Director, Office of Public Defense

DATE: November 27, 2023

RE: Urgent Request for Moratorium and Reform in the Public Defense System

I. Introduction

In April 2021, I was honored to assume the role of Director of the Office of Public Defense (OPD) for the State of Washington under your esteemed appointment, and with my oath of office administered by your hand on July 1, 2021. In taking that oath, I solemnly pledged to "work to ensure just and equitable legal representation for every person in the State of Washington who has been found to be indigent." Today, I write to express my deep concerns for the state of our criminal public defense system, which is now facing a grave crisis.

The criminal public defense system in the State of Washington is on the verge of collapse, and I earnestly implore the Washington Supreme Court to take decisive action. I humbly request the Court to:

1. Issue an order imposing a 90-day moratorium on the assignment or appointment of new felony out-of-custody clients to public defenders, effective January 1, 2024;
2. Issue an order restricting assigning authorities in each jurisdiction to assign or appoint new clients to public defenders only if their current open caseloads are below 60 percent of current State caseload limits;¹
3. Issue an order that the restricted caseload limit will remain in effect until the adoption of new caseload standards which are currently being developed by the Washington State Bar Associations Council on Public Defense (CPD) as previously requested by the Supreme Court.

It has become quite clear that the public defense system in Washington is under significant strain and in need of decisive action.

¹ See Appendix 1 for explanation.

II. The Bases for the Request

The nationwide public defense crisis has been reported for many years.² From states instituting public defense reforms, to other systems effectively collapsing, to media focusing attention on public defense issues, the topic is unavoidable because it is so important to our free society. Washington is affected by this crisis and is no different than any other state.

The above requests are grounded in troubling, yet compelling trends within the Washington public defense community:

1. **Exodus of Experienced Public Defenders:** An alarming trend of experienced public defenders submitting their resignations is currently underway, as evidenced during the recent WSBA Council on Public Defense meeting on November 2, 2023, the King County Council Meeting on October 3, 2023,³ and numerous conversations with Governor's staff and the legislative delegation in Benton and Franklin counties. In the last month, in two separate counties, four seasoned public defenders felt compelled to submit letters of resignation, citing their inability to, in good faith, affirm their compliance with our current standards while simultaneously providing constitutional and ethical assistance of counsel. This is in addition to numerous resignations in many jurisdictions throughout the summer and fall. This alarming trend is also underscored by OPD's most recent RCW 10.101 Public Defense Improvement application cycle, during which more than 87 percent of Washington counties reported facing challenges in recruiting and retaining a sufficient pool of defense attorneys.
2. **Flawed Caseload Standards:** The existing caseload standards stem from guidelines established in 1973, and fail to address the complexities and time demands of current cases. The caseload standards adopted by this Court in 2013 state that "[t]he caseload of a full-time public defense attorney or assigned counsel should not exceed the following: 150 felonies per attorney per year..." but a new national report suggests that the maximum caseload for felony lawyers should be no more than 59 cases. The American Bar Association (ABA), in collaboration with the National Center for State Courts (NCSC) and the RAND Justice Policy Program, recently published their highly

²Anita Khandelwal and Girmay Zahilay, *Our public defender system is at the breaking point*, Seattle Times, September 15, 2023, <https://www.seattletimes.com/opinion/our-public-defender-system-is-at-the-breaking-point/>. (Also attached as Appendix 2).

Debra Cassens Weiss, *In 'watershed moment,' report recommends new guidelines for public defender caseloads*, ABA Journal, September 13, 2023, https://www.abajournal.com/news/article/in-watershed-moment-report-recommends-new-guidelines-for-public-defender-caseloads#google_vignette. (Also attached as Appendix 3).

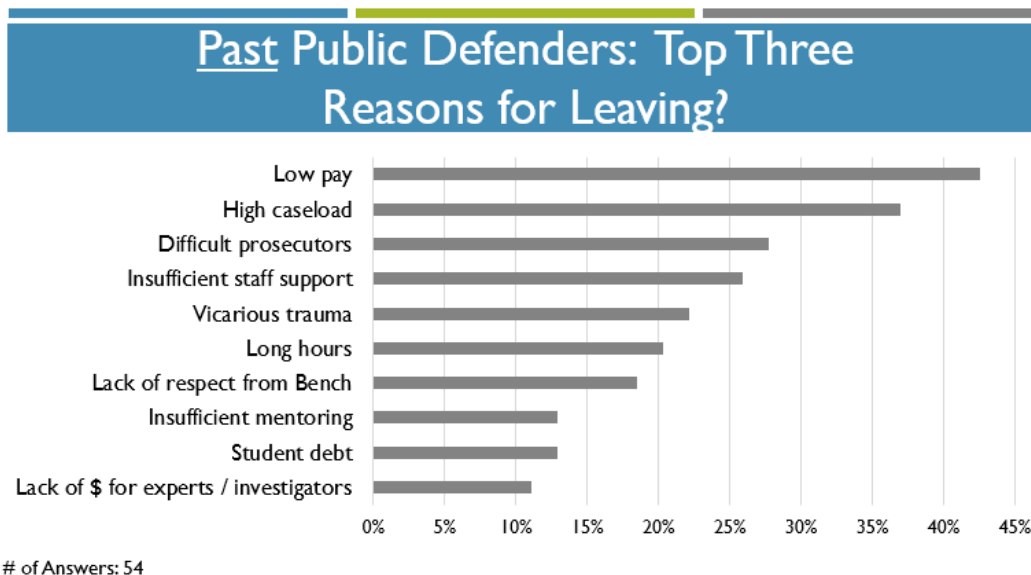
Cameron Probert, *WA defense attorney crisis 'band-aid' is failing. Tri-Cities pleads for state help*, Tri-City Herald, May 15, 2023, <https://www.tri-cityherald.com/news/local/crime/article275367071.html>. (Also attached as Appendix 4).

Denver Pratt, *Whatcom County takes steps to find public defenders for people, some who are still in jail*, Bellingham Herald, July 7, 2023, <https://www.bellinghamherald.com/news/local/article254152843.html>. (Also attached as Appendix 5).

³ *Briefing 2023-B0097: Class A Attorney Attrition Crisis*, KING COUNTY LAW, JUSTICE, HEALTH AND HUMAN SERVICES COMMITTEE (Oct. 3, 2023, 9:30 AM), https://king.granicus.com/player/clip/10036?meta_id=642003.

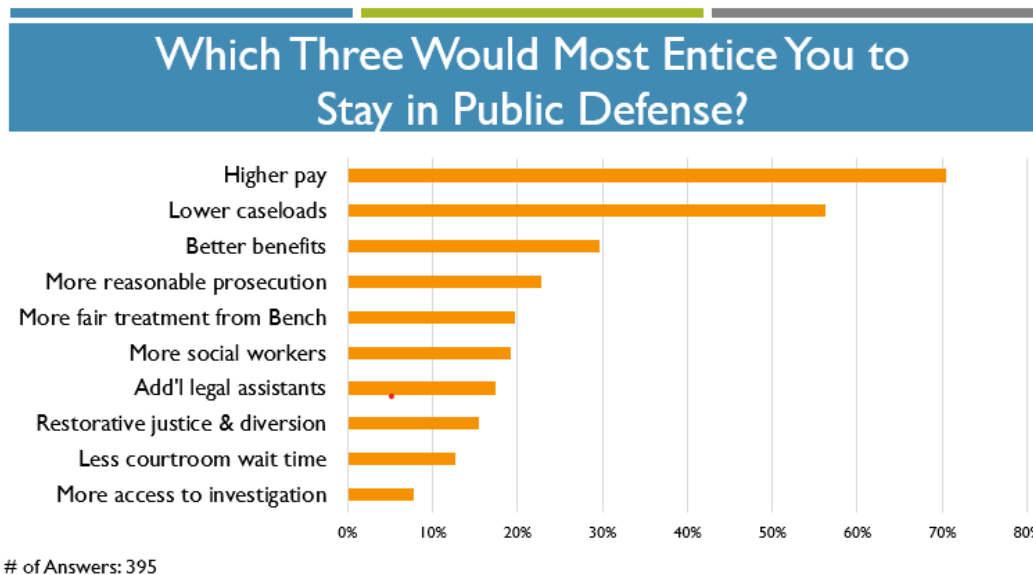
anticipated National Public Defense Workload Study.⁴ This comprehensive study examined the amount of time public defenders nationwide spend on each case. In contrast to our current standard of 150 felony cases per year, the study suggests that a public defender representing clients in the least serious felony cases should handle a maximum of 59 cases annually. This is a nearly 40 percent reduction from the current caseload standards. These revelations strongly indicate that Washington State requires an estimated 60 percent increase in the number of public defenders to meet modern standards.

3. **Compensation and Workload Issues:** Earlier this year, OPD surveyed former public defenders about their reasons for leaving public defense practice. The top two responses were “low pay” and “high caseload.”



Similarly, when asked what would entice former public defenders to return to public defense, the top answers were “higher pay” and “lower caseload standards.” When asking current public defenders what would entice them to remain in public defense, the top answers were, “higher pay” and “lower caseloads.”

⁴ PACE, NICHOLAS M., MALIA N. BRINK, CYNTHIA G. LEE & STEPHEN F. HANLON, NATIONAL PUBLIC DEFENSE WORKLOAD STUDY. Santa Monica, CA: RAND Corporation, 2023.
https://www.rand.org/pubs/research_reports/RRA2559-1.html.



A qualitative analysis of these results revealed that public defenders who feel pessimistic about their jobs focus heavily on high caseload as a reason for their dissatisfaction.

