

*The Court of Appeals
of the
State of Washington*



April 22, 2025

Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Comments about Proposed Amendments to Appellate
Caseload Standards for Indigent Defense Counsel

Dear Justices of the Washington Supreme Court:

We offer this comment as a resource as you evaluate the proposed amendments to Washington's caseload standards for appellate cases with appointed counsel. The Court of Appeals takes no position on what the interim caseload standard should be. We offer this comment to inform the court and stakeholders about Court of Appeals caseloads and potential impact on indigent parties. Our goal is to ensure that the court's decision is as informed as possible.

Unlike the trial courts, the Court of Appeals has readily accessible statewide data about the numbers and types of cases where appointment has been required since 2020, in addition to other relevant data that might be helpful to you.

The WSBA proposes an interim reduction in the appellate caseload standard from 36 cases credits per year, per full time attorney to 25 cases credits per year, per full time attorney until a caseload study can be completed. We understand from the Office of Public Defense (OPD) that it currently counts every 800 VRP record pages as one case credit. This means a case with a VRP record of 799 pages counts as one case credit and a case of 801 pages counts as two case credits. In other words, OPD does not currently give partial case credits, for example $\frac{1}{4}$ credit for every 200 pages of record, which would be a more precise way to equalize work among attorneys. We also understand that all PRP appointments count as at least two case credits irrespective of record size.

We note that the WSBA and the council for public defense have stated that a workload study is underway. As far as we are aware, our court has not been contacted, nor has data been collected from the Administrative Office of the Courts about Court of Appeals data to inform this workload study.

Attached are reports that show:

- The number of total appellate case filings in each division and statewide, each year 2019 through 2024. Figure 1.
- The number of Court of Appeals filings for each case type. These totals are provided for each division and statewide, each year 2019 through 2024. Almost all criminal appeal filings, juvenile offense filings, and dependency and termination filings involve appointed counsel. These cases only rarely involve privately paid counsel. Figure 2.
- Personal restraint petition filings and the total number of personal restraint petition appointments per year each year 2019 through 2024. Figure 3.
- The number of days between relevant events for criminal appeals pending or disposed of by opinion in each year 2019 through 2024. These include filing to record completion, record completion to completion of the appellant's brief, and completion of appellant's brief to completion of briefing. Figure 4.
- The total number of criminal case filings per division and statewide, every year since 2019, showing there has been an overall reduction in criminal case filings. Figure 5.
- The number of discretionary filings in Division Two, (meaning optional filings like reply briefs) in cases involving appointed counsel. Figure 6.
- Average and median civil and criminal record lengths in Division Two, 2022 to 2025. One day of trial typically results in a VRP that is approximately 200 pages long. A one-week trial consists of about 1,200 VRP pages, and a three-week trial consists of about 3,600 VRP pages, counting only trial days. Figure 7.
- The number of extensions ruled upon by the clerk in Division Two, 2017-2024. Figure 8.

Data Trends:

- Generally, case filings of all types have been steadily increasing to pre-Covid levels. But criminal filings have remained about 20 percent below 2019 levels.
- In Division Two, the only division that keeps data about the length of records, the average civil case record size is larger than the average criminal case record size. Average criminal record sizes have remained fairly constant since 2022. Average criminal record sizes have remained below OPD's benchmark of 800 pages in 2023, 2024, and to date in 2025.
- Discretionary filings in cases involving appointed counsel have increased steeply in recent years. Discretionary filings include reply briefs, motions to reconsider, and petitions for discretionary review to the supreme court.

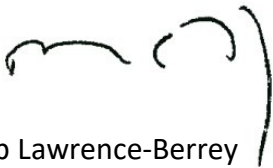
Current OPD backlog: Our understanding is that OPD currently has about 56 attorneys contracted to work on indigent appeals in Washington. Approximately 150 indigent criminal defendants currently have pending appeals and OPD has not yet assigned them counsel for their appeal. Statewide, between 2020 and 2024, approximately 10% of Court of Appeals criminal appeals resulted in reversals, while 56.4% resulted in remand for some relief or further action, for

example the striking of a legal financial obligation. Figure 9. Applying those rates to the 150 indigent people awaiting counsel, we estimate that about 15 of those people are entitled to reversal and almost 85 of them will be entitled to further action on remand like the striking of at least one legal financial obligation.

