



**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

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October 24, 2024

The Honorable Chief Justice Steven González
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

RE: Standards for Indigent Defense

Dear Chief Justice González and Members of the Court:

The Washington State Office of Public Defense (OPD) stands in full support of the Indigent Defense Standards proposed by the Washington State Bar Association (WSBA). Implementation should occur as quickly as possible because oppressive workloads impact the lives of public defense attorneys, their staff, and most importantly, their clients.

OPD supports a three-year implementation schedule as proposed by the WSBA, but we recommend a start date better aligned with government budget development timelines. We also understand that the Court is seeking alternative implementation options. For that reason, this letter addresses other possible pathways that could be implemented swiftly, and provide immediate relief to public defense workloads and caseloads.

Caseloads Must Reflect Complexities in Modern-Day Public Defense

Public defense is and has always been a noble and challenging profession. However, the practice today is markedly different from the past. Today's defenders represent a higher proportion of clients with serious substance use disorders and mental illness. They navigate increased volumes of discovery due to technological advances such as body camera footage, computer forensics, and social media content. They litigate increasingly complex legal issues such as fighting racial disparities and addressing criminal culpability due to brain development. Furthermore, defense attorneys are constitutionally mandated to advise clients of consequences of findings of guilty, such as severe immigration consequences, housing, and impact on public benefits which requires substantial time.

Recruiting and retaining public defense attorneys is increasingly difficult. The defense community cannot attract enough qualified attorneys due to growing complexities in this overworked, low-paying, under-resourced, and often unappreciated profession. This shortage has particularly impacted small, rural, and remote jurisdictions, literally leaving hundreds of people without their constitutionally guaranteed representation.¹ With other states facing similar recruitment and retention

¹ <https://www.aclu-wa.org/news/aclu-washington-sues-yakima-county-failing-appoint-attorneys-indigent-people-charged-crimes>

challenges, Washington must lead the way in achieving sustainable reforms that will attract young lawyers.

Addressing the public defense crisis requires a comprehensive approach, and a critical component is reductions to caseload limits. The Court's adoption of caseload limits in 2012 was a critical step at that time, but the profession has since evolved. New research illustrates how those numbers no longer align with constitutionally effective representation in modern-day defense practices.

For example, the following sample responses from a 2023 OPD-administered statewide survey on public defense job satisfaction illustrate current caseloads' impact on effective representation:

The caseload is the backbreaker. It is miserable constantly knowing there are so many obligations to my clients that I am not meeting due to caseloads. This knowledge and the stress make me struggle to stay present in my life outside of work.

-Anonymous Public Defense Attorney, 8 years' experience.

It is the endless and high rate of new cases that I see most attorneys burn out on, particularly class A public defenders. These cases, as well as felonies in general and some misdemeanors, take so much work to 'do the case right' that the high caseloads are extremely stressful and take a huge amount of work to keep up with. ... The amount of cases, and the tasks within those cases, make me feel like I am running from one task to another nearly every day. That's a bad feeling to have day after day, it's stressful, leads to burnout and mistakes, and hugely contributes to talented attorneys leaving public defense.

-Anonymous Public Defense Attorney, 8 years' experience.

I have come to realize that the state, the courts and the political powers that be, don't necessarily want us to have adequate time and resources to effectively represent people. They want our clients to have only so much representation so as to check the due process box officially, but not so much that we actually disrupt their system.

-Anonymous Public Defense Attorney, 10 years' experience.

I know that I could do better work with a smaller case load. It's frustrating when our effectiveness is limited by time constraints vs. knowledge, skills, or resources.

-Anonymous Public Defense Attorney, 29 years' experience.

Clarifying the Distinction Between Manageable Caseloads and Implementation Challenges

A recurring message among responses to the WSBA's proposed caseload limits is that they should be rejected due to resource constraints. OPD recognizes that limited financial resources and the lack of attorney applicants complicate immediate implementation of reduced caseloads. However, these criticisms conflate two distinct issues: whether the proposed standards are appropriate for public defense versus the challenges with implementation. OPD encourages the Court to untangle these issues and address them separately because professional standards for constitutional representation should not be dictated by budgetary constraints.