4. **Ineffectual Certification Process:** The required certifications, signed by public defenders, not only require attorneys to comply with existing caseload standards, but they also place the burden of proving compliance with individual attorneys rather than their supervisors, department leaders, or assigning authorities. No known public defender has failed to certify compliance even when they are above standards presumably out of fear of the loss of employment if they don't take assigned cases. I do not know any case before the Supreme Court or Court of Appeals where a public defender, agency, or office has refused to take new cases. (I do know of jurisdictions where public defense directors have negotiated with their county officials outside of court)

Regrettably, the public defense workload predicament has reached a tipping point, and the ones bearing the brunt of this crisis are the individuals constitutionally and statutorily entitled to effective counsel. With 28 years of experience as a public defender, I find it profoundly disheartening to witness defendants languishing in jails without counsel or being forced to return to court monthly to learn they still don't have a lawyer. Public defense workloads have undoubtedly played a significant role in driving public defenders away and impacted our ability to provide effective assistance of counsel to all who are entitled.

III. Conclusion

There is no denying that these systemic stressors take a toll on the well-being of public defenders themselves. Faced with the decision of persisting with their current workload or departing for the sake of their mental, emotional, and physical health, many public defenders are opting for the latter. I personally grappled with this very dilemma around five years ago when I refused to accept additional cases as a felony attorney. In my situation, I chose to persevere, albeit

with a support system outside of my office that allowed me to continue - but these resources are not available to all public defenders.

Therefore, I urgently request that the Supreme Court issue an emergency order to enact a 90-day moratorium on assigning new out-of-custody felony cases to public defenders, commencing on January 1, 2024. The reduction of out-of-custody assignments will allow adequate time to work on current cases and will allow some relief for existing public defenders.

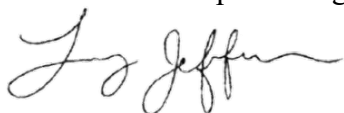
Furthermore, after the 90-day moratorium, no public defender should receive new out-of-custody clients if their active caseload exceeds 60 percent of the current caseload limits. This approach will enable public defenders to concentrate on their existing cases without the added strain of new ones. This move would have consequences but would also allow public defenders to keep practicing effectively until new caseload limits are established in accordance with the recommendations established by the National Public Defense Workload Study. Until the new caseload limits are created, each jurisdiction should be responsible for ascertaining its current criminal public defender capacity during this period, ensuring that no defender is overwhelmed.

I also encourage the Court to issue an emergency order updating the indigent defense qualifications. Modest changes to these standards would allow jurisdictions to rely on training and co-chaired trials to get more attorneys qualified for felony cases. OPD staff have been working with the Council on Public Defense for the last year to improve the qualifications and standards, and the CPD will present its recommendations to this Court. This work was conducted after hours of listening sessions with lawyers, city and county funders, and public defense administrators.

Lastly, the Office of Public Defense is an administrative office and is prohibited from carrying a caseload by statute. Under different circumstances, I can imagine OPD taking different courses of action. However, since those other options are not available, I am using the authority I have to make this urgent request to reduce criminal workloads immediately to save the public defenders we have left.

I am acutely aware of the challenging decision I urge the Washington Supreme Court to make. My oath of office obliges me to set aside my personal comfort in favor of advocating for the constitutional rights of the citizens of the State of Washington. For two years, I have taken the limited steps available to me to alleviate this crisis, but now, it is absolutely imperative that we address the urgent challenges confronting our public defense system. My sincere hope is that we can take the essential steps required to uphold the constitutional rights of the people of Washington, ensuring that justice remains a cornerstone of our society by ensuring meaningful access to counsel for those individuals charged with crimes.

With utmost respect and gratitude for your consideration,

A handwritten signature in black ink, appearing to read "Larry Jefferson", with a stylized, flowing script.

Larry Jefferson
Director, Washington State Office of Public Defense

Attachments:
Appendix 1 – Further Explanation of Moratorium Proposal

Appendix 2 - Anita Khandelwal and Girmay Zahilay, *Our public defender system is at the breaking point*, Seattle Times, September 15, 2023, <https://www.seattletimes.com/opinion/our-public-defender-system-is-at-the-breaking-point/>.

Appendix 3 - Debra Cassens Weiss, *In 'watershed moment,' report recommends new guidelines for public defender caseloads*, ABA Journal, September 13, 2023, https://www.abajournal.com/news/article/in-watershed-moment-report-recommends-new-guidelines-for-public-defender-caseloads#google_vignette.

Appendix 4 - Cameron Probert, *WA defense attorney crisis 'band-aid' is failing. Tri-Cities pleads for state help*. Tri-City Herald, May 15, 2023, <https://www.tri-cityherald.com/news/local/crime/article275367071.html>.

Appendix 5 - Denver Pratt, *Whatcom County takes steps to find public defenders for people, some who are still in jail*, Bellingham Herald, July 7, 2023, <https://www.bellinghamherald.com/news/local/article254152843.html>.

Appendix 6 – Robert C. Boruchowitz, *New National Study Can Be a Catalyst for Transformational Change in Public Defense and the Criminal Legal System*, King County Bar Association Bar Bulletin, Oct. 2023, at 1, 10-1.

Appendix 7 – Office of Public Defense 2024 Supplemental Budget Recruitment Specialist Team, <https://www.courts.wa.gov/content/Financial%20Services/documents/2024/Supplemental/31%20BC%20Recruitment%20Specialist%20Team.pdf>.

Appendix 8 - Office of Public Defense 2024 Supplemental Budget Statewide Evaluation of Public Defense Services, <https://www.courts.wa.gov/content/Financial%20Services/documents/2024/Supplemental/32%20BD%20Statewide%20Evaluation%20of%20Public%20Defense%20Services.pdf>.

Appendix 1

Implementing a moratorium on the allocation of out-of-custody felony cases emerges as a pivotal albeit extreme measure imperative for managing the escalating challenges faced by criminal public defense administrators, attorneys, and support staff. Currently, the prescribed felony caseload limit stands at 150 cases annually. [CrR 3.1 Stds](#). While the complexity of a felony case is considered under Standard 3.3, there exists no explicit directive on how these cases should be weighted in terms of complexity. This oversight translates into practical scenarios where a felony DUI case bears the same weight as a homicide case.

Should the Supreme Court decree a moratorium effective January 1, 2024, public defenders would be relieved from handling out-of-custody felony matters until April 1, 2024. This respite offers a temporary reprieve from overwhelming workloads while enabling continued legal support to incarcerated individuals.

Concurrently, the proposed open caseload restrictions introduce an additional criterion that bars the assignment of cases to public defenders until their caseload drops below 60% of the yearly case limit. In simpler terms, this regulation ensures that while public defenders retain a maximum case cap of 150, case assignments would cease if a public defender maintains an ongoing caseload of 90 cases at any given time.

This proposed moratorium and the accompanying caseload restrictions represent crucial interventions aimed at alleviating the burdens on public defenders. By temporarily halting the influx of out-of-custody felony cases and introducing constraints on open caseloads, these measures seek to strike a balance between workload management and the provision of effective legal representation for the accused, ultimately safeguarding the integrity of the justice system.

Appendix 2

Anita Khandelwal and Girmay Zahilay, *Our public defender system is at the breaking point*, Seattle Times, September 15, 2023, <https://www.seattletimes.com/opinion/our-public-defender-system-is-at-the-breaking-point/>.

Our public defender system is at the breaking point

Sep. 15, 2023 at 2:09 pm



The current volume of prosecutions cannot continue without a massive influx of defense attorneys who simply don't exist in today's labor market, write the authors. Pictured are the King County Courthouse, Administrative... (Daniel Kim / The Seattle Times) **More** ▾

By [Anita Khandelwal](#) and [Girmay Zahilay](#)

Special to The Seattle Times

There exists a pervasive narrative that the public safety crisis could be solved if local governments just prosecuted and jailed more people for property and drug offenses. If we were “tougher on crime,” some say, these problems would go away. The individuals who push such ideas, however, have never uttered a sensible plan for how to increase prosecution and incarceration in our current reality.

The truth is that our region's criminal legal systems are not only at capacity, they are flirting with their breaking points. The King County Sheriff's Office cannot find enough new deputies to fill its ranks, historic backlogs in our court system [delay](#) cases for years, and the King County Jail has had intractable [staffing](#) shortages. Corrections officers themselves have [pleaded for more diversion programs](#), stating their inability to keep themselves and incarcerated people safe at current staffing levels.

Public defenders are the latest justice system employees to test their breaking points. Newly published [research](#) spotlights the unsustainable caseloads King County public defenders have been working to manage. These caseloads grow even worse daily as experienced defenders qualified to handle the most serious cases quit, leaving a smaller and smaller number of attorneys to handle those most serious cases.

As this system teeters on the edge of collapse, there is only one path to public safety rooted in reality: focusing King County's limited legal system capacity on the gravest allegations of illegal behavior. The current volume of prosecutions (over 40% of which are not these most serious offenses) cannot continue without a massive influx of defense attorneys who simply don't exist in today's labor market.

This month, experts convened by the American Bar Association, working with the RAND Corporation, confirmed what every public defender has known for decades: current caseloads are not sustainable.

The newly published standards indicate that attorneys should not be assigned more than 60 of even the lowest-level felonies in one year. In the King County Department of Public Defense, most felony attorneys are assigned more than 70 cases in a year. But this understates the strain felony attorneys are under, because those 70 cases include midlevel and high-level felonies.