Estimates of system capacity and the number of full-time attorneys needed to avoid steadily increasing numbers of indigent defendants without appointed counsel: Assuming OPD could award partial credits, and assuming 4-year average criminal appeal record length of 739 pages, an attorney completing 36 case credits would be able to complete about 36 cases per year using OPD's current system crediting one case credit per 800 record pages. Using the total number of 2023 filings of cases subject to appointed counsel (1,079), it would take 30 full time attorneys working on Court of Appeals cases alone to avoid a steadily increasing OPD backlog. If the caseload standard were reduced to 25 case credits, it would take 43 full time attorneys working on Court of Appeals cases alone to avoid a steadily increasing OPD backlog.

In addition to the data provided here, we are happy to explore whether we have other data relevant to any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Lawrence-Berrey', with a stylized flourish at the end.

Rob Lawrence-Berrey
Presiding Chief Judge
Washington State Court of Appeals, Division III

Figure 1.

Total Annual Filings by Division by Year Since 2019

Year	D1	D2	D3	Totals by Year
2019	1,569	1,373	763	3,705
2020	1,298	1,104	635	3,037
2021	1,293	1,075	720	3,088
2022	1,350	1,208	754	3,312
2023	1,370	1,415	707	3,492
2024	1,386	1,271	746	3,403
Total Filings	8,266	7,446	4,325	20,037

Data Source: Filings and Terminations BIT Reports

Figure 2.

COA Total Filings by Case Type

Case Type	2019	2020	2021	2022	2023	2024	
Criminal	1017	573	545	877	888	846	
Domestic	241	184	182	182	220	277	
Civil	791	663	697	771	860	879	
Juv. Dep.	152	105	152	128	85	96	
Juv. Off.	38	27	38	35	41	30	
D/R	494	483	525	458	488	504	
PRP	849	908	845	777	807	626	
Probate/ Guardians	63	39	46	52	49	78	
Mental Ill/ Alcohol	43	45	45	24	44	60	
Adoption/ Parentage	17	10	13	6	10	7	
Other	0	0	0	2	0	0	
Totals	3,705	3,037	3,088	3,312	3,492	3,403	Total % Change
YTY % Change		-18.0%	1.7%	7.3%	5.4%	-2.5%	-8.2%

Data Source: Filings and Terminations BIT Reports

Figure 3.

