

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: Comment on standards  
**Date:** Tuesday, September 24, 2024 8:18:06 AM

---

---

**From:** Robert Boruchowitz <boruchor@seattleu.edu>  
**Sent:** Tuesday, September 24, 2024 7:43 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment on standards

**External Email Warning!** This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

I urge the Court to adopt the proposed amendments to CrR3.1/CrRLJ3.1/JuCR9.2 STDS as recommended by the Washington State Bar Association Board of Governors.

As the GR 9 cover sheet emphasized:

Public defense in Washington is facing a crisis of attrition and an inability to recruit staff brought about by excessive workloads and poor compensation. Attorneys are resigning from the public defense profession in droves because they cannot continue the work given the volume of cases.

The proposed changes will stem the tide of resignations, encourage new law graduates to become defenders, and inspire former defenders to return to the field. The proposed amendments address (1) Support staff requirements, (2) attorney qualifications, and (3) caseload standards.

I have been engaged in public defense issues for 50 years, as a trial and appellate lawyer, as Director of The Defender Association in King County for 28 years, and as a law professor and consultant for 17 years. I chaired the Council on Public Defense Standards Committee that developed the proposed amended standards. This was a more than two year process, informed by listening sessions with practitioners and careful review of the new National Public Defense Workload Study. I was on the committee that revised the American Bar Association Ten Principles of a Public Defense Delivery System.

I serve on the National Association for Public Defense Committees on Workload and Systems Builders. I have been an expert witness on effective assistance of counsel and systemic public defense services in state and federal courts in New York, California, and Washington. I have helped to evaluate defender services in Illinois, New Hampshire, Louisiana, Nevada, Oregon, Utah, Idaho, Mississippi, Michigan, California, and Washington, D.C, and I have conducted assessments in

Arizona, Washington, and Pennsylvania.

I understand the enormous pressure on defender attorneys and staff in attempting to provide effective representation to clients under the current caseload limits. I also understand the political and financial challenges in obtaining funding for public defense.

I know that some opponents of the standards argue that it simply is not possible to find a way to implement them. The reality is that both state and local governments can develop new funding approaches and expand diversion programs to reduce the demand for public defense. When the Court implemented the existing 400 misdemeanor limit, some cities had public defense caseloads per attorney of 1000 or more per year. Local governments increased their budgets and developed diversion alternatives so that they could meet the new requirement. There still are local governments that prosecute DWLS 3 cases, a crime of poverty that mostly is no longer treated as a crime in some of our larger counties. These cases can constitute as much as 30 per cent of public defense misdemeanor caseloads. Even if the legislature does not reclassify DWLS 3 as non-criminal, local prosecutors and courts can develop alternatives and ameliorate the impact of reducing defender per attorney caseloads.

The amended standards would help to ameliorate the racial disparity in the criminal legal system, as the lawyers and staff would have more time for their clients' cases and to address the impact of systemic racial disparity on their clients who are disproportionately of color.

I have read the heart-wrenching accounts of defender lawyers who rely on medication to deal with the anxiety they have from crushing caseloads and their concern that they are not meeting their clients' needs. I have listened to experienced attorneys who quit public defense because of the workload. One of my strongest former students is leaving public defense because he cannot balance the work with caring for his new child.

Some of the attorneys who quit have said they would have stayed if they had some hope that the caseload would be reduced. Adopting the WSBA recommendation would provide that hope and lead to more lawyers and staff remaining in public defense and new folks wanting to become defenders.

I note this statement from the Sheriffs and Police Chiefs:

We would much rather see public defenders receive the support they need to do their jobs well and as required according to criminal case volume. We do not believe criminal accountability should be dependent on availability of a public defender. Any acceptable solution in this case would necessitate state and local officials working together to ensure there is a proper workforce to meet caseload needs.

This moment does present the opportunity for state and local officials to work together. As happened in Michigan, the state can develop new funding structures

to support the local governments and all stakeholders can help to implement the new standards. But this does not mean that there should be a new trial court workload study and delay of implementation of the standards. The standards are the product of more than two years of study, informed by a diverse group of practitioners and by the national study. State and local officials can work together to develop additional funding, to expand alternatives to traditional prosecution, and to provide incentives such as loan repayment assistance for defenders. We need to address the crisis in public defense, and the proposed amended standards are a thoughtful and comprehensive approach.

Thank you for your consideration.

Robert C. Boruchowitz

Professor from Practice

Director, The Defender Initiative

Seattle University School of Law