Empowering Public Defense Standards, Caseloads, and Independence

WDA Defender Conference

April 29, 2023

Sun Mountain

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Topics

- How defenders can build and maintain independence
- How court rules can help protect independence
- How legislation/charter provisions can protect independence
- Building alliances, including community support
- Importance of articles, op-eds, editorial support
- New National Public Defender Workload Standards and how the CPD plans to address them

Before we begin

GR 42 and Public Defender Independence

1. What are the most common forms of improper interference in your work?

Enter your answer

Submit

Survey

https://forms.office.com/Pages/ResponsePage.aspx?id=WE9o2UNkrEumZU5w3GEAiYar8VoU-TxBgXVnz_yLt0lUN0I2SVlaSDc1QllEOU4zUkhEWlJVOEo0RS4u

For nonprofits—and others

- Build alliances, including bar associations
- Build a reputation
- Develop media contacts
- Write/co-author op-eds
- Develop community contacts
- Be visible
- Organize other defenders
- Utilize the board and other advisory groups
- Seek help from national associations, including NAPD.

Court Rule

GR 42
INDEPENDENCE OF PUBLIC DEFENSE SERVICES

(a) Purpose and Policy. The purpose of this rule is to safeguard the independence of public defense services from judicial influence or control. Consistent with the right to counsel as provided in article I, sections 3 and 22 of the Washington State Constitution and in Washington statutes, it is the policy of the judiciary to develop rules that further the fair and efficient administration of justice. In promulgating this rule, the Washington Supreme Court seeks to prevent conflicts of interest that may arise if judges control the selection of public defense administrators or the attorneys who provide public defense services, the management and oversight of public defense services, and the assignment of attorneys in individual cases.

(b) Scope. This rule applies to superior courts and courts of limited jurisdiction.

(c) Selection of the public defense administrator and public defense attorneys. Judges and judicial staff in superior courts and courts of limited jurisdiction shall not select public defense administrators or the attorneys who provide public defense services.

Judges and judicial staff in superior courts and courts of limited jurisdiction shall not select public defense administrators or the attorneys who provide public defense services.

(d) Management and oversight of public defense services.

(1) Judges and judicial staff in superior courts and courts of limited jurisdiction shall neither manage nor oversee public defense services, including public defense contracts and assigned counsel lists. Judges should encourage local governments to have attorneys with public defense experience manage and oversee public defense services.

(2) The terms "manage" and "oversee" include: drafting, awarding, renewing, and terminating public defense contracts; adding attorneys or removing them from assigned counsel lists; developing or issuing case weighting policies; monitoring attorney caseload limits and case-level qualifications; monitoring compliance with contracts, policies, procedures and standards; and recommending compensation.

Judges and judicial staff in superior courts and courts of limited jurisdiction shall neither manage nor oversee public defense services, including public defense contracts and assigned counsel lists. Judges should encourage local governments to have attorneys with public defense experience manage and oversee public defense services.

(e) Assignment of public defense attorneys in individual cases.

(1) Consistent with federal and state constitutions, applicable statutes and rules of court, the role of judges and their staff in the assignment of a specific attorney in an individual case is to (a) determine whether a party is eligible for appointment of counsel by making a finding of indigency or other finding that a party is entitled to counsel; or (b) refer the party for an indigency determination; and (c) refer the party to a public defense agency or a public defense administrator to designate a qualified attorney. Alternatively, a public defense administrator may, prior to a court hearing where eligibility is determined, designate a qualified attorney to be appointed if the court finds the party is eligible.

(2) If there is no public defense agency or administrator, a judicial officer should appoint a qualified attorney, on a rotating basis, from an independently established list of assigned counsel or contractors.

(3) If no qualified attorney on the list is available, a judicial officer shall appoint an attorney who meets the qualifications in the Supreme Court Standards for Indigent Defense.

(f) Necessary services and substitution of counsel. This rule does not limit a judicial officer's authority to grant a motion for necessary investigative, expert, or other services, or to appoint counsel in individual cases when substitution of counsel is required or requested. Substitution of counsel should be made as provided in (e) above.

[Adopted effective January 1, 2023.]