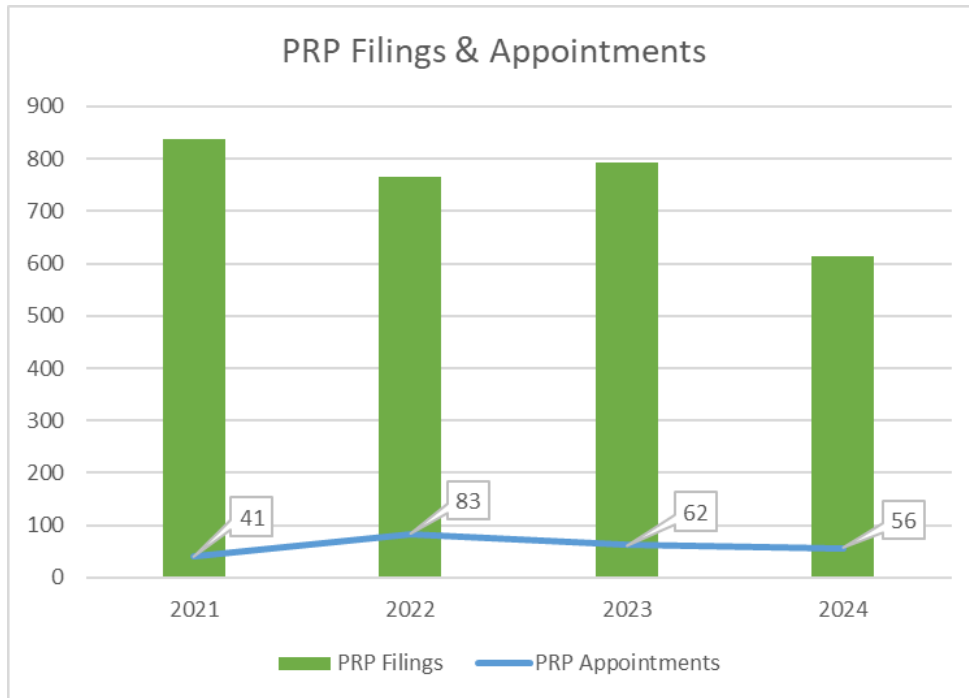


Figure 4.

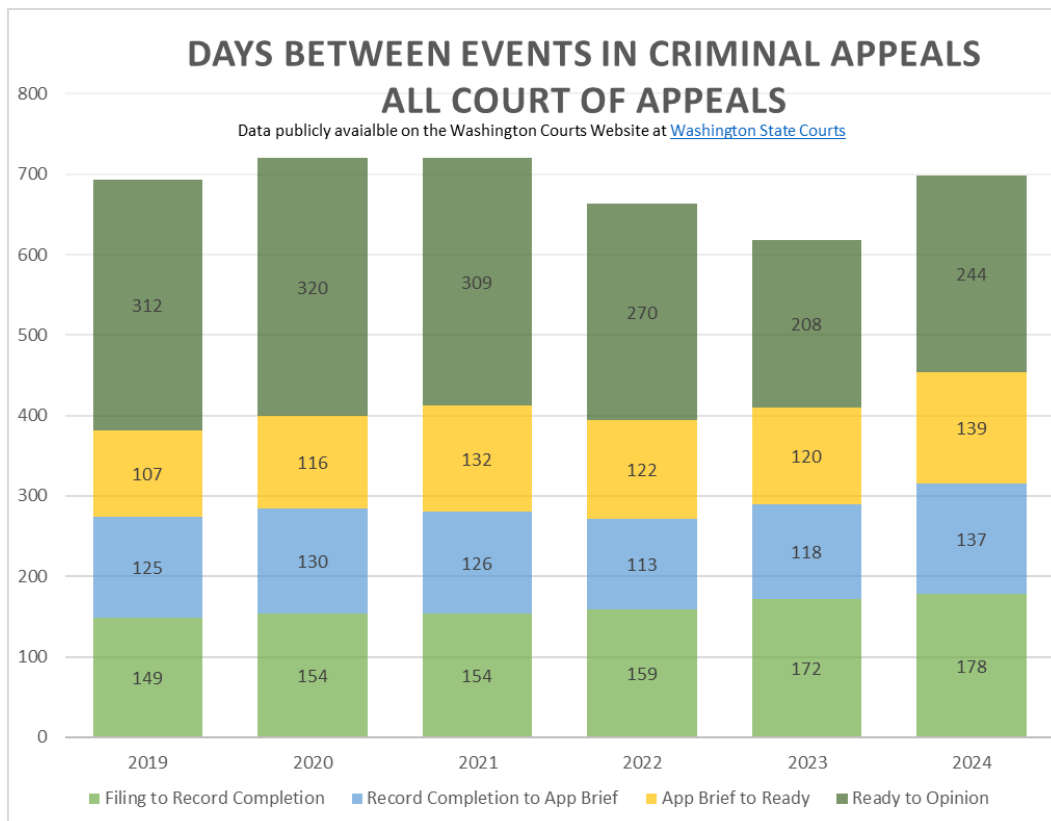


Figure 5.