For what the new nationwide study calls "midlevel" felonies, such as arson, armed robbery, and drug distribution, experts in public defense advise attorneys should be assigned no more than 36 cases per year — half of what most felony attorneys in DPD handle on an annual basis. Even recognizing that most criminal cases resolve without a trial, this research estimates the complexity of negotiating plea offers, conducting investigations and communicating with clients takes 57 hours per case for offenses of this severity.

The situation for the shrinking number of attorneys qualified to handle the most serious offenses, such as murder or other crimes that carry a life sentence, has become even more dire. Under the new standards, these lawyers should take no more than seven or eight such cases per year. But DPD attorneys representing clients facing life sentences routinely represent dozens of other clients as well.

Bringing the number of cases each defense attorney handles closer to the new recommended thresholds would require hiring more lawyers. But much like police and corrections officer staffing, this isn't a problem that more money from an already strained county budget can fix. Throwing money at a nationwide labor shortage doesn't magically produce more qualified applicants, particularly applicants qualified and trained to handle serious cases.

Because we cannot fix the public defender shortage (or, for that matter, the law enforcement, prosecutor, or corrections officer shortages), we need to find more efficient and evidence-based ways of addressing harm in our community. Nearly 2,000 of the cases the King County Prosecuting Attorney's Office filed last year were

property and drug offenses. That would be full-time work for at least 33 more attorneys under the new standards. Finding alternative paths for addressing lower-level offenses could stave off the total collapse of our region's public defender system while also helping focus limited resources on allegations of sexual assault and murder. Before it's too late, we must scale up community-based diversion options and therapeutic alternatives, and expand the types of crimes eligible for the Legal Intervention and Network of Care program, or LINC, and therapeutic courts.

We are amid a public defender attrition crisis. Attorneys qualified to handle the most serious cases are leaving due to unsustainable workloads and this exodus is further straining those who remain. We need a plan to address this problem before our staffing crisis reaches a breaking point. The voters of King County have already demonstrated they believe in innovative, evidence-based solutions to public safety by passing this year's crisis care centers levy. If the system is ever going to recalibrate, we must invest in more of the kinds of solutions voters support: diversion programs for lower-level offenses and more evidence-based strategies for reducing crime, like supportive [housing](#), community-based accountability, and mental health and addiction recovery infrastructure.

The United States Constitution entitles us all to a speedy trial and right to representation. That means a public defender crisis could lead to a constitutional crisis. Let's work together to create a plan, fix this problem, ensure access to justice, and create the public safety we all deserve.

Anita Khandelwal is the director of the King County Department of Public Defense.

Girmay Zahilay is a member of the Metropolitan King County Council representing District 2 and is chair of the council's Law, Justice, Health and Human Services Committee.

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Appendix 3

Debra Cassens Weiss, *In 'watershed moment,' report recommends new guidelines for public defender caseloads*, ABAJournal, September 13, 2023,
https://www.abajournal.com/news/article/in-watershed-moment-report-recommends-new-guidelines-for-public-defender-caseloads#google_vignette.

PUBLIC DEFENDERS

In 'watershed moment,' report recommends new guidelines for public defender caseloads

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

SEPTEMBER 13, 2023, 2:24 PM CDT

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“This is a watershed moment for both the nation’s indigent defense system and America’s entire criminal legal system,” said attorney Stephen F. Hanlon. Image from Shutterstock.

and Goals did not differentiate among types of felonies.

The new *National Public Defense Workload Study* recommends public defenders devote an average of 35 hours to each felony case and 22.3 hours to each misdemeanor case. Those hours “more accurately reflect what it takes to provide competent legal representation in a modern world that includes social media, cellphones, surveillance cameras and body cameras,” according to one of the press releases.

The new study also breaks down the recommended time commitment based on severity of the alleged crime. In serious felonies, for example, the average time needed is 286 hours for crimes with a possible sentence of life without parole, 248 hours for murder cases, 167 hours for sex-crime cases, and 99 hours for other high-severity felonies.

Many public defenders are “overloaded” with work, even when caseloads are evaluated under outdated guidelines drafted in 1973 that don't reflect modern-day realities, according to a new study released Tuesday.

The new *National Public Defense Workload Study* (https://www.rand.org/pubs/research_reports/RRA2559-1.html) recommends scrapping the old guidelines in favor of new guideposts envisioning that significantly more hours will be devoted to defending people accused of crimes.

The old guidelines effectively recommended that public defense lawyers devote an average of 13.9 hours to each felony case and 5.2 hours to each misdemeanor case, according to press releases [here](https://www.arnoldventures.org/newsroom/groundbreaking-report-finds-many-public-defenders-are-dangerously-overworked-and-outlines-new-standards-for-reducing-their-caseloads)

(<https://www.arnoldventures.org/newsroom/groundbreaking-report-finds-many-public-defenders-are-dangerously-overworked-and-outlines-new-standards-for-reducing-their-caseloads>) and [here](https://www.rand.org/pubs/research_reports/RRA2559-1.html)

(https://www.rand.org/pubs/research_reports/RRA2559-1.html).

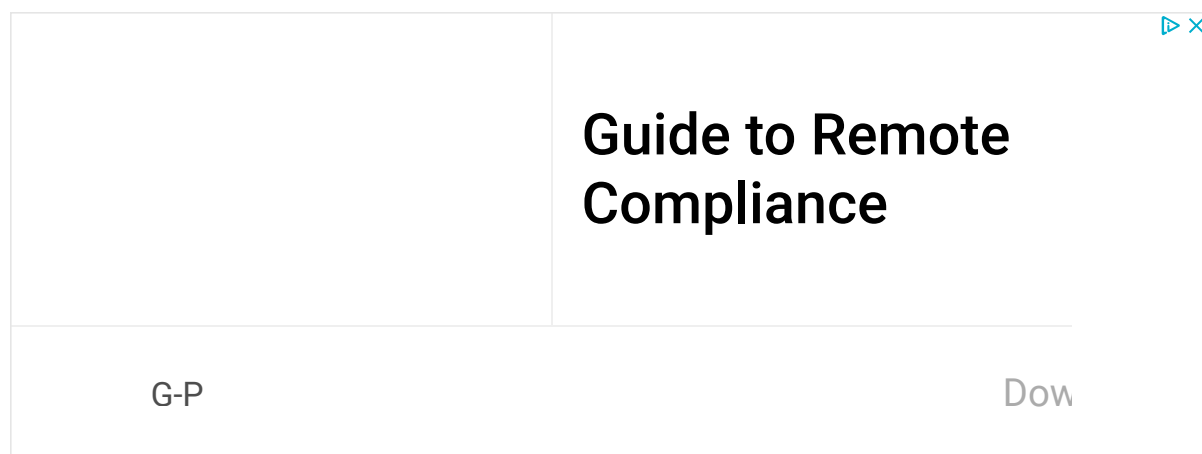
Those guidelines by the National Advisory Commission on Criminal Justice Standards

“This is a watershed moment for both the nation’s indigent defense system and America’s entire criminal legal system—but only if these standards are comprehensively implemented over a five-year period,” said attorney Stephen F. Hanlon, one of the report’s co-authors, in a press release.

Hanlon is formerly a project director with the ABA’s Standing Committee on Legal Aid and Indigent Defense, known as the SCLAID.

Hanlon is executive director of a new group called the Quality Defense Alliance, which aims to implement the guidelines throughout the country, whether through advocacy or litigation, he told Law360 (<https://www.law360.com/pulse/articles/1719991/public-defenders-are-dangerously-overworked-report-finds>) in an interview.

The ABA’s Standing Committee on Legal Aid and Indigent Defense was one of several groups collaborating on the new study and report. Another co-author of the report was attorney Malia Brink, who led the SCLAID’s participation in the project. Additional documents are available at the SCLAID website (https://www.americanbar.org/content/aba-cms-dotorg/en/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/natl-pub-def-standards).



“Attorneys, to do their job effectively, need more time than the 1973 standards estimated that they need,” Brink told Law360 (<https://www.law360.com/pulse/articles/1719991/public-defenders-are-dangerously-overworked-report-finds>).

“We have seen over and over again that our justice system makes mistakes. Preventing those mistakes from ever happening requires a devotion of time,” Brink told Law360. “If we really believe in equal justice, then that person who relies on public defenders is entitled to that same ability to test the prosecutor’s evidence as someone who is wealthy.”

Other report collaborators were the RAND Corp. and the National Center for State Courts. The philanthropic group Arnold Ventures provided funding.

The report developed caseload recommendations based on a review of 17 state-level public defense workload studies and input from 33 expert criminal defense attorneys.

The report’s recommendations have not been approved by the ABA’s House of Delegates. But the House did approve a revised version (<https://www.abajournal.com/web/article/resolution-603>) of the ABA Ten Principles of a Public Defense Delivery System at the ABA Annual Meeting in August.

The Ten Principles of a Public Defense Delivery System included a call for adequate state funding of public defender agencies and regulator monitoring and control of public defender caseloads.

“Public defenders and other providers of indigent defense grapple with an overwhelming caseload that exceeds the reasonable capacity for effective representation, but the available data about the magnitude of this issue has been inadequate and outdated,” said ABA President Mary Smith in a press release.

“This report—which builds on earlier ABA initiatives like the recent rollout of 10 principles for improving the public defense system—offers stakeholders a roadmap for how to genuinely ensure equitable justice for every individual.”

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Appendix 4

Cameron Probert, *WA defense attorney crisis 'band-aid' is failing. Tri-Cities pleads for state help*. Tri-City Herald, May 15, 2023, <https://www.tri-cityherald.com/news/local/crime/article275367071.html>.