WASHINGTON DEFENDER ASSOCIATION

PRACTICE ADVISORY | 3/31/2023 | Ali Hohman and Sheri Oertel

NEW GR 42 Independence of Public Defense Services

Introduction: General Rule (GR) 42, Independence of Public Defense Services, went into effect on January 1, 2023.

This rule is intended to protect public defenders from interference with their duties by judicial officers and preserving public defense independence. GR 42 applies to **ALL** judicial proceedings and includes judicial officers and staff.

GR 42 Breakdown

- Judges and judicial staff throughout Washington State can no longer do the following:
  - Cannot manage and oversee public defense services- including awarding of indigent defense contractors.
  - Cannot assign individual public defense attorneys to individual cases, including they cannot control assignments from the rotating list of eligible OPD attorneys. GR 42(a), (c), (d)(1), (e)(1).

- Went into effect January 1, 2024.

- Appointment process changed:

  - Judges also cannot just choose to "appoint" private attorneys.
    - Some judicial officers believed appointments were appropriate under RCW 36.26.090. However, that RCW has not been updated since 1984 and GR 42 is brand new, effective 1/1/23. When a Supreme Court rule and statute conflict, the Court Rule governs. *State v. Flaherty*, 177 Wn.2d 90, 296 P.3d 904 (2013)(citing RCW 2.04.200 – all laws in conflict with Supreme Court rules "shall be and become of no further force or effect."
  - The judges can appoint private attorneys but only in one condition under GR 42(e)(3): "no qualified attorney on the list is available".

- GR 42 does not prevent judges from granting motions for necessary expenses for investigators and experts, "or to appoint counsel in individual cases when substitution of counsel is required or requested. Substitution of counsel should be made as provided in (e) above." GR 42(f).
  - "Substitution of counsel" is a request by the client and/or new attorney to allow a new attorney (already hired/determined by the client) to take over the case from an OPD attorney.
  - This is legally distinguished from when an OPD attorney withdraws from a case due to conflict, and a new OPD attorney must be appointed. That is not the legal term of "substitution of counsel." In those cases, the appointment goes back to the OPD administrator or the attorney who is appointing cases off the list; not the judge's decision who to appoint. See. GR 42(e)(2) & (3).

Appointment Availability Ethical Considerations for the Defense Attorneys

Under RPC 1.16, 1.1, 1.3, *each attorney still has an ethical duty to the client to refuse an appointment if they cannot effectively represent the client* due to overall caseload, the quantity of complex cases they already have, or the type or complexity of the case being appointed. This is also true of any private attorney the Court tries to appoint.

Accordingly, "available" depends upon:

The attorney's qualification level under the Standards of Indigent Defense 14.1vs case type;

What the contract establishes as "available" or not (some state a private attorney contracted for conflict can refuse any sex offense for example); and

RPC 1.16, 1.1, 1.3: These mandate if the attorney cannot effectively represent the client due to caseload, complexity, or other issue, the attorney has a duty to decline or to withdraw from the case.

If the Courts are now refusing to follow State Office of Public Defense and WSBA Advisory Recommendations of the 12 felony per month case cap, availability is expanded automatically of the panel attorneys.

Rural Practice Considerations

A new issue has already arisen in rural counties without an OPD administrator. Under GR 42(e)(2), the judges "should appoint a qualified attorney, on a rotating basis, from an independently established list of assigned counsel or contractors."

If a judge appoints you as an attorney, your duty is to ensure your position of creating the list and keeping it up to date with qualified, contracted attorneys, is rotated. Get a specific timeframe on the record, maybe quarterly or 6 months at a time.

The only discretion the attorney in this position is the order of the names on the list. Otherwise, all contracted attorneys should be listed in some manner understandable for judges to use in this situation. You might create a table for example here.

By the plain language, this list is only of qualified, already contracted attorneys. There is no authority for the Judge to order the appointed attorney who provides the list and keeps it up to date to go out and be involved in contracting additional attorneys, or to provide a list of private, not already contracted attorneys. Additionally, the duty to verify actual qualifications of each attorney prior to appointment remains with the court.

Resources

- GR 42
- Robert C. Boruchowitz and Larry Jefferson, Protecting the Independence of Public Defenders - Washington State Bar News (wabarnews.org)
- Model template for tracking appointments.

