

Justices of the Washington State Supreme Court,

My name is Molly Gilbert; I am a full-time Defense Investigator for the King County Department of Public Defense, in my second term as Union President for the DPD/SEIU 925 chapter of line attorneys and staff, and honored to be a member of the WSBA Council on Public Defense. I am writing to you in my personal capacity, and my views are my own.

My hope is to take a slightly different tack than my peers with this letter: the issues before you, in my opinion, can be broken into four primary parts:

1. Labor

- a. Unequivocally, there is an ever-decreasing pool of public defense attorneys available in WA State. While the term 'burnout' has been tossed around nationally in recent years, the extent to which public defense practitioners experience dangerous medical complications because of stress is unprecedented. In King County, the Department of Public Defense has higher FMLA leave rates than the Prosecutor's Office, Sheriff's Office, and Public Health. Labor and Caseloads have become a chicken:egg scenario; you can't fix one without fixing the other. The only way WA will hire enough attorneys to meet *any* improved caseload standard is by lowering that standard first, so we can retain the few attorneys we have left and then focus on recruitment to refill our ranks.
- b. The King County Department of Public Defense employs roughly 170 line attorneys.
 - i. In 2023, DPD lost 37 line attorneys; so far in 2024, DPD has lost 38 line attorneys, with 8 more planning to leave before the new year.
 - ii. That is **48% turnover** over two years, of public defense attorneys in King County; many of them were Class A Qualified, and their vacant positions were filled by attorneys who recently graduated law school.
 - iii. 14 of the attorneys who left this year were admitted to the Bar after Jan 1, 2021. It is not just our highly experienced attorneys who are burning out and leaving.
- c. Non-attorney public defenders are a labor pool that may be immediately available.
 - i. There are five local universities that offer Master of Social Work degrees, and a bevy of community colleges that offer degrees in Social & Human Services. Recruitment of Mitigation Specialists could begin there.
 - ii. Most local community colleges offer ABA-approved Paralegal Certificates that would ably prepare Paralegals for careers in public defense. Recruitment of Paralegals will likely be straightforward.
 - iii. Legal Assistants are another labor pool that is widely available, as most administrative professionals can swiftly adapt to the unique needs of public defense offices.
 - iv. Defense Investigators, however, are not so easy to find; there is one Private Investigator Certificate program in WA State. It would not be a heavy lift, however, for a state-level public defense organization (such as OPD or WDA, with appropriate funding) to create the needed curriculum for Defense Investigator training and recruitment.

2. Effective Representation

- a. My own caseload as a Defense Investigator has ballooned to an unsustainable size:
 - i. In 2018, my typical caseload was: 35 Felonies (including 3-4 homicides) + 5 Misdemeanors
 - ii. My current caseload is: 59 Felonies (including 10 homicides) + 5 Juvenile Felony cases + 9 Misdemeanors.
 - iii. When I started working in Public Defense in 2009, I was assigned to a Death Penalty case. Our Bates number went to ~500, and the entire defense file (State's Discovery included) fit on a single CD-ROM. It was less than 4gbs of data. The case file was in a document format that could be printed easily, the only exception being crime scene photos and audio from police interviews. For

Death Penalty cases the entire defense team was taken off caseload, so they could focus solely on that one incredibly important case.

- iv. In 2024, the Homicide cases assigned to me routinely exceed 100gb of State's Discovery; Bates numbering goes past 2000 pages, and multimedia files include security video footage, traffic camera footage, police body camera footage, COBAN police vehicle dashcam footage, 3D laser-scanned rendering of the crime scene in situ, cell phone extractions, cell tower location data, social networking warrant returns... one hypothetical case of mine includes every single one of those items listed, in addition to a large volume of forensic testing by the crime lab.
 - A. Unlike with Death Penalty cases, no member of the defense team receives caseload relief while working on Homicides. I currently have 10 death cases, in addition to my other 60+ cases. The Felony Attorneys I support carry open caseloads of 75-90 at any given time, with an over-saturation of Class As if the unlucky attorney is qualified to that level of practice.
- b. Attorney attrition unavoidably causes cases to transfer, which delays justice and is a major complication for criminal courts across WA State.
 - i. Every time an attorney burns out and takes medical leave, or quits altogether, their work must be shifted to their co-workers, who are similarly struggling under their own caseload.
 - ii. Data released recently by DPD Management shows the cost of these transfers:
 - A. Felony Murder cases accepted by DPD, on average, took 96 attorney hours to resolve if the case stayed with the same Attorney of Record.
 - a. If the Felony Murder case transferred to a new Attorney of Record, the average attorney hours jumped to 278. **This is an increase of 290% in the time it took for a single death case to resolve, simply because the case transferred to a new attorney.**
 - B. Felony Sex cases saw an increase of 227% for time to resolution post-transfer.
 - C. Felony Low cases saw an increase of 155% for time to resolution post-transfer.
 - iii. As stated previously in this letter, DPD lost 48% of its attorneys the past two years. It is impossible to imagine the toll that those case transfers took on every single defendant who lost their first attorney; for public defense clients in custody, these delays are unconscionable. And not just for them; victims of crime will see a case finally set for trial, only to learn that the defense attorney must be replaced and the process will practically start over again.
 - iv. This has become an ever-compounding problem. No longer are we dragging a COVID backlog in King County; we are dragging a transfer-case backlog that is increasing every week.
- c. Assigning a public defender to a criminal case, under current working conditions across WA State, is more akin to stamping an attorney's name in red ink on docket than it is assigning constitutional representation. Understandably, there is concern that the Proposed Standards will leave defendants stranded in court rooms without assigned counsel. But that is happening *now*. The truth is hidden behind an attorney's stamped name, and they and the accused unfairly bear the burden of the justice system's failings to keep public defense caseloads in check. Effectively, the defendant does not have representation when their defense attorney, and the defense attorney's support staff, are assigned so many cases that they have to pick which client matters more than others. It is an unfair ethical quandary at any level of criminal justice, but is especially unfair to lay upon the head of a single attorney who wants to (and is ethically obligated to) effectively represent every single one of their clients.
- d. Lastly, under this subject of 'Effective Representation', there lies a central question about the role of the Washington State Bar Association in the creation of these Indigent Defense Standards. I have read many submitted comments to this Court saying that WSBA is somehow 'out of line' with the Revised Standards. As the licensing body that sets legal ethics in WA State, it is well within their purview to determine how attorneys conduct themselves. This includes ensuring that those same attorneys are protected from outside sources that would disturb their legal practice. It is no different than the Washington Medical Commission setting standards for the operation of surgery wings to ensure their licensed physicians don't face