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CRIME

WA defense attorney crisis ‘band-aid’ is failing. Tri-Cities pleads for state help

BY CAMERON PROBERT

UPDATED MAY 15, 2023 10:00 AM





Larry Zeigler, Franklin County Office of Public Defense manager, discusses the difficulties he faces when attempting to hire lawyers for his department during a bi-county press conference held at the Franklin County Courthouse in Pasco.



Only have a minute? Listen instead

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PASCO, WA

A West Richland man was back in Franklin County jail two days after [being released](#) by a judge because he didn't have an attorney.

Kurt Painter, 28, was arrested Thursday shortly after 12:30 p.m. on suspicion of residential burglary after he was found in a Pasco garage trying to break into a car.

Painter was one of the first people to have his bail cut because of the shortage of attorneys to handle public defense in the county. Officials already had announced a Friday news conference to address the need for help before Painter was arrested again.

The issues around the [lack of defense attorneys](#) could get a lot worse, before it gets better, Franklin County Office of Public Defense Manager Larry Zeigler said at the news conference.

"I'm not going to stand here and tell everybody that I've got all the answers or that there is any panacea," he said. "It's taken us years to get to this point and it's going to take us years to get out of it. It's going to be an incremental process."

Franklin and Benton county officials were joined by a state representative and senators in an attempt to put pressure on the state to step up and help fix the

problem.

Franklin County is looking for at least two more attorneys to handle felony cases to ease a backlog of more than 75 cases waiting for an attorney to be assigned.



Larry Ziegler Bob Brawdy bbrawdy@tricityherald.com

In Benton County, they are looking to hire a new head of public defense to lead recruitment efforts for attorneys. While the problems aren't as bad there, they still have a backlog of 50 cases waiting for an attorney to be assigned.

Sen. Matt Boehnke, R-Kennewick, said discussions with the three Tri-City area senators were starting.

"It has a lot more firepower when you're going into the governor's office with this," he said. "We're going to reach out to the majority party as well ... We don't have anything now, but maybe early next week."

CONFLUENCE OF ISSUES

The shortage of defense attorneys is not unique to the Tri-Cities.

A combination of factors have compounded over the years to create the shortage. A combination of increasing retirements and fewer law school graduates has meant a drop of people going into public defense.



State and county leaders representing Franklin and Benton Counties share the podium and microphone Friday morning at the Franklin County Courthouse for a news conference to discuss the broken public defense system in Washington state. From left: Franklin Deputy Prosecutor Daniel Stovern, Larry Ziegler Franklin County Office of Public Defense Manager, Sen. Matt Boehnke R-Kennewick, Benton Prosecutor Eric Eisinger, Benton County Commissioner Mike Alvarez, Sen. Nikki Torres R-Pasco and Franklin County Commissioner Clint Didier. Bob Brawdy

And many recent graduates don't want to go into lower paying county jobs because their college debts are so high, according to the state Office of Public Defense.

The lack of attorneys has been exacerbated by rules set by the state Supreme Court that limit who can take what cases and how many can be handled at once.

Compounding the problem is a huge backlog of trials because the COVID pandemic put many cases on hold for a couple years.

A suspect is constitutionally entitled to a [trial within two months](#) of arraignment on formal charges if the suspect is in jail and hasn't agreed to a delay.

Or a trial must begin within three months if the person is out of custody.

The state and federal constitutions guarantee that anyone accused of a crime is entitled to an attorney if they can't afford one.

With the lack of attorneys, Franklin County Office of Public Defense has been focusing on assigning attorneys to people in jail who are accused of violent crime.

In Painter's case, he was released from his bail on charges of having a stolen car to buy time, so the charges didn't need to be dropped or a private attorney appointed.

Benton County has shifted \$1 million in funding to pay for a series of raises for public defenders, and Franklin County is looking at using \$300,000 to pay for new

attorneys and to keep the ones they have.



Benton County Prosecutor Eric Eisinger speaks during the news conference discussing the crumbling Washington state public defense system. Bob Brawdy bbrawdy@tricityherald.com

But officials called these solutions band-aids to the larger problem of a mandate handed down to them by the state without any funding behind it.

“The solution to this problem is going to have to be found on the state level,” Zeigler said. “I don’t think the counties and cities, more than likely, have enough money to cover what’s going to be entailed here.”

This problem has been brewing for decades. Zeigler pointed to a seminar held 25 years ago shortly after the state [Office of Public Defense](#) was formed.

At the seminar, the then director of the office promised public defenders would have a uniform public defense system in the state with the support they need.

“Well, it never happened,” Zeigler said. “It was too easy to do band-aids with a contract system and it worked for a while, but I think we’ve worked ourselves into a corner.”

STATE ISSUE

The other Franklin and Benton county officials also laid the blame on state requirements that were not being addressed.



Franklin County deputy prosecutor Daniel Stovern speaks during a news conference discussing the crumbling Washington state public defense system. Bob Brawdy

Franklin Deputy Prosecutor Daniel Stovern worked as a public defender for nine years before moving to the prosecutor's office. He urged anyone with a law degree to apply for positions.

"It's an incredibly gratifying career," he said. "This funding being transferred, ... it's a band-aid that will not continue to hold forever. So we asked for assistance from the state, from the governor's office, Legislature to do something to both standardize and help fund public defense."

Benton County Prosecutor Eric Eisinger called it the most pressing public public safety issue facing the area.

He's optimistic the county will be able to bring in a public defense manager to help with recruitment, but it's going to take a community and statewide effort to solve the larger issues.

Benton County Commissioner Michael Alvarez said the commissioners understand the importance of issues. He pointed to the backlog of cases caused during the court shutdown during COVID-19.

He asked for the state legislators and the governor's office to look at the issue and help the counties.

"We've done the financial things, what we can go ahead and do, but ... the funding isn't guaranteed from year to year," he said. "We're going to need help from the state."

... This isn't just a Franklin County or Benton County issue. This is affecting all 39 counties within the state."

This story was originally published May 15, 2023, 5:00 AM.

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Cameron Probert covers breaking news and education for the Tri-City Herald, where he tries to answer readers' questions about why police officers and firefighters are in your neighborhood. He studied communications at Washington State University.

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Appendix 5

Denver Pratt, *Whatcom County takes steps to find public defenders for people, some who are still in jail*, Bellingham Herald, July 7, 2023,
<https://www.bellinghamherald.com/news/local/article254152843.html>.



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CRIME

Whatcom County taking steps to find public defenders for people, some who are still in jail

BY DENVER PRATT

UPDATED JULY 07, 2023 3:25 PM



Whatcom County continues to struggle to find enough public defense attorneys to represent people accused of crimes, two months after [the Bellingham Herald first reported](#) on the problem.

In mid-May, roughly 43 people were waiting for public defense attorneys to be appointed to them. Nearly a dozen of those people were in the Whatcom County Jail, with some waiting for an attorney for more than a month.

All of the 43 people [qualified for a public defender](#), but the Whatcom County Public Defender's Office could not represent them because it was already handling other cases that created conflicts of interest.

Of the 43 unrepresented people in mid-May, 26 had cases in District Court, 12 were charged with felonies in Superior Court and five were facing charges in Juvenile Court.

Since that time, the county has hired an in-house conflict attorney, the public defender's office has added to its staff and judges have begun talking about the rare step of assigning private attorneys to handle cases.

As of Thursday, July 6, there were still eight people waiting for an attorney to be found for them, according to Whatcom County Superior Court Administrator Dave Reynolds.

More than half of those eight are currently incarcerated, Reynolds said.

While the number of people waiting to have an attorney appointed to them has dropped, the issue remains one the county is grappling with.

A VITAL ROLE

Both the [U.S. Constitution and Washington State Constitution](#) demand that if a person cannot afford an attorney, one will be provided for them.

[That right begins as soon as](#) a person is taken into custody, appears in front of a judge or court commissioner or is formally charged, whichever comes first, according to Washington state court rules.

Locally, people who are indigent, or can't afford an attorney, are screened by Whatcom County's Office of Assigned Counsel. If they qualify, their cases are sent to the public defender's office to be assigned attorneys.

If the public defender's office can't accept the case due to a conflict or caseload limits, the case is returned to the Office of Assigned Counsel. The case is then sent to private attorneys who have contracts with Whatcom County and agree to take on cases the public defender's office cannot.

This system is changing, though.

In June, the county's Office of Assigned Counsel hired attorney Melissa Stone as a public defense conflict attorney. Stone will handle cases in which the county's public defense office is prohibited from accepting due to conflicts of interest, or that the office has sent back due to staff attorneys hitting their caseload limits.

Stone is expected to provide direct representation for many of the people who were awaiting an attorney.

Stone's hiring marks the first time the Office of Assigned Counsel has had an in-house attorney, Reynolds, the court administrator, said.

Earlier in the year, the four Superior Court judges met with Reynolds and Satpal Sidhu, the county executive, and encouraged them both to hire an attorney with public defense experience to manage and oversee public defense services in Whatcom County, according to a mid-June Whatcom County press release.

After receiving approval from the executive, Reynolds then hired Stone as the in-house attorney. She started June 12, according to the release.

Stone immediately began representing people who needed a public defense attorney and were awaiting trial and is expected to develop a plan "to assure that all defendants awaiting trial have qualified representation," according to the release.

Stone has been a practicing attorney for more than 12 years and previously worked as a paralegal and court clerk in both the public and private sectors before attending law school. She's spent the majority of her time as a practicing attorney in Whatcom County, Stone said in an email to The Herald.

