WASHINGTON DEFENDER ASSOCIATION

Submitted via email attachment

October 31, 2024

Washington State Supreme Court
PO Box 40929
Seattle WA 98504-0929

Re: Comment on Proposed Amendments to the Court's Standards for Indigent Defense

Dear Chief Justice Gonzales and Members of the Court:

The Washington Defender Association (WDA) exists to support public defenders across the state. The vast majority of its membership is composed of line defenders carrying case loads. WDA is steered by an executive director and small staff, and by a Board of Directors, many of whom run public defense agencies in this state. WDA knows that our line defenders—our membership, our employees, our colleagues—need relief from crushing caseloads, and they needed it yesterday.

For this reason, WDA supports all of the WSBA's proposed amendments to the standards for indigent defense, including the new case credits and caseload numbers, and the three-year implementation timeline. WDA recognizes this is an ambitious timeline, and our Board of Directors understands the feasibility of this timeline is uncertain. In fact, most of our Directors will be directly tasked with the implementation of these standards in their own jurisdiction, so there is perhaps no one else in the state who understands the difficult balance this Court is being asked to strike. But as an organization, for the past forty years our duty has been to advocate for the needs of our membership, and our membership demands the expedient relief offered by the three-year implementation timeline. The true cost of constitutionally adequate defense can no longer be disproportionately borne by our membership, our clients, and our communities.

Public defense in Washington is at a tipping point.

The dire state of public defense in many jurisdictions in this state is well-documented and need not be belabored here. This Court need only review the dozens and dozens of comments received by practicing public defenders and defender staff to understand the house is crumbling. Overwhelming caseloads are taking a toll on the mental health of public defense professionals. Public defenders are exiting the profession at an unprecedented rate and attorneys starting their careers are not choosing to enter public defense with the current caseloads. Without adoption of a prioritized and expedited implementation plan to reduce their staggering workloads, the exodus will only grow.

Public defense traditionally has relied upon the commitment of extraordinary attorneys to work long hours with inadequate pay and benefits, which often fall short of that provided to other criminal legal system stakeholders. And public defenders in many locations in the state lack meaningful access to paralegals, investigators, social workers, experts, case management technologies, and administrative staff. This is particularly true in the jurisdictions that rely exclusively on contract counsel to deliver public defense.

Public defenders have an ethical duty no one else in the criminal legal system holds.

Of all the system actors in a criminal courtroom, only public defenders represent an individual human being. Prosecutors do not. Judges do not. This Court—and the public viewing this debate—must never lose sight of the fact that these standards are about meeting that ethical duty. Excessive caseloads lead to many clients accepting plea deals to get out of jail or to avoid multiple court appearances. Public defenders work twice as hard as anyone to try to ensure ethical representation of their clients, but system-wide there are too many public defenders who simply have too many cases to meet their ethical burdens.

Criminal cases are often complex, document-heavy, involve experts, and always involve an individual human being's life. In no other attorney job would an annual caseload of 150 adult felony clients, or 400 adult misdemeanors clients, or 250 youth clients *for one attorney* be normalized. But our system accepts this madness as somehow ordinary. With respect to our colleagues on the prosecution side, their comments and thoughts on the optimal caseload of a public defender have no place in this conversation. In no other area of the legal profession is opposing counsel invited to weigh in on their adversary's caseload—especially when that same opposing counsel holds all the charging discretion and power, and especially when public defense clients have no choice in their representation and generally come from vulnerable and historically marginalized communities.

Public defenders need more time with cases—with clients—to ethically represent all of their clients. A voice in opposition to the new caseload numbers is simply the system balking at the notion that public defenders should have adequate time to challenge the power of the State. At their heart, the proposed rule amendments recognize the professional responsibility public defenders have to their clients.

Reasonable caseloads will not mean justice-delayed for victims.

Many comments have focused on the impact to alleged victims, assuming such an impact would be negative. First, we must again point out that this conversation is about a public defender's professional responsibility to a client, who is a person accused and not convicted. But second, reasonable caseloads will not delay justice for victims—in fact, just the opposite should occur. With excessive caseloads for defenders, new case appointments fall deeper in a trial defender workload and go to the back of long line. The Courts consistently hear crime victims express their frustration with how long their case(s) take to resolve. Lower caseloads for defenders will reduce such delays and in turn reduce the frustrations of victims.