Washington State Bar Association
Standards for Indigent Defense Services

- **STANDARD NINETEEN: Independence and Oversight of Public Defense Services**
- ***Standard:***
- **Public defense providers should not be restrained from independently advocating for the resources and reforms necessary to provide defense related services for all clients. This includes efforts to foster system improvements, efficiencies, access to justice, and equity in the legal system.**
- **Judges and judicial staff shall not manage and oversee public defense offices, public defense contracts, or assigned counsel lists. Judges and judicial staff in superior courts and courts of limited jurisdiction shall not select public defense administrators or the attorneys who provide public defense services.**
- Attorneys with public defense experience insulated from judicial and political influence should manage and oversee public defense services.

The agencies, organizations, and administrators responsible for managing and overseeing public defense services shall apply these Standards, the Supreme Court Standards for Indigent Defense, and the WSBA Performance Guidelines in their management and oversight duties.

Jurisdictions unable to employ attorneys with public defense experience to manage and oversee public defense services shall consult with established city, county, or state public defense offices, or engage experienced public defense providers as consultants regarding management and oversight duties.

- (The WSBA Board of Governors adopted Standard 19 in May 2021)

King County Charter

- **350.20.60 Duties of the Department of Public Defense.**
- The duties of the department of public defense shall include providing legal counsel and representation to indigent individuals in legal proceedings, including those in the superior and district courts for King County and in appeals from those courts, to the extent required under the sixth amendment to the United States Constitution or Article I, Section 22, of the Constitution of the State of Washington. The department of public defense **shall also foster and promote system improvements, efficiencies, access to justice and equity** in the criminal justice system. Additional duties may be prescribed by ordinance. **Elected officials shall not interfere with the exercise of these duties by the department**; however, the enactment of appropriation ordinances does not constitute interference. The department shall not have its duties, as established in this section, decreased by the county council or the county executive. (Ord. 17614 § 1 (part), 2013).
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Section 350.20.61. Administration of the Department of Public Defense.

- The department of public defense shall be managed by the county public defender. The department shall utilize the services of the executive departments and administrative offices as administered by the county executive.
- The county public defender shall be appointed by the county executive, subject to confirmation by the county council**, to a term that ends at the same time as the term of the county prosecuting attorney, unless removed earlier by the executive for cause,** including the grounds for vacancy for elective office under Section 680 of this charter and such other grounds as the council may prescribe by ordinance. The removal may be appealed by the defender to the council by a process to be prescribed by ordinance. The council's determination shall be final.
- The county executive shall appoint the county public defender from candidates recommended by the public defense advisory board under a process prescribed by ordinance. Qualifications of the county public defender may be established by ordinance. The county executive may reappoint the county public defender to additional terms, subject to confirmation by the county council. Confirmation of the appointment or reappointment, or removal when appealed, shall require the affirmative votes of at least five members of the county council. (Ord. 17614 § 1 (part), 2013).
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Section 350.20.65. Public Defense Advisory Board

The public defense advisory board is established to review, advise and report on the department of public defense in a manner that may be prescribed by ordinance. The board shall also advise the executive and council on matters of equity and social justice related to public defense. In the event of a vacancy in the office of county public defender, the board shall recommend candidates from whom the county executive shall make an appointment to fill the vacancy subject to confirmation by the county council. The county council shall prescribe by ordinance the board's membership, process and qualifications for appointment to the board, rules and procedures, and may prescribe by ordinance additional duties of the board. (Ord. 17614 § 1 (part), 2013).

Press

Opinion

Readers respond: Preserve independence of public defense

Published: Aug. 28, 2022, 5:00 a.m.

By Letters to the editor | The Oregonian

We are writing on behalf of 21 law professors from around the country in response to the recent upheaval in Oregon's public defense system. The removal and replacement of the Public Defense Services Commission members and their subsequent firing of the public defense director make clear the need to provide full independence for public defense in Oregon

- The judiciary should not be controlling who leads public defense or the commission. As the **American Bar Association notes, "The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel...** Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense."

Op Ed Conclusion

- The Legislature should change the statute to include diverse appointment authority for the **c**ommission and a term of years for the director of Public Defense, subject to removal for just cause.