Stone said she's worked as an intern and attorney in the county's public defense office, as a prosecutor and has law firm, non-profit and federal court experience. She most recently served as an assistant attorney general.

Stone's position with the county's Office of Assigned Counsel is currently funded through December 2024, she said.

She will handle overflow and conflict cases from the county's public defense office. As of late June, Stone had around 65 cases across Superior, District and Juvenile courts. Several of her clients have more than one case, she said.

"This position is quite unique and is the result of the county recognizing the importance of representation for indigent people accused of crimes," Stone said.

Initially, Stone's caseload was front-loaded with a group of people awaiting attorneys, making her first few weeks on the job very busy, she said.

Since she can now facilitate moving cases toward some sort of resolution, she said she expects her caseload will remain manageable and [within the limits set by the Washington State Supreme Court](#). Stone said she does expect her caseload to grow some though, because "there will always be conflicts necessitating conflict counsel."

As time goes on, conflict or overflow cases will come to her first before being sent out to other contracted indigent defense attorneys, she said, marking a change in the way Whatcom County handles conflicted public defense cases.

Stone ultimately said she saw the position as "an opportunity to use my experience to fill an urgent need in my community. I love Whatcom County and feel fortunate to be back at the courthouse."

She said "getting to know the clients, their stories, their challenges, their goals, then seeking justice for them in what can be a daunting process" is what most attracted her to this type of work, adding that she wants her clients to know she's here to help them.

Stone said regardless of someone's financial situation, it's important that people have representation so that they can be advocated for properly.

"Any attorney representing indigent clients is serving a vital role. It goes beyond providing legal advice — an attorney can be a lifeline for a client, especially when that person is in custody," she said.

QUALIFICATIONS

While Stone's hiring has eased the number of people waiting for an attorney to be found for them, there still is a need for public defense attorneys who can handle the most serious felony adult cases.

Under rules set by the [Washington State Supreme Court](#), attorneys who represent indigent clients must meet specific qualifications in order to be able to handle and accept specific types of cases.

Attorneys who wish to represent an indigent client must meet minimum requirements for practicing law, be familiar with state statutes, rules of professional conduct, mental health issues, and various sets of guidelines for criminal defense representation and indigent appeals, among others.

For the [most serious adult felony cases](#), such as murder, first-degree rape or other violent offenses, attorneys must meet all the above qualifications, as well as have served two years as a prosecutor or two years as a public defender or two years in a private criminal practice, and must also have been trial counsel alone or with another attorney and handled a significant portion of the trial in three felony cases that have been sent to a jury, according to the qualification rules.

The qualifications set by the state Supreme Court that a public defense attorney must meet vary depending on the type of case, such as for adult sex offenses or lower level felonies.

Stone said she is not yet qualified to handle “some of the more serious adult felonies.” If those cases arise, Stone said she works with the county’s Office of Assigned Counsel to find an attorney who can handle that case.

A RARE STEP

Even though the county’s Office of Assigned Counsel now has an in-house conflict attorney, some of Whatcom’s Superior Court judges have started talking about appointing attorneys directly from the bench.

After [a new state rule went into effect in January](#) regarding the independence of public defense services, the assignment of attorneys for indigent clients became a function of the Superior Court Clerk’s Office, and judges became less involved in helping find attorneys for people, Whatcom County Superior Court Presiding Judge Lee Grochmal said in an email to The Herald.

The new rule does not prohibit a judge from assigning a case to an attorney if no qualified public defense attorney is available or willing to take the case.

But it’s a rare step for a judge to take, Grochmal said.

“We don’t like to do this because it requires that we order an unwilling attorney to do work they are not under contract to do. Attorneys [have an ethical obligation to](#)

take such cases when necessary, but it is not something we are eager to do on a regular basis,” she said.

Grochmal said she has not personally appointed an attorney who does not already have a contract to provide indigent public defense services, but said she was aware of at least one case in which that did occur.

The attorney that was selected to take the case had a conflict of interest and was unable to take the case. Ultimately, an attorney from the list of contracted attorneys was found and took the case, she said.

During a Thursday morning court hearing for a man accused of rape, voyeurism, burglary, theft and assault across three separate cases, Whatcom County Superior Court Judge Freeman said he would likely be appointing an attorney to represent the man because one could not be found for him and it was unclear whether Stone was legally allowed to handle his cases.

The man is currently incarcerated in the county jail. During the Thursday hearing, he said his rights were being violated and he needed an attorney so that he could address issues with his bail.

The man is expected to have a follow-up court hearing next week. He is one of the five people currently incarcerated who is awaiting an attorney in Whatcom County.

Whatcom County Public Defense Director Starck Follis previously told The Herald in May that there has always been enough private lawyers who accepted court-appointed cases, but due to state and national shortages of defense attorneys, “fewer and fewer” people are willing to take on those cases.

It’s not just Whatcom battling these issues either.

The Tri-Cities in Eastern Washington is facing a crisis after several months of not having any qualified attorneys to assign to new cases, the Tri-City Herald reported. Judges began cutting bail for people accused of crimes and were considering requiring private attorneys to take on public defense cases, according to the Tri-City Herald.

While counties across the state look at various ways to solve the shortage, Whatcom took the step of hiring Stone.

Grochmal, the presiding judge, said she was one of the judges who met with the court administrator and county executive earlier in the year and encouraged them to hire an in-house attorney to oversee public defense service in Whatcom County.

“I applaud the clerk and executive for working together to fill this new position expeditiously. I am hopeful that Ms. Stone can eventually transition into a role where she can take a more active part in managing and overseeing Assigned Counsel, including recruitment of additional attorneys to accept new cases,” Grochmal said.

This story was originally published July 7, 2023, 11:02 AM.



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Reporter Denver Pratt joined The Bellingham Herald in 2017 and covers courts and criminal and social justice. She has worked in Montana, Florida and Virginia.

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Appendix 6

Robert C. Boruchowitz, *New National Study Can Be a Catalyst for Transformational Change in Public Defense and the Criminal Legal System*, King County Bar Association Bar Bulletin, Oct. 2023, at 1, 10-1.

Bar Bulletin

KING COUNTY BAR

Yer Blues

Volume 42 • Issue 2 • \$2.00
October 2023



From the Desk of the
EXECUTIVE DIRECTOR

By Christina Entrekin Coad

The second Monday in October is Indigenous Peoples' Day, a contemporary interpretation of the Columbus Day federal holiday originally enacted in 1932. How we approach this day varies: some choose to honor or celebrate, while others mourn. No matter how you experience Indigenous Peoples' Day, it is personal, and it is essential we commit to shifting our lexicon from "Columbus Day" to "Indigenous Peoples' Day."

Erasure and Rewritten History: The Importance of Acknowledging Indigenous Peoples' Day

Indigenous Peoples' Day was proposed by Indigenous people in 1977 to the United Nations as an offset to anti-Indigenous discrimination and to debunk the myth Columbus discovered America. Many of us remember the rhyme, "In 1492 Columbus sailed the Ocean Blue." This rhyme, and this version of American history I learned in school, sticks with me. I am certain that somewhere exists a photograph of me and my classmates dressed as either Indian Braves or Pilgrims, each costume fashioned from either a brown paper bag or white butcher paper. I

feel a twinge of embarrassment to admit my excitement about having been dressed in a paper bag, but it seemed far better than being invisible. These retellings of history, a discovered continent, of gracious Thanksgiving hosts and their invited guests, are not only inaccurate, but are also harmful and dangerous rewritings of history.

Erasing and distorting Truth and lived experience are long-standing tactics of war, slavery, and colonization. This threat is not confined to the past but persists as a contemporary tool of oppression being exacted in American

schools, libraries, and community centers. For example, Florida's new 2023 standards for social studies education include teaching, "slaves developed skills which, in some instances, could be applied for their personal benefit." I agree wholeheartedly with Congresswoman Shantell M. Brown's *Newsweek* op-ed: "what's happening in Florida is part of an ongoing, and far from new, effort across the country to erase, distort, and deceive people about Black

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New National Study Can Be a Catalyst for Transformational Change in Public Defense and the Criminal Legal System

By Robert C. Boruchowitz

There is a crisis in public defense, as experienced lawyers quit because the workload is crushing, and offices struggle to replace them. In some Washington counties this year, accused persons sat in jail for weeks with no lawyer at all. A new National Public Defense Workload Study makes clear that existing caseloads are far too

high.¹ King County and most jurisdictions in the state are facing significant turnover in defender staff and challenges in recruiting experienced attorneys for the most complex cases.

King County can be proud of the progress it has made in improving public defense since The Defender Association was founded as the first defender office in 1969. King County

and Seattle were among the first jurisdictions to set maximum caseloads for lawyers.

But the caseload limits, which now are required by a state supreme court rule, including 150 per year per lawyer for felonies, were based on National Advisory Commission standards that are 50 years old. The practice has changed dramatically, and defenders

now must understand a variety of technology and forensic evidence that did not exist when the standards were developed. They must digest terabytes of digital data and review hours of police video camera footage. The new Study identified these changes as well as the

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I • N • S • I • D • E

Swamped!

A local practitioner's
comedic take on the
fast-paced legal world.

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need to review “cell phone data, and social media data; the increasing use of forensic evidence; and the expanding scope of a criminal defense lawyer’s obligations, such as advising clients on the collateral consequences that attend criminal convictions.”

Sentences have become longer, and as less serious cases have become diverted out of the criminal legal system into alternatives, caseloads are more difficult because the percentage of complex cases has increased.