This Court should not conflate caseloads with implementation.

As other comments point out, opposition to the proposed amendments generally focus on implementation. This Court must separate the proposed caseload numbers themselves from the question of how and when the system will reach those numbers. There cannot be any serious debate that public defenders need lower caseloads to make the profession sustainable, and also need them as a matter of professional responsibility, as explained above.

Only a handful of comments received by this court speak to the proposed case credit/caseload numbers themselves, and the methodology employed to get to them. And to WDA's knowledge, no individual or organization raising a concern about the caseloads, or the RAND study offers any alternative, evidence-based caseload number.

The case credit and caseload proposals brought to this Court by the WSBA are the result of considered study, both nationally and locally, and should be adopted.

Implementation should conform to the timeline proposed by the WSBA.

We are facing an immediate crisis that requires immediate action. But as noted, WDA's membership is made up of line defenders as well as defenders who are charged with administering public defense. Our Board reflects those who carry out these different roles; some of those on the Board who run public defense agencies have concerns about the feasibility of the WSBA three-year plan. Different jurisdictions are experiencing different staffing and funding challenges, varied local political pressures, and unique obstacles that may hinder implementation in some places. Some worry that without significant increased financial support from the state, local jurisdictions will either be unable to, or simply refuse to, implement the three-year plan, and as a result those accused will be left to face the power of the state without the assistance of counsel.

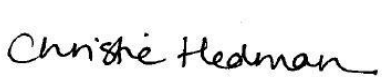
But this concern is not a new one. Since *Gideon* and throughout WDA's forty years of effort to have Washington adopt and implement realistic and fair public defense standards, opposition to change has always been dominated by concerns about lack of funding, local resistance to implementation, and worry about harm to those accused who are unable to afford counsel. However, the system has been forced to respond to reforms before, and those reforms have been successfully implemented to work towards a more just and efficient criminal legal system. WDA and its Board recognize the very real concerns about the funding and personnel necessary to implement these changes on the proposed timeline. However, as WDA surveys the current landscape, it must support the reforms as proposed because they are so desperately needed.

For the reasons stated above, WDA strongly supports and asks this Court to adopt the standards as proposed on the three-year implementation schedule as proposed by the WSBA.

WDA strenuously opposes any alternative that asks this court to abandon the careful work of the Council on Public Defense and to go back to the drawing board for more study with stakeholders. The crisis requires immediate and significant action, not just lip-service to a future ideal. Any alternative that involves more study at this time will just provide further excuses to delay implementation. Most importantly, delay will unquestionably contribute further to the exodus of exhausted line defenders, will not encourage law students to pursue a career in public defense, and will do nothing to address the "justice by geography" and disparity in resources and support available to defenders across the state.

Thank you for your consideration.

Sincerely,



Patrick O'Connor
President

Christie Hedman
Executive Director

From:	OFFICE RECEPTIONIST, CLERK
To:	Martinez, Jacquelynn
Subject:	FW: WDA Comments on Standards Court Rule Proposal
Date:	Thursday, October 31, 2024 1:36:54 PM
Attachments:	image002.png image003.png WDA Standards Court Rule Comment October 2024.pdf

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From: Christie Hedman <hedman@defensenet.org>
Sent: Thursday, October 31, 2024 12:27 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Patrick O'Connor <patrick.oconnor@co.thurston.wa.us>
Subject: WDA Comments on Standards Court Rule Proposal

Attached please find the Washington Defender Association's comments in support of the WSBA's proposed amendments to the Court's Standards for Indigent Defense.

Thank you for your assistance and please don't hesitate to let me know if you have any questions or have any problems with the attachment.

Christie Hedman
Executive Director
she/her/hers
Tel: 206.623.4321 | Fax: 206.623.5420
hedman@defensenet.org
WASHINGTON DEFENDER ASSOCIATION