- *Robert C. Boruchowitz, Seattle University School of Law*
- *Randy A. Hertz, New York University School of Law*
- *Ellen Yaroshefsky, Hofstra University School of Law*

WASHINGTON STATE BarNews

THE OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR ASSOCIATION

June 9, 2022

Protecting the Independence of Public Defenders

WSBA Board of Governors proposes new court rule and adopts new standards

BY ROBERT C. BORUCHOWITZ AND LARRY JEFFERSON

Two Pennsylvania public defenders were fired after they filed an amicus brief in the state supreme court in a case about how the state implements cash bail.[1] The first chief public defender in Birmingham, Alabama, a Black woman, was fired after, among other things, her office obtained dismissals in 20 percent of their cases and favorable verdicts or mistrials in 66 percent of the cases that went to trial.[2]

NOT IN OUR BACKYARD?

That kind of interference would never happen in Washington, right? Regrettably, in some Washington jurisdictions, local government officials or local courts have interfered with the independence of public defenders.

In Cowlitz County, the chief public defender was recently fired after her office filed public disclosure requests about prosecution practices. In addition to the public disclosure requests, the chief public defender had hired new staff, implemented procedural changes to comply with the WSBA Standards for Indigent Defense, and acquired new state funding resources for the office. A condition in the settlement offer by the county was that the defender withdraw all pending public disclosure requests she had made in her role as chief defender.[3] Although she did not accept that offer, her office withdrew one of the requests. The chief defender's termination can have a chilling effect on her former colleagues and on others in other counties.

Also troubling is a recent example in Asotin County in which the county hired a lawyer to be a public defender when the lawyer was not admitted to practice in Washington.[4]

The independence of the public defense function is more critical than ever. No lawyer providing public defense services should ever be fired for advocating for their clients or requesting the resources to do so. The Office of Public Defense stands ready and willing to assist any county to ensure quality legal representation that upholds the rights of all people facing the loss of liberty or family.

The adoption of the new WSBA Standards for Indigent Defense Services and the proposed GR 42 will help strengthen public defense so that we do not have unacceptable differences in quality based on geography.

HeraldNet
EVERETT, WASHINGTON

COMMENTARY

Comment: State must bolster poorly funded public defense system

Sixty years after the Gideon decision, funding and support for the right to counsel is failing in Washington state.

Saturday, April 1, 2023 1:30am | OPINION COMMENTARY

By Tarra Simmons and Jason Schwarz / *For The Herald*

When Clarence Earl Gideon wrote from a Florida jail that he had been deprived of his 6th Amendment right to counsel at his criminal trial, he set in motion a chain of events that would change American law and culture.

Gideon v. Wainwright, decided March 1963 by the U.S. Supreme Court, requires the government to provide lawyers at public expense to the accused facing jail or loss of liberty.

Now, 60 years later, Washington, like other states, is at a public defense crossroads where the very promise of Gideon is threatened unless we take collective action. Next door, in Oregon, the public defense system, faced with overwork and underfunding, collapsed, resulting in hundreds of criminal cases being dismissed. If such a crisis were to occur in Washington it would likely affect someone you know; more than 70 million Americans have been convicted of a crime; 1 in 3 families will have a family member with a criminal record; nearly half of Black American males and 40 percent of white males will have been arrested by the age of 23. With strong leadership and public support, Washington can learn from Oregon's missteps and assure that our public defense protects those in need of counsel.

Today public defenders are not just lawyers, but a team of professionals representing the accused, including social workers, paralegals, legal assistants and investigators. They represent parents in hearings where the state is attempting to take away their children, children in At Risk Youth petitions, and ill people whom the state is seeking to involuntarily commit to a mental hospital. They are on-call 24 hours a day to speak to arrested youth, and they represent people in criminal and civil post-trial work.

Now, 60 years later, Washington, like other states, is at a public defense crossroads where the very promise of Gideon is threatened unless we take collective action.

Public defense is facing a crisis. The quantity of work confronted by today's public defenders is unlike that faced in prior generations, and the workload is mounting. Caseload standards first developed in 1973 no longer accurately reflect the work because each case is taking longer. The standards were drafted when public defenders didn't have to view hours of body camera footage, review years-worth of data from witness' cell phones or respond to complex forensic and toxicology reports. Increases in homelessness, decline in timely mental health services, and changes in the law have added complexity and increased pressure to the work.