The old standards presumed that a lawyer could do an “average” misdemeanor in about five hours and an “average” felony case in about 13 hours. There was no distinction between a first offense “joy riding” and a multi-count homicide. The new study, which

took more than a year, informed by 17 other studies from around the country and based on the analysis of 33 experienced defense attorneys, found that “low severity” felonies require 35 hours of attorney time, and “low severity” misdemeanor cases require 13.8 hours. This means that a lawyer doing only low-level felonies could not do more than about 47 felonies a year.

One implication of the study is that to provide effective representation in 400 misdemeanors a year, as Washington’s court rule would allow, would require more than 5500 hours of work, or 106 hours a week with no vacations, holidays, or sick leave. The study found that murder cases require 248 hours of attorney time. But King County defenders who have murder and other life sentence cases routinely represent dozens of other clients at the same time.

Most people who go to court in America go to criminal court. Overwhelmingly they are poor and disproportionately they are people of color. Although people who cannot afford a lawyer are entitled to have one provided by the government, in some jurisdictions that does not always happen, and people end up pleading guilty without a lawyer so they can get out of jail. This year, three Washington counties have had multiple months in which they were unable to assign an attorney to people charged with crimes.

In Oregon recently, a federal judge ordered that people held in the Washington County jail without a court-appointed lawyer must be released 10 days after their initial court appearance.² The Oregon Supreme Court is scheduled to hear argument September 19 on a writ of mandamus on the questions of whether defenders may

withdraw when their caseload is excessive and whether cases should be dismissed if adequate counsel cannot be timely appointed.³

Often public defense lawyers have too many cases, not enough resources, and are paid less than they could make in private practice. Even though it is widely accepted that lawyers doing criminal cases need investigators, social workers, and paralegals to help provide effective representation, many public defense counsel have little or no such help.

Even though King County defenders have caseloads lower than the court rule limits, given the changes in practice since the court rule was adopted, they struggle to provide effective representation to all their clients.

In a recent *Seattle Times* op-ed, Department of Public Defense Director Anita Khandelwal and King County Councilmember Girmay Zahilay described the King County defenders’ caseloads as unsustainable. They wrote, “These caseloads grow even worse daily as experienced defenders qualified to handle the most serious cases quit, leaving a smaller and smaller number of attorneys to handle those most serious cases.”⁴

They added: “The situation for the shrinking number of attorneys qualified to handle the most serious offenses, such as murder or other crimes that carry a life sentence, has become even more dire.”

The National Public Defense Workload Study, published September 12, was produced by an unusual coalition that spent more than a year preparing it. The RAND Corporation, the American Bar Association, the National Center for State Courts, and Lawyer Hanlon, with funding support from Arnold Ventures, prepared the study and developed recommended attorney hours per type of case.

The study has produced a series of responses from state and national organizations.

“The NPDWS study is yet another alarm indicating that we have much more work to do to make the constitutional right to counsel real for everyone,” said Emma Andersson, deputy director of the American Civil Liberties Union’s Criminal Law Reform Project. “In this era of mass incarceration and overcriminalization, public defenders work to challenge systemic oppression every day. Despite their essential role, public defenders are consistently undervalued. Lawmakers and decision-makers must invest in public defense systems, while simultaneously reducing mass incarceration.”

The Chair of the Washington State Bar Council on Public Defense (CPD), Jason Schwarz, who is Director of the Snohomish County Office of Public Defense, said:

The accused are entitled to an effective advocate and that means a lawyer with time and resources to help. This study underlines what



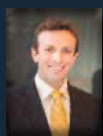
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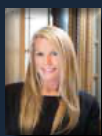
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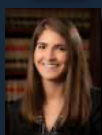
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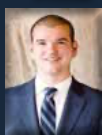
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public defenders are experiencing every day, which is a staggering increase in the number and complexity of cases....The CPD understands that overworked public defenders impact legal outcomes for the accused and the fairness of the criminal legal system.

The CPD Standards Committee has been reviewing the study and has begun developing recommendations on how to apply it to the Washington practice.

In August, the American Bar Association published revised Ten Principles of a Public Defense Delivery System. It reaffirmed that "For state criminal charges, the responsibility to provide public defense representation rests with the state; accordingly, there should be adequate state funding and oversight of Public Defense Providers."⁵

The Principles state:

Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations. Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology.

Citing the new national study in a footnote, the Principles state that national workload standards should never be exceeded.

The Principles continue:

If workloads become excessive, Public Defense Providers are obligated to take steps necessary to address excessive workload, which can include notifying the court or other appointing authority that the Provider is unavailable to accept

additional appointments, and if necessary, seeking to withdraw from current cases.

A few days before the National Study was released, the Washington State Association of Counties (WSAC), joined by Pacific, Lincoln, and Yakima Counties, filed suit against the State of Washington, seeking a declaratory judgment that the State's trial court public defense system violates the state and federal constitutions.⁶

The Counties seek an injunction "requiring the State to provide stable, dependable, and regular State funding sufficient to enable counties to provide constitutionally adequate and equitable trial court indigent defense services in addition to the other critical services they must provide for their residents."

According to the complaint, Washington's system of delegating trial court indigent defense obligations to the counties "denies indigent defendants equal access to justice." The lawsuit alleges the State has failed to provide counties with adequate and reliable funding. It also alleges that state limits on counties' authority to raise tax revenue leave counties unable to raise funds to cover court-appointed criminal defense costs.

The lawsuit asks the Court to declare the State's indigent defense system unconstitutional and require that the State provide counties consistent and stable funding for indigent defense.

So, what can we do about this crisis? The op-ed authors urged, "we must invest in more of the kinds of solutions voters support: diversion programs for lower-level offenses and more evidence-based strategies for reducing crime, like supportive housing, community-based accountability, and mental health and addiction recovery infrastructure."

These approaches are consistent with recommendations from other experts, including The Sentencing Project, which recently issued a report recommending that prosecutors not prosecute certain non-violent, non-public safety offenses and emphasizing that community-based approaches can prevent crime. They added, "For offenses which cannot be moved out of the criminal legal system altogether, early short-term diversion programs, which connect individuals to services or rehabilitative programming as early as prior to first court appearance, can offer an alternative to the harms associated with more prolonged court-involvement[.]"⁷

The Sentencing Project cited a study of more than 60,000 nonviolent misdemeanor cases in Boston that found that non-prosecution of a non-violent misdemeanor resulted in a 53% reduction in the likelihood of a new criminal complaint and a 60% reduction in the number of new criminal complaints, over the next two years, compared to individuals subject to standard case processing.⁸

The new National Public Defense Workload Study can serve as a catalyst for legislators, criminal defense lawyers, prosecutors, judges, corrections officials, former defender clients, and representatives of community groups to begin serious discussions both about how to reduce the number of cases in the system and to increase public defense resources, including more state funding.

Washington State Bar Association President Hunter Abell described the work of the Council on Public Defense as critically important:

Fleshing out standards that will support the state's constitutional obligation to provide 'adequate' legal counsel to anyone facing a criminal charge. What we are

talking about here is how long a person might have to wait to get their day in court, and the quality of their defense. Those are among the foundations of criminal justice.

Without transformational change soon, the erosion of public defense, which is critical to preserving the fairness and integrity of the criminal legal system, could lead to delays in adjudication, wrongful convictions, and a complete collapse of respect for the law and the courts. ■

Robert C. Boruchowitz is Professor from Practice and Director of The Defender Initiative, Seattle University School of Law. He is an emeritus member of the WSBA Council on Public Defense and was Director of The Defender Association for 28 years.

1 Pace, Nicholas M., Malia N. Brink, Cynthia G. Lee, and Stephen F. Hanlon, *National Public Defense Workload Study*. Santa Monica, CA: RAND Corporation, 2023. https://www.rand.org/pubs/research_reports/RRA2559-1.html.

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3 *Public Defender of Marion County, Inc. v. Izell Guajardo-McClinton*, calendar at <https://www.courts.oregon.gov/courts/appellate/go/Pages/sc-calendar.aspx>.

4 "Our public defender system is at the breaking point," *Seattle Times*, August 15, 2023, available at <https://www.seattletimes.com/opinion/our-public-defender-system-is-at-the-breaking-point/>.

5 *ABA Ten Principles of a Public Defense Delivery System*, August 2023, available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/1s-sclaid-603-public-def-principles-2023.pdf.

6 Press release at <https://wsac.org/washingtons-counties-file-suit-against-the-state-of-washington/>. The complaint is available at <https://wsac.org/wp-content/uploads/2023/09/Complaint-for-Declaratory-and-Injunctive-Relief.pdf>.

7 "Safety Beyond Sentencing," by Liz Komar and Nicole D. Porter, August 3, 2023, available at <https://www.sentencingproject.org/policy-brief/safety-beyond-sentencing/>.

8 Agan, A., Doleac, J., & Harvey, A. (2021). *Misdemeanor prosecution*. National Bureau of Economic Research.

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Appendix 7

Office of Public Defense 2024 Supplemental Budget Recruitment Specialist Team,
<https://www.courts.wa.gov/content/Financial%20Services/documents/2024/Supplemental/31%20OBC%20Recruitment%20Specialist%20Team.pdf>.