OPD Urges the Court to Adopt the WSBA's Proposed Case Credits and Caseload Limits

OPD urges the Court to adopt the qualification requirements and the case credits/caseload limits proposed by the WSBA. Unlike the Court's current caseload limits (established by Standards in CrR 3.2, CrRLJ 3.2, and JuCR 9.2) these newly proposed numbers are founded in recent data, research, and analysis.² They reflect public defense workload studies completed in multiple states and analyzed by experts from the American Bar Association and the RAND Corporation. These individual state studies were compiled for the purpose of serving as guidance to states like ours. Washington is incapable of conducting a local caseload study due to the decentralized nature of local public defense. In fact, the far majority of cities and counties do not collect time data for workload and caseload evaluation. This national study is the best resource we are likely to ever have on public defense workloads. While full implementation will not be immediately possible in most locations, these caseload figures should nonetheless serve to be the standards that we work towards to ensure quality representation for all public defense clients statewide.

Three-Year Implementation

The WSBA has requested the Court adopt a three-year implementation timeline for these new caseload limits. This timeline is ambitious, particularly given the limitation of external resources such as state funding to support local public defense services, and the limited number of attorneys seeking careers in public defense. However, this ambitious timeline is directly proportional to the growing concerns mounting in the public defense community, and the large volume of defenders, particularly in felony practice, who are pursuing work elsewhere. Public defense, in most jurisdictions, is not well paid compared to other legal professions, and the caseloads often require extensive hours which degrades quality of life and the ability to provide effective and compassionate representation. Immediate reduction of caseloads, coupled with increased reductions in upcoming years, will provide greatly needed relief for current defenders, provide incentive to remain in the profession, and attract others to or *back to* this work. While a three-year implementation timeline will be difficult in the short-term, it will create the conditions that are needed to preserve constitutionally required representation in the long-term.

The implementation date recommended by the WSBA is July 1, 2025. OPD recommends that the Court instead consider January 1, 2026 for the following reasons:

- Unlike the state government, county and city governments run on fiscal years that begin on January 1 and end December 31. Their budget process typically begins during summer months and concludes by early fall.
- OPD and other partners will request a significant increase for state funding of city and county public defense services in the upcoming 2025 legislative session, and the results of that request will help local jurisdictions plan for the first phase of implementation.

² To better understand the history behind the National Advisory Commission (NAC) Caseload Standards adopted in 1973 (150 felonies or 400 misdemeanors per year), see pages 15-22 of the National Public Defense Workload Study; Pace, Brink, and Hanlon (2023).
https://www.rand.org/content/dam/rand/pubs/research_reports/RRA2500/RRA2559-1/RAND_RRA2559-1.pdf

- Cities and counties will need time to hire and contract with additional attorneys and modify local practices. This effort would happen through calendar year 2025 and will result in immediate reductions while jurisdictions are ramping up towards January 1, 2026.

Alternative Suggestions for Implementation

Critics have noted that implementation could require doubling or tripling the public defense expenditures if current charging levels remain unchanged. The new case credits and caseload limits are only attainable and sustainable through additional funding, an increased attorney pipeline, and creative alternatives to court case filings. OPD is working to attract attorneys to public defense through new programming such as our recruitment specialists, our forthcoming rural internship program, and increased training academies. All of these steps are necessary and OPD will pursue them, but successful efforts may require longer than three years in some jurisdictions. Implementation challenges, nonetheless, must not stop progress. Budgetary and resource constraints should never dictate standards for legal representation. Below we have listed alternative implementation pathways for the Court to consider:

1. **Implement Phases I and II, Followed by an Evaluation:** As members of the public defense community have expressed, implementation of Phases I and II of the WSBA's proposed case credits and caseload limits will provide significant statewide relief. An alternative to fully implementing all three phases may be implementation of these two phases followed by a year-long pause during which an evaluation and analysis can be conducted. Should this approach be selected, OPD offers to partner with the Court, the defense community, WSBA, and city/county governments by planning for the evaluation, collecting quantitative and qualitative data, and exploring options and budget sources for the evaluation. Results would be published and shared with the Court and other partners to help inform budget and policy decisions at the state and local levels for completion of implementation.
2. **Prioritization of Felonies:** It may be logical to target initial efforts in the area of greatest need, such as felony caseload reductions, and reserve implementation of misdemeanors for a few years. In recent years, even prior to COVID, counties statewide have expressed difficulty recruiting and retaining a sufficient pool of qualified felony attorneys. The shortage began in rural areas and has spread recently to urban ones. Both staff and contract attorneys often begin their public defense careers in misdemeanors, and advance after several years to felonies. At this level they litigate more complicated issues, work longer hours, are exposed to repeated depictions of violence and trauma, and face more stressful consequences. As felony attorneys leave the profession, their remaining caseloads are spread among their remaining coworkers, creating an even greater workload, thereby perpetuating the cycle. Significantly reducing felony caseloads will create much-needed relief for this critical core of public defense.
3. **Local Public Defense Action Plans:** An option that permits localized pathways toward progress is Public Defense Action Plans (Plans), whereby counties and cities identify annual progress metrics towards complete compliance within a timeline prescribed by the Court.