Unlike public defense, prosecutors, police and courts receive significant state and federal dollars to defray the costs to local taxpayers. Local governments determine the way public defense is delivered and funded. Of the estimated $200 million spent locally on public defense in Washington in 2021, only $12 million was provided by the state. As a result, public defense is sometimes seen as a disproportionate draw of local resources, while still comparatively underfunded. Unequal allocation of resources by local jurisdictions results in justice by geography for the accused

Caseload standards first developed in 1973 no longer accurately reflect the work because each case is taking longer. ...

Unequal allocation of resources by local jurisdictions results in justice by geography for the accused

The Oregon public defense system recently buckled under similar pressure. After years of underfunding and understaffing Oregon's public defense system collapsed, resulting in hundreds of dismissals and a loss of public confidence. After investigating, the American Bar Association noted that Oregon employed 31 percent of the public defense lawyers needed to adequately represent the accused. A similar study in New Mexico found that it had only a third of the public defenders it needed. In response, New Mexico began a five-year statewide plan to hire public defenders. Washington too must address systemic changes in the practice of law and revise our standards consistent with new national norms.

The work to improve public defense cannot be born solely by public defenders. The blueprint to effect change will take effort, ingenuity, time and money. Local governments should review compensation and resources to public defense attorneys and staff to assure parity with government legal professionals. State government should supplement the cost to local jurisdictions. Bills like Senate Bill 5415 and Senate Bill 5046 could provide State funding for services historically paid for by local governments.

When the public defense system fails, we become purveyors of an injustice that almost solely impacts the accused. The accused are disproportionately economically disadvantaged, BIPOC, and suffering from acute trauma or illness. Poor representation results in lengthier prison sentences and the incarceration of the innocent.

Local governments should review compensation and resources to public defense attorneys and staff to assure parity with government legal professionals. State government should supplement the cost to local jurisdictions.

We must strive to create a just legal system. It involves out-of-the-box solutions to crime, like restorative justice that amplify the voices of affected people, and gradual divestments from the legal system to health care and the social safety net. But for now, the work continues by investing in public defense to avoid the kind of crisis felt in Oregon.

Now 60 years after Clarence Earl Gideon's successful petition to the Supreme Court, Washingtonians can be proud of our achievements in providing public defense services through changing times. But we cannot rest on those laurels as new challenges confront us. Those challenges demand our collective action.

State Rep. Tarra Simmons, D-Bremerton, represents the 23rd Legislative District and is founding director of the Civil Survival. Jason Schwarz is director of the Snohomish County Office of Public Defense and chair of the Washington State Bar Association Council on Public Defense.

Snohomish Experience of Independence

Development of New Standards

History

- 1963 – Gideon v. Wainwright
  - 1981 – SRA
  - 1984 – Washington v. Strickland
- 1985 – WSBA adopted Indigent Defense Standards
- 1989 – RCW 10.101.030 may adopt standards
  - 1993 – Three Strikes
  - 1996 – Two Strikes
  - 2001 – Indeterminate sentencing for many sex offenses
- 2005 – RCW 10.101.030 shall adopt standards
- 2011 – WSBA adopted Performance Guidelines for Criminal Defense Representation
- 2013 – Wilbur v. Mount Vernon/Burlington
- 2012 – Court rules adopt some standards
- 2021 – Indigent Defense Standard 19

New National Public Defender Workload Standards

The National Public Defense Workload Study
NAPD Conference
March 2023

National Public Defense Workload Study: Overview of Project

- Systematic Review of Workload Studies
  - Existing, Jurisdiction-Specific Public Defense Workload Studies
- Role of the Delphi Panel
  - Expertise
  - Consensus

Why set workload standards?

Model Rule of Professional Conduct

- Rule 1.1 requires Competence

  Competence requires not only legal knowledge and skill, but the "thoroughness and preparation reasonably necessary for the representation."

- Rule 1.3 requires Diligence

  Comment 2 to Rule 1.3. notes that a "lawyer's workload must be controlled so that each matter may be handled competently."

Why set workload standards?

