

## STANDARD THREE: Caseload Limits and Types of Cases

### Standard:

1. The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.
2. The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, "quality representation" is intended to describe the minimum level of attention, care and skill that Washington citizens would expect of their state's criminal justice system.
3. **General Considerations:** Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload <sup>^</sup> limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward more serious offenses or case types ^ that demand more investigation, legal research and writing, use of experts and/or social workers or other expenditure of time and resources. <sup>^</sup> Attorney caseloads should be assessed by the workload required, and certain cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney's numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of a material witness, petitions for conditional release or final discharge, and any other matter that does not involve a new criminal charge.

**Definition of case:** A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

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4. **Caseload Limits:** The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following:

150 Felonies per attorney per year; or

300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a case weighting or counting system as described in this Standard, 400 cases per year; or ^

250 Juvenile Offender cases per attorney per year; or

80 open Juvenile Dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court cases at a time plus a limited number of non death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 *supra*; or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. *(The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)*

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full time attorneys.

5. **Case Counting:** The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement case-weighting or to count cases by a credit system. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A case weighting or case credit system must:

1. recognize the increased or decreased workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
2. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;
3. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and
4. be periodically reviewed and updated to reflect current workloads; and
5. be filed with the State of Washington Office of Public Defense.

Cases which are complex, serious, or require more work and time or contribute more significantly to attorney workload should be weighted upwards. In addition, a case weighting or case credit system should consider factors that might result in a case weight or case credit of less than one case.

Notwithstanding any case weighting or case credit system, resolutions of cases by plea of guilty to any criminal charge on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law fully communicated to the client, and must be counted as one case.

**6. Case Weighting:** Cases should be assessed by the workload required, and certain cases and types of cases should be weighted accordingly. The following are some examples of situations where case weighting or counting might result in representations being counted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system. A case weighting system may adopt a presumptive weight or credit subject to review.

**A. Case Weighting Upwards:** Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.

**B. Case Weighting Downward:** Listed below are some specific examples of situations where case weighting or counting might result in representations being less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.

1. Cases that result in partial representation of a client, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearance of retained counsel, withdrawal or transfer for any reason, or a limited appearance for a specific purpose on a specific case (not including representation of multiple cases on routine dockets).
2. Cases in the criminal or offender case type that do not involve filing of a new criminal charge, including sentence violations, extraditions, representation of a material witness, and any other matter or representation of a client that does not involve a new criminal charge. Non-complex sentence violations should be counted as at least 1/3 of a case.
3. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case credit or more.
4. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). However, where such systems are in place, consideration should be given to

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adjusting the caseload limits appropriately, recognizing that case weighting and counting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the actual appearance time spent at such dockets. Compensation for representation at first appearance and arraignment dockets of this kind may be by either a case weighting or counting system or by an alternative system that assesses the proportionate amount of attorney time involved for each docket.

5. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be counted as at least 1/3 of a case.

### **Related Standards**

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, Formal Opinion 06-441. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

*ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases*, (1996)  
American Bar Association, Chicago, IL.

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-I.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [\[Link\]](#)

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

[Keeping Defender Workloads Manageable, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 \(Spangenberg Group, 2001\). \[Link\]](#)