Public defense practices, resources, challenges, and structures differ by jurisdiction, and significant reforms are sustainable when communities create localized strategies that capitalize on existing resources and address particularized barriers. Caseload reduction and

attorney recruitment/retention can be influenced by factors such as charging practices, disproportionate funding between prosecution and public defense, compensation levels (especially compared to local housing costs), lack of supervision or monitoring for public defense, loan repayment assistance, physical distance from law schools, availability of investigation and expert services, or amount of local training and support for the defense bar. Paths toward reform will vary from place to place. Nonetheless, the public we serve and our overworked public defense community deserve both progress and accountability.

Plans would detail the steps that will be taken to work towards compliance with the new case credits and caseload limits. The Court would identify a time limit, such as four, five, or six years, by when public defense attorneys everywhere would need to be in universal compliance with the case credits and caseloads in the Standards. The Plans should be available for public review and, similar to the requirement for local case weighting policies under the current Standards, be filed with OPD. The Plans should detail:

- The attorneys' current annual caseloads by practice area;
- The key challenges faced locally in attaining reduced caseloads;
- Plans to address those challenges; and
- Setting and reporting of annual performance metric goals to measure progress.

This Court has already adopted a structure under which public defense caseloads are measured in relation to locally adopted policies. Under the Court's current Standards for Indigent Defense, cities and counties may develop localized case weighting policies.³ Those policies must meet certain enumerated requirements.⁴ When attorneys file certifications in court, they certify to compliance with caseload limits. If they practice in a jurisdiction with a case weighting policy, their certification affirms compliance with caseload limits in accordance with the local policy. Alternatively, if they practice in a jurisdiction that does not have a case weighting policy, they certify to compliance with the presumptive caseload numbers in the Standards for Indigent Defense (e.g. 150 felonies or 400 misdemeanors, and all cases are counted as one credit).

Similarly, this Court could allow for a new parallel structure: permitting cities and counties to develop localized Plans which detail progressively decreased local annual caseload limits, and attorneys would certify to compliance with caseload limits identified in those Plans. If a jurisdiction does not adopt a Plan, an attorney's caseloads would be measured against the caseload limits adopted by this Court (for example, 47 felony case credits per year, as proposed by the WSBA). Finally, as is currently required for all case weighting policies, jurisdictions could be required to file their Plans with OPD.

OPD would work collaboratively with cities and counties in developing Plans and sharing resources. We would also include Plans in our Chapter 10.101 grant funding program, which already requires jurisdictions to use state funds to comply with or make improvements

³ Case weighting policies value cases as more or less than an "average case" based on the time typically required for representation. For example, a simple driving violation may be valued as less than one average case, whereas a domestic violent fourth degree assault will likely be valued as more than one average case. Case weights, rather than case numbers, are compiled for measuring caseloads.

⁴ Standards for Indigent Defense, Standard 3.5.

towards compliance with the WSBA Standards.⁵ As the centralized repository of the Plans, OPD could report to this Court, the Legislature, the public defense community, and other partners on the Plans and their updates.

4. Incremental Caseload Reductions of 15% until WSBA Caseload Standards are

Achieved: Jurisdictions currently vary in public defense caseloads, where in some locations the attorneys carry maximum caseloads (150 felonies or 400 misdemeanor case assignments per year), while others maintain lower caseloads. Some jurisdictions currently case weight, which may make adaption to the WSBA case weights easier, whereas others have never case weighted and will experience significantly more change. These variances mean that jurisdictions will have to invest different levels of funding and support to achieve the WSBA's prescribed three phases, and jurisdictions with higher caseloads will have a further distance to achieve progress. An alternative to the three-year plan could be to require jurisdictions to take a more incremental approach such as a 10% or 15% reduction per year, and attorneys would certify compliance to locally established increments until all jurisdictions reach the WSBA's caseload limits.