- **ABA Model Rule 1.7(a)(2) – Concurrent Conflict**
- Lawyers cannot undertake the representation of more clients than they can competently represent.
- Excessive caseloads create a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client.

Why set workload standards?

ABA Ten Principles (2002) – Principle 5

Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (*i.e.*, caseload adjusted by factors, such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measure.

Washington CrR 3.1
STANDARDS FOR INDIGENT DEFENSE
Standard 3.2.

- 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.

Why set workload standards?

ABA Ethics opinion 06-441

- The ethics rules "provide no exception for lawyers who represent indigent persons charged with crimes."
- "All lawyers, including public defenders, have an ethical obligation to control their workloads."
- "When an existing workload becomes excessive, the lawyer must reduce it to the extent that what remains to be done can be handled in full compliance with the Rules."

National Workload Study Overview

- **Subject Limited in Scope – Only Adult Criminal Cases**
  - **11 Case Types**
  - **8 Case Activities**
- **Participants – 33 Criminal Defense Lawyers from Around the Country**
  - Full-time public defenders
  - Court-appointed counsel
  - Private practitioners
- **Information provided to Panelists**
  - Results of all 17 previously conducted workload studies (2005-2022)
  - Ethical Rules and Standards applicable to adult criminal cases

National Workload Study: Scope

Adult Criminal Case Types - 11

- Felony High – LWOP
- Felony High – Murder
- Felony High – Sex
- Felony High – Other
- Felony – Mid
- Felony – Low
- DUI – High
- DUI – Low
- Misdemeanor – High
- Misdemeanor – Low
- Probation/Parole Violations

National Workload Study: Scope

Adult Criminal Case Activities - 8

- Client Communication and Care
- Discovery and Investigation
- Experts
- Legal Research, Motions Practice, Other Writing
- Negotiations
- Court Preparation
- Court Time
- Sentencing/Mitigation and Post-Adjudication

Information Provided to Panelists: Summary 17 Existing Workload Studies

FELONY – HIGH – MURDER	Oregon-2022	Homicide or sex case	552.5
	New Mexico-2021	Murder including CARD (child abuse resulting in death)	391.0
	Utah-2021	Non-capital murder	300.0
	Indiana-2020	Non-capital murder (non-LWOP)	232.1
	New Mexico-2007	Murder	202.6
	Rhode Island-2017	Murder	181.6

Strickland v Washington: "**reasonably effective assistance** of counsel . . . pursuant **to prevailing professional norms**"

Standards of Practice Anchor the Delphi Process

- **Rules of Professional Conduct**
  - Require competence, diligence, and communication.
- **ABA Criminal Justice Standards**
  - Client Interviews
  - Establishing Client Trust
  - Duty to Keep the Client Informed
  - Duty to Investigate
  - Duties Prior to Plea
  - Trial Duties
  - Sentencing Responsibilities

Standards Applicable Before Recommending a Plea to a Client - Standard 4-6.1(b)

In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client and should not recommend to a client acceptance of a disposition offer [plea] unless and until appropriate investigation and study of the matter has been completed. Such study should include discussion with the client and analysis of:

- the relevant law
- the prosecution's evidence
- potential dispositions, and
- relevant collateral consequences.

Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.

Results of National Workload Study

Case Weight for each Case Type

- E.g., 100 hours for each Felony-High-Other
- *Not a real example*

Case weights → caseload standards

- To be turned into standards, need **attorney hours available for case work**
  - ABA studies default to 2080 hours
    - Does not account for vacation, sick leave, training, community outreach, etc.
    - Judicial workload studies usually 1300-1600
  - Will differ by jurisdiction
  - Might differ within a jurisdiction

- If 100 hours for a type of case, 1650 hours a year for direct client representation, can do 16 of those cases if that kind of case can be resolved in one year.