malpractice lawsuits, regardless of the hospital administration's finances or desire to improve patient survival rates.

3. Money

- a. I am thankful that I procrastinated in finishing this written comment, because it gave me the opportunity to read the letter submitted by Judge Deborah Fleck (retired) about the recommendations of the WA Trial Court Funding Task Force in 2005, which lays out a multitude of well-researched and thoughtful ways in which our state can appropriately fund Indigent Defense. It is clear that a better funding solution must be found; but implementation *cannot wait*.
- b. I wonder what the funding increases for the Washington State Patrol Crime Lab, and every single law enforcement agency in WA State would add up to, cumulatively, since the original 150 Felonies per year caseload limit was codified. I wonder how those increases compare to the projected cost of the Revised WSBA Standards. I wonder how much taxpayers pay for all of our state's Law Enforcement Oversight bodies, for litigation, and for police misconduct settlements.
- c. I wonder where the City of Seattle will find \$170,000,000, for the raises and \$50,000 hiring bonuses that they promised the Seattle Police Department.
- d. I wonder how much we're paying for sweeps of homeless encampments.
- e. I wonder how much our state spends to prosecute non-violent misdemeanors; and I wonder how many of those cases are dismissed before trial, or substantively reduced at plea.
- f. It is notable to me that the counterarguments of 'we don't have the money' and 'we'll need many more prosecutors upstream if you hire this many defense attorneys' have been dragged out every single time there are systemic improvements in indigent defense. Yet somehow our great nation abided by Gideon's Promise. Somehow WA State has previously created, and then improved, caseload standards without the justice system breaking.

4. Rollout

- a. I don't presume to know what is best for other counties, but believe that I am well informed on what is best for King County: and that is for the Revised Standards to have been rolled out *three years ago*. I wish that I could propose an alternate timeline that is more palatable, or suggest horse-trades between Non-Attorney staff and Caseload Relief, but all I can think of is these questions:

If I were arrested today and charged with a felony crime that I was innocent of, and was languishing in-custody at a local jail, would I trust that the public defenders assigned to represent me would do so effectively? If I knew their caseloads were as unbearable as they currently are? After my second or third attorney, would I still maintain my innocence, or would I capitulate and accept a plea deal just to get out of custody?

If I later found out that *my attorneys were still in Phase I and should have had lower caseloads*, and that 'eventually they would get there once funding was allocated and recent law school graduates applied for jobs', would I feel that I had received effective representation?

If I later found out that *my attorneys should have had more social workers, investigators, paralegals, and legal assistants available to assist them*, and that 'eventually staff would be hired once funding was allocated', would I feel that my case was properly investigated, or that my mitigating facts had been well-communicated during plea negotiations? Or would I feel like I was less important than defendants who happen to be charged with crimes during Phase III?
- b. My suggested rollout of the Revised WSBA Standards: **remove the phases completely**. Instead, make the final staffing and case weighting numbers an immediate reality. Advise on how jurisdictions can prove that they are progressing towards the final goals, and spell out the liability that they face if they try to ignore your orders. Instead of a 'final implementation date' thrown down like a gauntlet, describe in detail the dangers that our entire state faces if the WSBA Standards are not implemented swiftly. Help us finally create an enforcement mechanism that isn't solely reliant on Quarterly Certifications by individual attorneys (many of whom are forced to routinely commit perjury or else lose their jobs.)

- c. I also submit that the Revised WSBA Standards did not appropriately increase staffing ratios for Legal Assistants and Paralegals. During drafting of the Standards, I proposed that all support staff become 1:4 ratios; instead of increasing the staffing of Social Workers and Defense Investigators to 1:3 ratios, and leaving Legal Assistants and Paralegals at a 1:8 ratio, respectively, **I strongly believe 1:4 for all four non-attorney job classifications would far better meet the need of public defense services.**
- i. With attorney caseloads reducing in size, the work of Social Workers and Defense Investigators will decrease accordingly to sustainable levels.
 - ii. Processing digital discovery, e-filing, opening and closing cases in a case management database; these are all tasks that require increased administrative support. Paralegals in my office are overwhelmed with data entry tasks and secretarial work that pull them far away from the types of advanced legal support they want to offer our overburdened attorneys. Modern law offices need far more than 1 Legal Assistant and 1 Paralegal for every 8 attorneys, so please consider a flat 1:4 ratio for all four non-attorney public defense classifications.

I apologize in advance for the spelling and grammatical errors that I'm sure I missed in this letter. I deeply appreciate your thoughtfulness and care as you consider this profoundly important issue in front of you. Thank you for taking the time to read my comments, as well as the comments sent by my fellow DPD union members and coworkers.

Molly Gilbert

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