Total Criminal Filings by Division by Year Since 2019*

* Criminal Filings aggregate the following case types: Criminal, Juvenile Offender, and PRPs

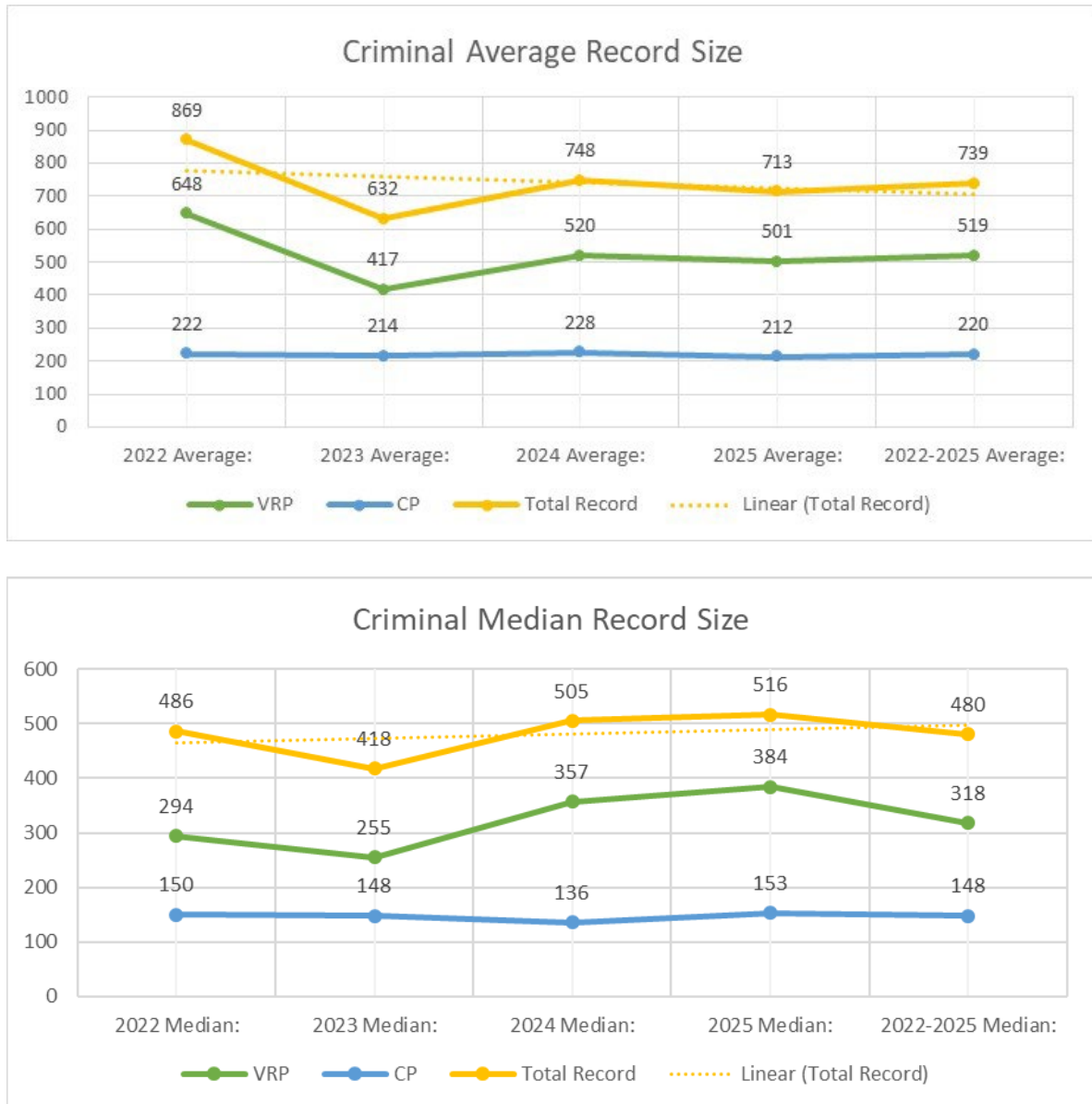
Year	D1	D2	D3	Totals by Year
2019	704	766	434	1,904
2020	568	572	368	1,508
2021	520	554	354	1,428
2022	649	639	401	1,689
2023	607	792	337	1,736
2024	517	655	330	1,502
Total Filings	3,565	3,978	2,224	9,767
% Change 19-24	-27%	-14%	-24%	-21%

Data Source: Filings and Terminations BIT Reports

Figure 6.