Under the WSBA's three-year plan, all jurisdictions would reduce down to the same caseload numbers under the same timeline. In some locations this would require a radical decrease in the first year from current caseload levels. Meanwhile in others, attorney caseloads are already in compliance with Phase I, yet they are still in crisis because of the dense concentration of high-level felonies, especially Class A and violent cases. Under the incremental approach, all jurisdictions would be required to make the same percentage reduction each year, bringing some relief to all locations. Jurisdictions with currently higher caseloads will take longer to reach compliance with the Standards, but the more gradual approach could be beneficial for purposes of attorney recruitment, resource development, and implementing changes to local practices.

Other Steps Forward

Caseload reduction is one of multiple steps necessary for public defense reform. OPD is committed to seeking additional funding for city, county, and state public defense services, and we request the Court's support in our legislative budget requests. We are committed to continuing increased training for defenders, implementing a new Rule 9 program in rural and underserved jurisdictions, actively engaging with law schools and universities to strengthen the pipeline into public defense, collaborating with prosecutorial partners to support increased options for pre-file diversion, and collaborating with local governments and state-level organizations to seek more solutions. We will also continue to collaborate with partners to find smart, sustainable solutions for providing quality public defense services in all areas of the state.

One significant challenge in addressing the public defense crisis is the lack of data. With Washington's decentralized public defense and courts, it is challenging to research and analyze public defense demands and shortages around the state. We ask for the Court's assistance in

⁵ Since 2006 OPD had administered a grant funding program for counties and cities as codified in RCW 10.101.050 - .080. To be eligible for funds, jurisdictions "must document to the office of public defense that it is meeting the standards for provision of indigent defense services as endorsed by the Washington state bar association or that the funds received under this chapter have been used to make appreciable demonstrable improvements in the delivery of public defense services." RCW 10.101.060.

exploring solutions with the JIS Committee to include public defense appointments as a trackable metric in the courts' case management systems.

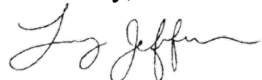
We implore this Court to support our public defense community and the people they represent by educating judicial officers on how the Rules of Professional Conduct particularly impact our profession. No attorney should be penalized or sanctioned for raising concerns over excessive workloads or seeking continuances due to inability to comply with these rules. Where workloads and other systemic obstacles interfere in public defense attorneys' ability to competently represent clients, to effectively communicate with them, to diligently investigate and litigate the cases, or to properly screen for conflicts of interest, judicial officers must welcome, listen to, and support the attorneys' requests. High public defense caseloads should not be a burden borne only by the public defense attorneys, their staff, and their clients. Rather, judicial support will be essential for finding solutions to ensuring quality representation for the communities that we all serve.

Finally, we offer a few small administrative corrections to the Standards submitted by the WSBA:

- Standard 4.B: This section refers to mitigation specialists and social workers. However, included should be "social services provider" to more accurately reflect the array of licensure and educational accreditations held by the professionals who conduct this work in public defense, and to not run afoul of RCW 18.320.010.
- Standard 14.B.6: The qualification standards should apply to appointed counsel who represent individuals after the first appearance or arraignment hearing. We find it unreasonable to expect that attorneys meeting all qualification levels will be available for these initial proceedings.
- Standard 14.C.2.f.iii: Adult Felony High-LWOP and Murder Cases: this section should conclude "at least one of which was submitted to a jury and at least one of which was a Felony-High *or Felony-Sex* case, and;". This should also apply to the Juvenile Felony High – Murder Cases, standard 14.C.3.f.iii.
- Standard 14.C.3.f.iii: Juvenile Felony High – Murder Cases: the years of experience in subsection ii and the trial requirements in subsection iii should reflect work in "adult or juvenile" cases and trials, not exclusively in adult felony cases and trials.

We appreciate the Court's time, effort, consideration, and demonstrated support for public defenders statewide. OPD is available for further conversations and discussions and to serve as a collaborative partner for improving access to justice in all Washington jurisdictions.

Sincerely,



Larry Jefferson
Director

From: [OFFICE RECEPTIONIST, CLERK](#)
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Subject: FW: WA State Office of Public Defense's Comment Letter Regarding Proposed Indigent Defense Standards
Date: Thursday, October 24, 2024 11:14:55 AM
Attachments: [OPD_Standards_Oct2024.pdf](#)
[image001.png](#)

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Sent: Thursday, October 24, 2024 11:13 AM
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Good morning,

Please find the Washington State Office of Public Defense's comment letter regarding the indigent defense caseload standards, which were proposed by the Washington State Bar Association, attached to this email.

Should you require any further information or documentation from our office, please don't hesitate to reach out.

Thank you for your time and consideration.

Best regards,

Molly Fraser (She/Her) - [What's This?](#)
Legislative Coordinator
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