Results of National Workload Study

Sample Caseload Standards

- Assume 2080 hours/year for casework
- Felony-High-Other Case Weight of 100 hours/case
- 2080 hours/100 hours =
  21 Felony—High—Other per attorney per year

Active Caseload Standard

- Requires time to close for each case type
- Sample for Homicide
  - Homicide Annual Standard - 10/year
  - Average Time to Close – 2 years
  - Open caseload standard – 20 cases
- Sample for Misdemeanor
  - Misdemeanor Annual Standard – 200/year
  - Average Time to Close – 3 months
  - Open Caseload Standard – 50 cases

NOT ACTUAL NUMBERS

Watershed Moment in Indigent Defense and Criminal Justice Reform

Plan

- Ask the Supreme Court to ask CPD for recommendations
- Map the 11 categories
- Develop proposed court rule
- Develop proposal for phased in implementation
- Develop suggestions for reducing demand side

Alternatives to Traditional Prosecution Can Reduce Defender Workload, Save Money, and Reduce Recidivism

National Association for Public Defense
Workload Committee - Demand Side Subcommittee
Statement on Reducing Demand For Public Defense[1]

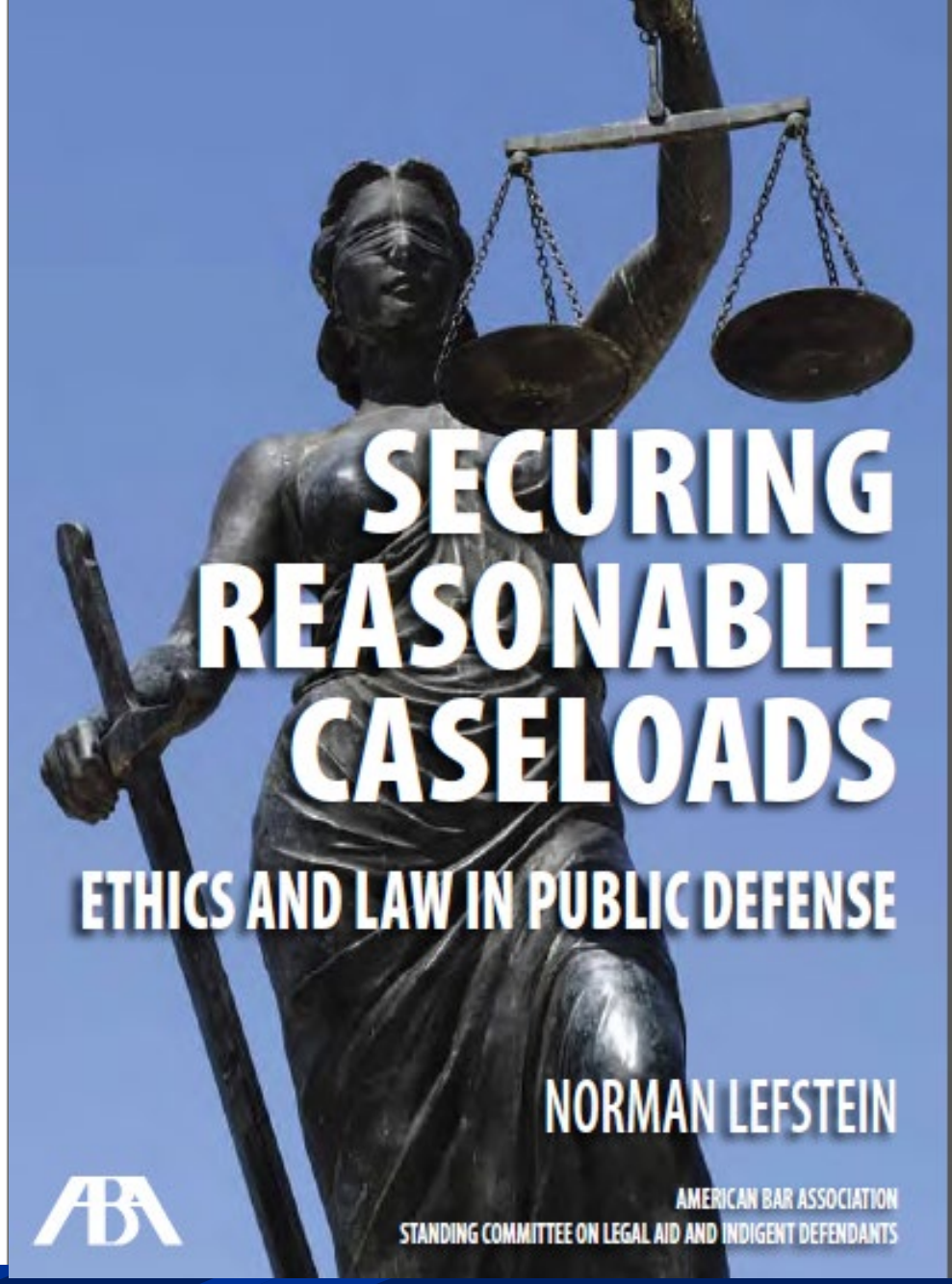
March 2017

There is a clear constitutional right to effective assistance of counsel for persons accused of crime, but in many places in the country public defenders and assigned counsel carry caseloads far above any reasonable level. Often, they have only a few minutes to defend a client. There are literally hundreds of thousands of minor, non-violent misdemeanor or low-level felony cases that could be handled outside of criminal court with no danger to public safety and no need for lawyers. Many of those clients would benefit from access to treatment services to address issues of homelessness, mental illness, or substance abuse. In many places, the largest facility housing mentally ill people is the county jail.[2] As Minnesota Judge Kevin Burke has said, "There are certainly behaviors we want to change, but the institutions of the criminal justice system aren't necessarily very effective in dealing with them."[3]

The excessive caseloads carried by many defenders are in part the result of an over-emphasis on prosecuting minor offenses. There are approximately ten million misdemeanor cases a year in the United States.[4] They include offenses such as sleeping in a cardboard box and feeding the homeless, as well as true criminal conduct such as assault.[5]

EIGHT GUIDELINES

Of Public Defense Related to Excessive Workloads



Purpose.
Dignity.
Action.

Law Enforcement Assisted Diversion (LEAD) is a widely replicated community-based, pre-booking diversion model that was designed and first implemented here in Seattle/King County.

While PDA now provides technical support for replicating the model statewide, nationally and internationally, our advice carries weight because we continue to do the work ourselves, in our flagship LEAD programs in Seattle, Burien, and unincorporated King County.