	± 2019	± 2020	± 2021	± 2022	± 2023	± 2024	± 2025	Grand Total
Appellants Reply brief	132	113	76	68	98	289	64	840
Motion for Reconsideration	5	26	35	19	25	36	8	154
Notice of Discret Review to Supreme Crt	31	28	11	22	49	29	2	172
Petition for Review	23	79	80	68	97	91	9	447
Petitioner's Reply brief	2		7	5	14	11	1	40
Grand Total	193	246	209	182	283	456	84	1653

Figure 7.



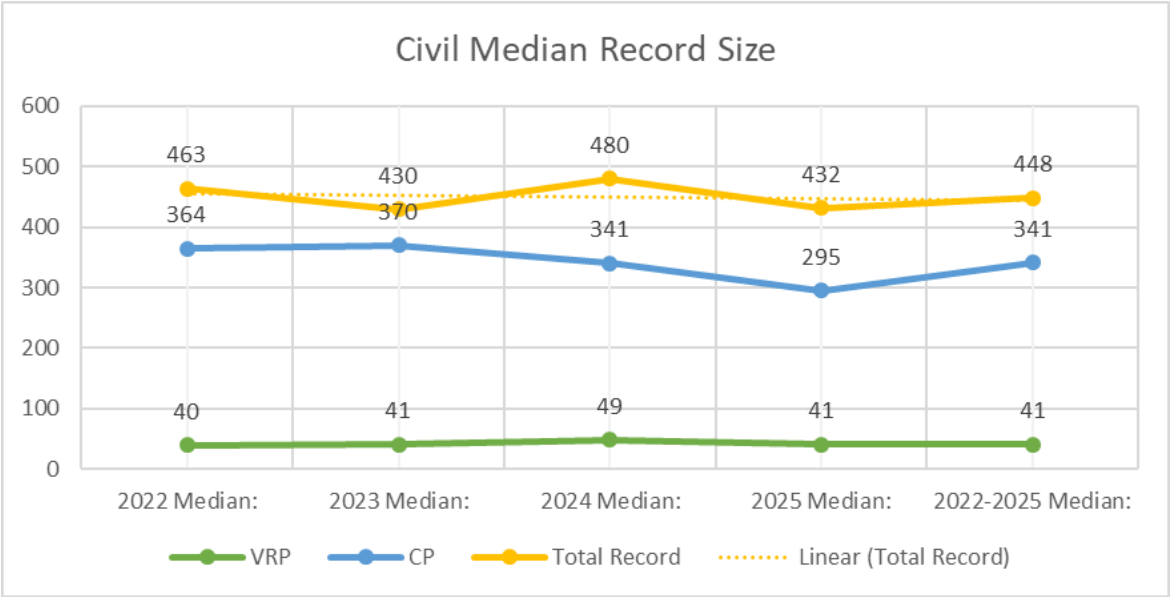
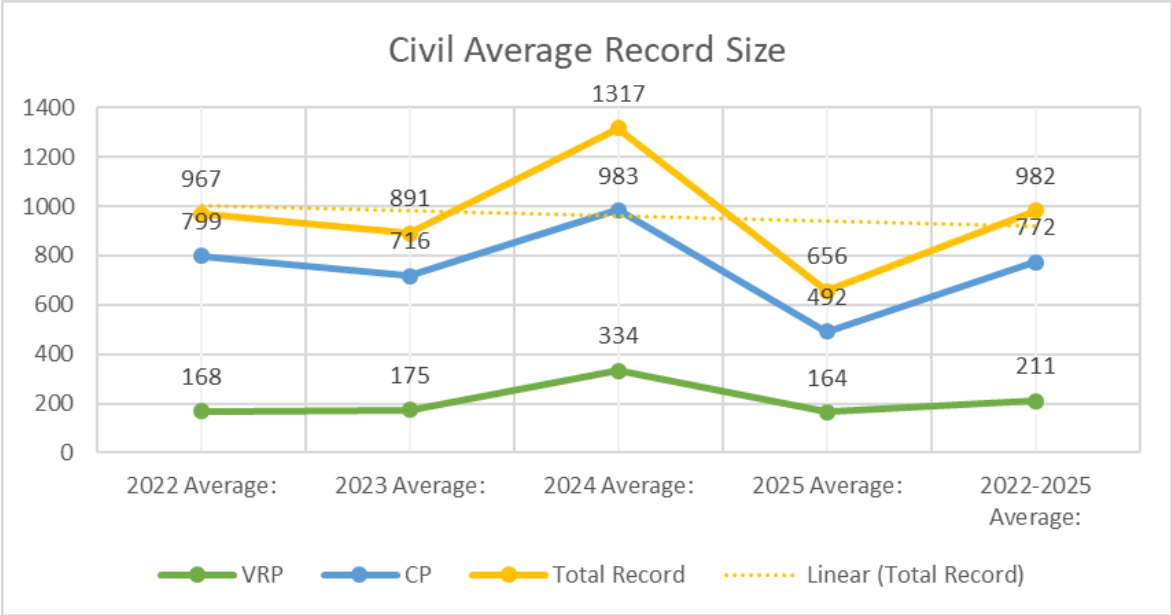