Washington State Judicial Branch

2024 Supplemental Budget

Recruitment Specialist Team

Agency: Office of Public Defense

Decision Package Code/Title: BC – Recruitment Specialist Team

Agency Recommendation Summary Text:

To address the shortage of public defense attorneys, particularly in rural counties, the Office of Public Defense (OPD) requests ongoing funding to coordinate statewide public defense recruitment efforts. A Recruitment Specialist Team will include 3.0 FTEs to assist county and city public defense systems by engaging with students at universities and law schools, providing grant funding and technical assistance to establish legal internship programs, and delivering trainings to counties and cities struggling with public defense recruitment/retention. (General Fund-State)

Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.00	3.00	3.00	3.00	3.00	3.00
Operating Expenditures						
Fund 001-1	\$0	\$642,225	\$642,225	\$627,225	\$627,225	\$1,254,450
Total Expenditures						
	\$0	\$642,225	\$642,225	\$627,225	\$627,225	\$1,254,450

Package Description:

Background and Current Situation:

State, county, and city public defense programs are experiencing unprecedented difficulties recruiting and retaining qualified public defense attorneys, who are critically necessary to ensure due process and a functioning legal system. Fewer law school graduates are seeking careers in public defense, and many experienced attorneys are retiring from the practice.

The shortage of attorneys is not limited to Washington State, and creative approaches are critical to find solutions that ensure constitutionally guaranteed public defense representation. Cities and counties of all sizes in Washington are facing this challenge, and most local jurisdictions lack the staff time and resources to actively recruit new and aspiring law school graduates to foster a pipeline into the public defense field.

Problem:

Cities and counties are struggling to recruit and retain adequate numbers of public defense attorneys to ensure due process for clients in their jurisdictions. Situations exist across the state where people are held in jail on criminal charges and public defense counsel simply are not available. Such shortages have become routine and widespread in other states, including Oregon, and some courts have been compelled to dismiss criminal charges due to a lack of public defenders. The current public defense shortage is not expected to resolve on its own, and requires a strategic, coordinated effort.

Proposed Solution:

OPD seeks funding to create a new Public Defense Recruitment Specialist Team to support public defense systems statewide to fill the gap in recruitment services. The Team, consisting of two FTE attorneys and one FTE program analyst,

will be dedicated to building a pipeline of law students into the public defense community statewide, administering grant funds to cities and counties to support internship and Rule 9 programs¹, and identifying strategies to retain attorneys in public defense jobs.

The Recruitment Specialist Team will collaborate with city and county public defense administrators, particularly in small and rural communities, which lack dedicated resources for ongoing recruitment strategies. Responsibilities will include:

- Guide city and county public defense administrators on establishing Rule 9 and other internship programs and administer grant funds to support compensation and housing stipends for the student interns;
- Promote public defense as a profession at law schools, universities, and high schools, and learn from students and faculty how to foster interest in public defense, including among persons of color who are underrepresented in the legal profession;
- Actively communicate with city and county public defense administrators to keep aware of their contracting and staff recruitment needs;
- Recruit and connect interested students and attorneys to public defense job and internship opportunities throughout the state;
- Train local attorneys, law students, and public defense administrators on opportunities for student loan forgiveness, including for contract workers, who can access federal public service loan forgiveness only under certain circumstances; and
- Identify and build on factors that attract law students and practitioners to public defense; identify and guard against factors that cause attorneys to leave the field.

Building a strong pipeline of public defenders will not happen quickly, and ultimately will be the result of continuous and collaborative efforts. A state-level focus on this issue will help stabilize retention in the profession in the years to come.

Fully describe and quantify expected impacts on state residents.

The Recruitment Specialist Team will bring new resources and expertise to small and rural jurisdictions to address immediate needs and plan ahead for improved future recruitment and retention. Smarter, more strategic recruitment will result in higher quality candidates for public defense positions and better representation for the clients they serve.

Explain what alternatives were explored by the agency and why this was the best option chosen.

OPD currently does not have the staffing or resources to dedicate to this purpose. Currently only the most sophisticated local public defense agencies are resourced for this type of active, ongoing recruitment. The far majority of jurisdictions, including rural ones, lack the resources and capacity for such ongoing work.

What are the consequences of not funding this request?

If this request is not funded, cities and counties will continue to struggle with recruiting public defense attorneys, and the shortage will lead to a lack of due process. In some instances, courts will be compelled to dismiss criminal charges if public defense counsel is not available.

Is this an expansion or alteration of a current program or service?

No

¹ As part of its regulation of the practice of law, the Washington Supreme Court adopted Admission and Practice Rule 9. Rule 9 authorizes supervised professional practice by qualified law students, enrolled law clerks, and recent graduates of approved law schools when they are licensed pursuant to this rule to engage in the limited practice of law as “Licensed Legal Interns.” A Rule 9 internship can be a valuable training opportunity for law students and an effective recruitment tool for employers interested in hiring new graduates.

**Decision Package expenditure, FTE and revenue assumptions:
Staffing Assumptions**

Job Title Classification	#s of FTE Round to Nearest Tenth				Workload Assumptions/Description
	FY 24	FY 25	FY 26	FY 27	
Managing Attorney	0.0	2.0	2.0	2.0	Two experienced public defense attorneys to focus on recruitment efforts and monitor a grant program. One located in Western WA, one in Eastern WA. Annual salary \$123,490 each. Annual benefits \$30,873 each totaling \$154,290 each * 2 = \$308,726
Program Analyst	0.0	1.0	1.0	1.0	Professional support staff for recruitment efforts including communication strategies, grant management, and tracking program outcomes. Annual Salary \$70,000. Annual Benefits \$18,500 totaling \$88,500

Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 24	FY 25	FY 26	FY 27	
Goods and Services	\$0	\$10,000	\$10,000	\$10,000	Costs for attending and hosting training events at universities and law schools; printed and digital materials and resources for aspiring public defenders at job fairs. Ongoing.
Travel	\$0	\$20,000	\$20,000	\$20,000	Travel costs for visits to local public defense offices, law schools, universities and other schools, and national training opportunities on recruitment strategies. Ongoing.
Equipment	\$0	\$15,000	\$0	\$0	Start-up costs for technology & equipment, \$5,000 per position. One-time.
Grants or Pass-Thru Funding	\$0	\$200,000	\$200,000	\$200,000	Reimbursement-based grants with city and county governments to promote the establishment of public defense Rule 9 and other internship programs, with emphasis on rural jurisdictions. Ongoing.

How does the package relate to the Judicial Branch principal policy objectives?

Fair and Effective Administration of Justice

Fair and effective administration of justice is contingent on the availability of a sufficient number of skilled public defense attorneys to provide constitutionally guaranteed representation.

Access to Necessary Representation

Without a sufficient number of public defense attorneys, defendants may be denied their constitutional right to counsel and timely resolution of charges against them. They may be held in jail without timely access to consult with legal counsel. They may have to delay their court cases while awaiting appointment of counsel.

Sufficient Staffing and Support

An insufficient number of local public defense attorneys are available to accommodate the demand in counties and cities statewide. The need is particularly great in misdemeanor cases (recruiting new attorneys) and high level, complex felonies (retaining experienced attorneys).

Are there impacts to other governmental entities?

This service would substantially assist county and city governments who are experiencing challenges in recruiting a sufficient number of public defense attorneys.

Stakeholder response:

OPD anticipates support for this proposal from local governments, courts, the Washington State Bar Association, law schools, universities, and high schools.

Are there legal or administrative mandates that require this package to be funded?

No

Does current law need to be changed to successfully implement this package?

No

Are there impacts to state facilities?

No

Are there other supporting materials that strengthen the case for this request?

Recent publications regarding shortages of public defense attorneys:

- [*Could a Public Defender Shortage Lead to Cases Being Dismissed?*](#) ; TVW's The Impact, September 6, 2023.
- [*"Very Troubling": Dozens in Whatcom County Waiting for a Public Defender to be Named*](#); Bellingham Herald, May 15, 2023.
- [*Tri-Cities Officials Race to Fix Lawyer Shortage before Criminal Cases are Dropped*](#); TriCity Herald, May 7, 2023.
- [*Attorney Shortage Affecting Some Charging Decisions in Yakima County, Prosecuting Attorney Says*](#); Yakima Herald-Republic, Feb 27, 2023.
- [*Attorney Shortage, Caseloads Leading to Shortage of Court-Appointed Attorneys*](#); Yakima Herald-Republic, Oct. 7, 2022.
- [*Class action lawsuit filed against state by criminal defendants over lack of public defenders*](#), The Oregonian, May 16, 2022.
- [*'I'm so confused': People without public defenders in Oregon speak out amid crisis*](#). Albany Democrat-Herald, September 4, 2022
- [*The Need for More Black Lawyers*](#), Mondaq (2021).

Are there information technology impacts?

No

Office of Public Defense
Policy Level – BC – Recruitment Specialist Team

Agency Contact:

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Appendix 8

Office of Public Defense 2024 Supplemental Budget Statewide Evaluation of Public Defense Services,

<https://www.courts.wa.gov/content/Financial%20Services/documents/2024/Supplemental/32%20BD%20Statewide%20Evaluation%20of%20Public%20Defense%20Services.pdf>.

Washington State Judicial Branch

2024 Supplemental Budget

Statewide Evaluation of Public Defense Services

Agency: Office of Public Defense

Decision Package Code/Title: BD – Evaluation of Public Defense Svcs.