Creating sustainable alternatives to punitive systems for individuals who engage in illegal activity related to behavioral health needs or poverty is a struggle, and we navigate the very real challenges daily as the project management team for LEAD (which now stands for Let Everyone Advance with Dignity, recognizing that law enforcement referral, while prioritized, cannot be the only door through which individuals are identified for community-based public safety response).

The LEAD Support Bureau (LSB) was formalized in 2016 to support those who seek to implement LEAD with fidelity to its core principles.

LSB works to answer the scores of requests annually from communities around the US, and internationally, to visit and learn more about the LEAD model, and to get technical assistance in replicating it. Requests had been generated by word of mouth as far back as 2012, but exploded after the release of the University of Washington outcomes evaluation in 2015, which showed that LEAD resulted in lower recidivism, jail use, prison time and felony charges compared to a control group that experienced the system as usual.

RCW 10.31.110
Alternatives to arrest—Individuals with mental disorders or substance use disorders.

- (1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a crime, and the individual is known by history or consultation with the behavioral health administrative services organization, managed care organization, crisis hotline, local crisis services providers, or community health providers to have a mental disorder or substance use disorder, in addition to existing authority under state law or local policy, **as an alternative to arrest, the arresting officer is authorized and encouraged to:**
- (a) Take the individual to a crisis stabilization unit as defined in RCW 71.05.020. Individuals delivered to a crisis stabilization unit pursuant to this section may be held by the facility for a period of up to twelve hours. The individual must be examined by a mental health professional or substance use disorder professional within three hours of arrival;
- (b) Take the individual to a triage facility as defined in RCW 71.05.020. An individual delivered to a triage facility which has elected to operate as an involuntary facility may be held up to a period of twelve hours. The individual must be examined by a mental health professional or substance use disorder professional within three hours of arrival;

- (c) Refer the individual to a designated crisis responder for evaluation for initial detention and proceeding under chapter 71.05 RCW;
- (d) Release the individual upon agreement to voluntary participation in outpatient treatment;
- (e) Refer the individual to youth, adult, or geriatric mobile crisis response services, as appropriate; or
- (f) Refer the individual to the regional entity responsible to receive referrals in lieu of legal system involvement, including the recovery navigator program described in RCW 71.24.115.


WELCOME HOME
SEATTLE
MARINERS


KEEP FIGHTING

Work Together

- Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.
  - **Margaret Mead**