

Subject: Support for the 2023 National Public Defender Workload Standards

Dear Honorable Justices,

I am writing to express my strong support for the adoption of the 2023 National Public Defender Workload Standards.

As a former employee of this Court, I have the utmost respect for each one of you – those on the bench, those in chambers, and those in administrative positions. I have seen first-hand the effort that you all put in, the care you take in your approach, and the sincerity you put into your work. I hold your thoughts, opinions, and beliefs in very high regard. This is why it feels so crucial for me to add in my perspective as both a friend of the court, and a friend to you all.

I have had the honor to work as a public defender in the State of Washington. In law school, I spent both of my summers interning at the Whatcom County Public Defender Office, first as a legal and investigative intern, then as a Licensed Rule 9 intern. After passing the Bar Exam, I began working for the Snohomish County Public Defender Association. While I have only been at this office for a little over a month, I have seen coworkers, clients, prosecutors, and judges adversely suffer from the mountains of active cases that are piled up, and cases that continue to flood in.

As I was recently sworn into the Washington State Bar Association, I took an oath. An oath to support the Constitution of the State of Washington and the Constitution of the United States. An oath to never reject the cause of the defenseless or oppressed. An oath to abide by the Rules of Professional Conduct approved by this very Court.

Those very Rules require us, as attorneys, to be zealous advocates for our clients. These Rules contemplate advocating for our clients in the office and in the trial courtroom. However, for many of us, we also feel called to zealously advocate for our clients in many other ways, which is why it is important for us as public defenders to share our experiences with this Court, on behalf of our clients.

It is a travesty how many attorneys are turned away from public defense so quickly. The phrase “work-life balance” is often ridiculed. Burnout is real and takes away many passionate and skilled lawyers from our field. Workload standards must be revised to support advocates and retain experienced attorneys.

The State of Washington relies on its court system to do justice to everyone who comes before them, victims and defendants alike. Failure to adequately provide for public defense hurts everyone involved in the court system. Current standards allow a public defender to be assigned 400 misdemeanors a year (less than five hours per client for an entire case), or 150 felony cases a year (less than eleven hours per client for an entire case). That is unsustainable.

What is more important than the pressure on public defenders is the danger our clients face considering the volume of cases we each handle. We strive to be the best advocates for our clients, but with how little time we have to represent each client, there are serious risks of constitutional violations that may take years to remedy, if ever. Indigent defendants should not bear the burden of the system's inability to adequately regulate the sheer number of cases.

Cases are being force-confirmed in courts around the state because of the age and volume of cases. Public defenders are fearful of providing ineffective assistance on cases we received. Clients are brought to trial with little confidence in their attorneys, knowing they have just met them.

Charges are being prosecuted that are merely crimes of poverty, causing our clients to be stuck in a cycle of incarceration and debt to the courts. The battles of trial are becoming administrative wars between offices because trial attorneys are overwhelmed by cases. The adversarial nature of the criminal field is worsening daily.

The revised Standards are necessary for the criminal court system to function. Administrative staff, investigators, social workers, technical support and infrastructure, training, and supervision all must be adequately provided for a public defense office to fulfill all the varied and vital tasks needed for client representation. To fail to provide sufficient resources to one side in adversarial court proceedings is a recipe for injustice, and indigent defendants have fewer resources than any other player in a criminal case.

In some places, accused persons are on waiting lists for lawyers because the existing public defense attorneys cannot take any more cases. Implementing the new standards will make clear that public defense budgets must be addressed, by the State and local jurisdictions, to provide for more lawyers.

In evaluating the revised Standards for adoption, I ask the Court to consider that what is required for truly competent representation today is vastly different than decades ago, even for the same charges. Persons accused of crimes have a right to competent counsel who can, among other things, fully explore forensic and other scientific issues at work in their case, provide adequate and accurate advice about immigration consequences, request and review extensive electronic evidence in many cases, and understand as well as address burgeoning mental health and addiction needs of many clients.

It is my fervent hope that this Court will adopt the proposed changes to the indigent defense standards as approved by the WSBA Board of Governors.

Sincerely,

Gabrielle Fisher, Attorney  
Snohomish County Public Defender Association