Figure 8.

Division II Extension Motions Ruled Upon by Clerks Over Time

Year	Motions Ruled Upon	YTY % Change
2017	1,525	
2018	1,761	15%
2019	1,727	-2%
2020	1,654	-4%
2021	1,282	-22%
2022	1,401	9%
2023	2,041	46%
2024	2,086	2%

Figure 9.

COA Opinions Filed by the Following Case Types: Criminal/Juv Off, PRPs Since 2020

Total COA Opinions by Criminal Case Types

COA	Crim/Juv Off	PRP/PSR	Totals
2020	851	101	952
2021	746	115	861
2022	455	107	562
2023	509	77	586
2024	553	78	631
Total Opinions by Case Type	3114	478	3592

Total COA Remands by Criminal Case Types

COA	Crim/Juv Off	PRP/PSR	Totals
2020	49	0	49
2021	96	1	97
2022	57	1	58
2023	75	1	76
2024	66	2	68
Total Remands by Case Type	343	5	348

COA Remands as a % of COA Criminal Opinions Filed Over Time

	Crim/Juv Off	PRP/PSR	% of Remands by Calendar Year
2020	5.8%	0.0%	5.1%
2021	12.9%	0.9%	11.3%
2022	12.5%	0.9%	10.3%
2023	14.7%	1.3%	13.0%
2024	11.9%	2.6%	10.8%
% of Remands by Case Type	11.0%	1.0%	9.7%

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Farino, Amber](#)
Subject: FW: Comments RE: Proposed Amendments to Appellate Caseload Standards for Indigent Defense Counsel
Date: Wednesday, April 23, 2025 2:35:21 PM
Attachments: [Appellate Caseload Standards Letter to Supreme Court \(002\).docx](#)
Importance: High

From: Blize, Peggy <Peggy.Blize@courts.wa.gov>
Sent: Wednesday, April 23, 2025 2:34 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments RE: Proposed Amendments to Appellate Caseload Standards for Indigent Defense Counsel
Importance: High

Attached please find Judge Lawrence-Berrey's letter and attachments regarding the proposed amendments to appellate caseload standards for indigent defense counsel.

Please let me know if I can be of further assistance. Thank you!

Peggy Blize
JAA to the Hon. Robert Lawrence-Berrey