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests one-time funding to contract with an independent subject-matter expert organization to conduct a statewide evaluation of county and city public defense services to help inform OPD and the Legislature on the most effective methods to support, monitor, and resource local public defense services and ensure constitutionally sufficient representation of indigent individuals in all jurisdictions. (General Fund-State)

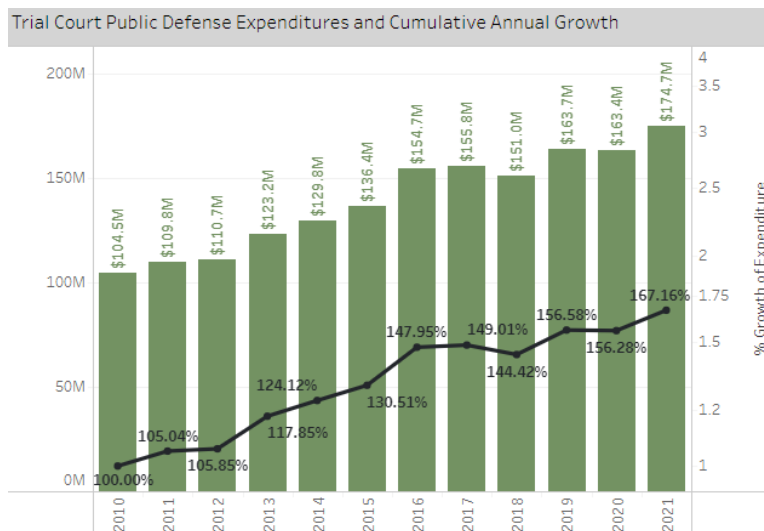
Fiscal Summary:

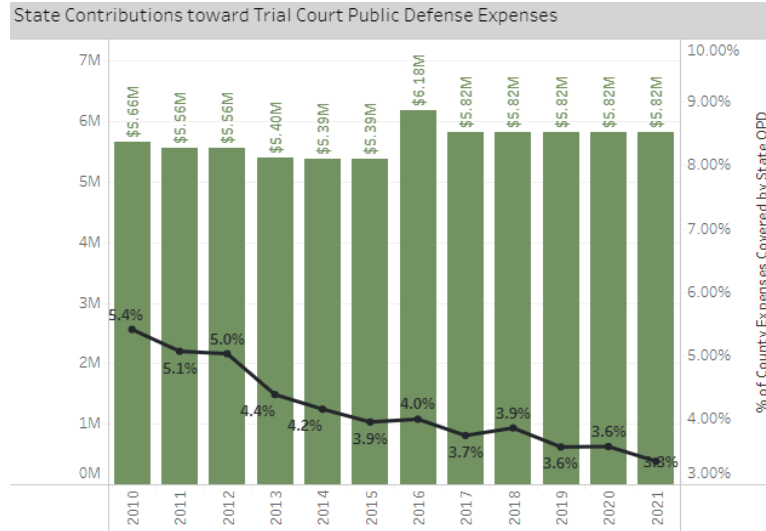
	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.0	0.0	0.0	0.0	0.0	0.0
Operating Expenditures						
Fund 001-1	\$160,000	\$160,000	\$320,000	\$0	\$0	\$0
Total Expenditures						
Net Cost	\$160,000	\$160,000	\$320,000	\$0	\$0	\$0

Package Description:

Background and Current Situation:

Washington law requires county and city governments to fund and deliver indigent criminal defense within the scope of their local government functions. ([RCW 10.101.030](#)) Meanwhile, the Washington State Office of Public Defense (OPD) provides state-funded representation in other unique case types. ([RCW 2.70.020](#)) OPD also disburses some state grant funds to cities and counties to support improvements to local public defense services. ([RCW 10.101.050 - .080](#)) However, as shown in the following two charts published by the [Washington State Association of Counties](#), county public defense expenditures have increased, while state grant funds have remained largely stagnant:





In recent years there have been proposals to increase state funding for local governments' public defense services:

- [Senate Bill 5773, 2023-2024 Legislative Session](#)
- [House Bill 2687, 2017-2018 Legislative Session](#)
- [Counties Suffer from Inadequate State Funding for Trial Court Public Defense Services](#), Washington State Association of Cities, January 14, 2020.
- [Frustrated and Broke, Washington Counties Consider Suing the State](#), NW News Network, April 5, 2018.

Additionally, in recent years litigation has raised concerns about some local governments' capacity to deliver constitutionally sound public defense representation:

- [Davison v. State](#), 196 W2d. 285 (2020)
- [Wilbur v City of Mount Vernon et. al.](#), 989 F.Supp 2d 1122, W.D. Wash (2013)

Washington is not unique in facing questions and challenges to the funding and delivery of public defense services. Neighboring state legislatures have recently taken significant steps to address the funding sources and structural models needed to improve public defense representation. For example:

- In 2023 Idaho House Bill 236 transitioned public defense services from counties to a new, state-administered system. ([House Bill 236 and Next Steps](#), Idaho Association of Counties, April 24, 2023)
- In 2023 Oregon Senate Bill 337 increased funding for the state-run public defense system, and initiated a transition from a contract model to state employee staff attorneys to combat the current shortage of attorneys. ([Oregon Lawmakers Put \\$98 Million Toward Public Defender Crisis](#), Oregon Capital Chronical, June 22, 2023)

Problem:

Washington lacks a comprehensive evaluation of current local public defense services, and lacks a plan for how the state can most effectively channel resources to support constitutionally effective representation in trial courts statewide. Counties and cities administer public defense differently jurisdiction by jurisdiction, which makes it more difficult for the state to strategically identify needed resources or measure the effectiveness of state support. The absence of a strategy is particularly acute as some jurisdictions are currently experiencing extreme shortages in new applicants for public defense positions, and an increase of attorney attrition. In some instances, incarcerated indigent individuals are without

counsel and denied constitutional protections. (See, for example, [Defendants Have a Right to Counsel, but Tri-Cities Struggles to Hire Enough Lawyers](#), Tri-Cities Area Journal of Business, January 2022.)

Proposed Solution:

OPD requests one-time funding to contract with an independent subject-matter expert organization to conduct a statewide evaluation of county and city public defense services. Using an objective perspective founded in state and national public defense standards and an understanding of public defense systems in other states, the selected organization will take a “deep-dive” look into a sample of representative jurisdictions in Washington. The sample cities and counties will be selected to reflect diversity in population, geographic characteristics, and public defense delivery models. The contracted organization will also engage with “Project Advisors” comprising public defense representatives, city and county government representatives, state representatives from the three branches of government, and community representatives experienced with and/or impacted by city and county public defense services. At the conclusion of the evaluation the organization will submit a report to the Legislature identifying current barriers to effective representation, and will recommend local government and state government solutions for effective strategies to ensure constitutionally sufficient services.

Fully describe and quantify expected impacts on state residents.

State residents who engage with or who are represented by public defense counsel currently experience different levels of service jurisdiction-by-jurisdiction. A statewide evaluation will help residents understand the expectations of constitutionally sufficient public defense representation provided by their government.

Explain what alternatives were explored by the agency and why this was the best option chosen.

OPD currently lacks both the staffing capacity and subject-matter expertise to engage in such an evaluation on its own. OPD employees work intimately with local city and county governments, and collect data and information that can be helpful components for an evaluation. However, such an evaluation could have long-term implications and must be conducted by an organization that already has an established methodology that has been successfully employed to evaluate other public defense systems around the nation.

What are the consequences of not funding this request?

Not funding this Decision Package will leave Washington without expert guidance on whether and how to better support city and county governments for improved public defense services.

Is this an expansion or alteration of a current program or service?

No.

Decision Package expenditure, FTE and revenue assumptions:

Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 24	FY 25	FY 26	FY 27	
Contract with Expert Organization	\$150,000	\$150,000	\$0	\$0	Expert organization to conduct statewide evaluation of city and county public defense services and write report for the Legislature with findings and recommendations. Work would begin in FY 2024 and conclude in FY 2025.
Travel	\$10,000	\$10,000	\$0	\$0	Travel expenses for Project Advisors to inform the expert evaluation process.

How does the package relate to the Judicial Branch principal policy objectives?

Access to Necessary Representation

Cities and counties take individualized approaches to structuring and funding public defense services, which can have direct impacts on the quality of representation received by clients. For example, some jurisdictions provide monitoring and oversight of contracted defense counsel, while others do not. Some incorporate case investigation and social work services into their scope of public defense services, while others do not. Some fund legal assistants and paralegals, others do not. The administrative structure and resourcing of local public defense can directly impact an indigent individual's ability to effectively exercise their constitutional rights to challenge the state's evidence.

Sufficient Staffing and Support

The staffing and support of public defense services varies by jurisdiction. While the WSBA has published recommendations on appropriate staffing and support of public defense delivery systems ([Washington State Bar Association Standards for Indigent Defense Services, 2021](#)), no comprehensive evaluation has reviewed whether jurisdictions meet these standards, or determined the consequences of falling short of these recommendations.

OPD does not have sufficient agency staff to conduct the proposed comprehensive statewide evaluation, thus proposes a contract with an independent subject-matter expert.

Are there impacts to other governmental entities?

No.

Stakeholder response:

Throughout the summer OPD met with a variety of stakeholders who are in favor of engaging a subject-matter expert organization to conduct a statewide evaluation of public defense. Stakeholders at these meetings included legislators, staff from the Office of the Governor, members of the Washington State Association of Counties and the Association of Washington Cities, a County Manager, an elected County Prosecuting Attorney, and representatives of the Washington Defender Association and the Washington State Bar Association's Council on Public Defense.

Are there legal or administrative mandates that require this package to be funded?

No.

Does current law need to be changed to successfully implement this package?

No.

Are there impacts to state facilities?

No.

Are there other supporting materials that strengthen the case for this request?

- [Nine Ways that States can Provide Better Public Defense, Prison Policy Initiative, July 27, 2021.](#)
- [Reframing the Indigent Defense Crisis, John Gross, Harvard Law Review, March 18, 2023.](#)
- [State Evaluations, The Sixth Amendment Center](#)

Are there information technology impacts?

No.

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