WACDL Washington Association of Criminal Defense Lawyers

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October 31, 2024

Washington State Supreme Court
Sent via email: SUPREME@COURTS.WA.GOV

Re: Washington Public Defense Caseload Standards

To the Honorable Justices of the Washington Supreme Court:

The Washington Association of Criminal Defense Lawyers (WACDL) asks the Court to approve needed changes to the public defense caseload standards. We respectfully urge the Court to consider the following points:

1. The current caseloads are badly outdated and do not reflect the tectonic shift in the volume and nature of electronic discovery that has occurred in the past decade.

The current caseload standards were adopted in 2012. In the world of technology, that was ages ago. To put this in perspective, in 2012:

- Law enforcement body camera footage did not exist.[1]
- Widespread smartphone use was still emerging.[2]
- Consumer online cloud storage was a novel concept in its infancy.[3]
- Digital device applications—e.g., Google maps, Instagram, Snapchat, wearable "biosensor" apps, to name just a few—were not embedded in our daily common human experience.

[1] *See, e.g.,* https://jsis.washington.edu/news/the-police-body-cameras-and-privacy-in-washington-state/#:~:text=Flash%20forward%20to%202017%2C%20when,officially%20outfitted%20by%20January%202018 (noting Seattle Police Department's body camera pilot program was first established in December 2014; Executive Order mandating body-worn video for all officers issued in July 2017).

[2] *See* https://techcrunch.com/2014/02/13/smartphones-outsell-dumb-phones-globally/#:~:text=2013%20was%20the%20year%20when,of%20a%20total%20of%201.8 (2013 was the year when smartphone sales first surpassed basic cell phone sales).

[3] *See* https://www.theguardian.com/technology/blog/2011/may/31/steve-jobs-icloud-lion-ios5 (Steve Jobs to unveil "iCloud" at Apple's June 2011 Worldwide Developer Conference).

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But the world has changed in just a few short years.

So has the discovery that criminal defense attorneys receive.

Now, in 2024, discovery often involves hours and hours of law enforcement body camera footage. Forensic downloads of smartphones and other electronic storage devices containing extraordinary volumes of data are common. Cell phone tower data, geofencing warrant data, and GPS data are increasingly standard aspects of criminal cases.

Importantly, defense counsel have their own independent obligation to adequately investigate the facts. In many cases, this requires timely and diligent investigation into complicated and voluminous digital evidence—separate from any discovery produced by the prosecution.

In short, the technological developments of the past 10-15 years mean that the resources that defense attorneys must devote to properly investigate and prepare their cases has increased substantially.

2. This Court's commitment to reversing the criminal justice system's disproportionate impact on communities of color calls for a present reduction of the caseload standards.

This Court recently recognized that racial injustices "are not relics of the past," and "racialized policing and the overrepresentation of black Americans [continues] in every stage of our criminal and juvenile justice systems."[4] This Court emphasized that the legal community "bear[s] responsibility for this on-going injustice," which "cannot be addressed without the individual and collective actions of all."[5]

This call to action extends to public defender caseloads.

Public defenders in Washington have long-shouldered the responsibility of protecting and defending the constitutional rights of indigent persons of color—persons who may be innocent, over-charged, or disproportionately targeted because of their race.

These public defenders have been consistently underfunded and overworked throughout our state's history.

This Court's conscious commitment to eradicating racial disparities in the criminal justice system calls for a present re-evaluation and reduction of the caseload standards.

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[4] Letter of The Supreme Court, State of Washington, June 4, 2020, https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf.

[5] *Id.*

3. This Court should credit the experts on the WSBA Council on Public Defense.

The caseload standards proposed by the WSBA Council on Public Defense (Council) are the result of more than two years of extensive study and dialogue with public-defense stakeholders across the state. The members of the Council are a group of our state's foremost authorities on public defense systems and administration, including individuals who have held leadership roles in Washington public defender offices over the past 50 years and are uniquely qualified to offer recommendations regarding appropriate caseload standards. These distinguished experts include Robert C. Boruchowitz (former director of The Defender Association and nationally recognized expert on effective assistance of counsel and systemic public defense services) and Eileen Farley (former director of Northwest Defenders Division of King County DPD and federal court appointed public defense supervisor for the Cities of Mount Vernon and Burlington[6]).

This Court should credit these subject matter experts.

Many individuals have submitted comments and critiques of the proposed caseload standards. But the members of the Council are the authorities in Washington on public defense standards of practice and public defense systems, and they have invested significant time and resources in carefully drafting these detailed standards. Respectfully, this Court should afford great weight to the recommendations of the Council.

4. Conclusion

Justice is not self-executing or automatic. Because our justice system is adversarial, we necessarily rely on the advocacy of defense attorneys to ensure that justice is done, and our state and federal constitutional rights are protected and upheld. Just outcomes—jury acquittals of the innocent; dismissals of those wrongly accused; reductions for those over-charged; and fair sentencing outcomes based on mitigating circumstances or youth—do not happen on their own. Rather, they are the product of hard work by individual criminal defense attorneys—often public defenders. Frequently, that hard work is limited by resources and an overwhelming caseload.

Many private defense lawyers have the luxury of managing their caseload by declining to accept cases that would impact their ability to provide effective representation to their existing clients. But public defenders do not. Rather, the

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[6] In *Wilbur v. Mount Vernon, et. al.*, 11-CV-01100 RSL (W.D. Wash.), United States District Court Judge Robert S. Lasnik concluded that "indigent criminal defendants in Mount Vernon and Burlington [had been] systematically deprived of the assistance of counsel at critical stages of the prosecution and that municipal policymakers have made deliberate choices regarding the funding, contracting, and monitoring of the public defense system that directly and predictably caused the deprivation." Dkt. 325 at 2.

resources that public defenders have to pursue justice for their clients are directly related to caseload standards and public defense funding.

Accordingly, we respectfully urge the Court to credit the work of the Council, re-evaluate the caseload standards, and adopt a reduction in the standards.

Sincerely,

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