

WASHINGTON STATE
BAR ASSOCIATION
Office of the Executive Director
Terra Nevitt, Executive Director

March 21, 2024

Chief Justice Steven González
Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

RE: Adoption of Amended WSBA Standards for Indigent Defense Services

Dear Chief Justice González:

On October 11, 2023, the Washington Supreme Court requested that the WSBA Council on Public Defense (CPD) review the newly released National Public Defense Workload Study (NPDWS) and advise the Court on any recommendations the Court should adopt. In addressing the Court's request, the CPD proposed comprehensive revisions to the WSBA Standards on Indigent Defense Services (WSBA Standards). The revisions to the WSBA Standards focus on increasing the proportion of support staff to attorneys in public defense agencies, modifying attorney qualification requirements, and revising caseload standards to reflect the findings of the 2023 National Public Defense Workload Study.

The proposed revisions to the WSBA Standards elicited significant public response, with more than eighty-five written responses from members of the public—including public defenders, representatives of Washington counties and cities, and state legislators—and nearly three hours of public testimony at the March 8, 2024, meeting. The written messages are accessible at the following link: https://wsbaonlinemy.sharepoint.com/:f/r/personal/parise_wsba_org/Documents/Revised%20Standards%20Feedback?csf=1&web=1&e=j1ZUPm (this link will expire April 20, 2024). Video recordings of the March 8, 2024, meeting may be found here: <https://www.wsba.org/about-wsba/who-we-are/board-of-governors/board-meeting-minutes>.

On March 8, 2024, the WSBA Board of Governors adopted the revised WSBA Standards for Indigent Defense Services. To respond to the Court's October 11, 2023, request, the Board also voted to forward the revised WSBA Standards and supporting materials to the Court with the recommendation that the Court incorporate the revisions to the WSBA Standards into the Court's Standards for Indigent Defense.

Enclosed please find the WSBA Standards for Indigent Defense Services as adopted on March 8, 2024, GR 9 coversheet, and supporting materials. The WSBA and the Council on Public Defense look forward to hearing from the Court on any future action the Court may wish WSBA or CPD to take with respect to updates to the Court Standards.

If you have any questions, please feel free to contact me, or direct them to Jason Schwarz, Chair



1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
800-945-WSBA | 206-443-9722 | terran@wsba.org

of the WSBA Council on Public Defense, at Jason.Schwarz@co.snohomish.wa.us.

Sincerely,



Terra Nevitt
Executive Director

Enclosures: WSBA Standards for Indigent Defense, as adopted March 8, 2024
 GR 9 Coversheet
 Supporting Materials

Cc: Hunter Abel, President, WSBA Board of Governors
 Justice Sheryl Gordon McCloud
 Ashley Lipford, Supreme Court Administrator
 David Ward, Court Rules Committee Staff Member
 Jason Schwarz, Council on Public Defense, Chairperson
 Maialisa Vanyo, Council on Public Defense, Vice-Chairperson
 Robert Boruchowitz, Council on Public Defense, Standards Committee Chairperson

GR 9 COVER SHEET

Suggested Amendments to
STANDARDS FOR INDIGENT DEFENSE SERVICES
REVISED CrR 3.1 Stds/CrRLJ 3.1 Stds/JuCR 9.2 Stds

A. Name of Proponent:

Washington State Bar Association
WSBA Council on Public Defense

B. Spokespersons:

Hunter Abel, President, Washington State Bar Association, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539 (telephone: (509) 969-4731)

Jason Schwarz, Chair, Council on Public Defense, Washington State Bar Association, Seattle, WA 98101-2539 (telephone: (425) 388-3032)

WSBA Staff Contact:

Bonnie Sterken, Equity and Justice Lead, Washington State Bar Association, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539 (telephone: (206) 727-8293)

C. Purpose:

Public defense in Washington is facing a crisis of attrition and an inability to recruit staff brought about by excessive workloads and poor compensation. Attorneys are resigning from the public defense profession in droves because they cannot continue the work given the volume of cases. In recognition of these problems, in January 2022, the WSBA Council on Public Defense (CPD) undertook a comprehensive revision of the WSBA Standards for Indigent Defense Services. In addition, following release of the National Public Defense Workload Study in September 2023, the Justices of the Washington Supreme Court requested that the CPD specifically address caseload standards.

In developing revised WSBA Standards, the CPD solicited input from the public and the criminal defense community at listening sessions, CLE events, CPD meetings, and through surveys. The CPD considered all feedback when revising the WSBA Standards. In addition, the revisions to the WSBA Standards were informed by the 2023 National Public Defense Workload Study; other studies of appropriate caseload and support staffing needs of public defense offices; and Constitutional, ethical, and professional standards for public defenders.

The revisions to the WSBA Standards focus on three areas: (1) Support staff requirements, (2) attorney qualifications, and (3) caseload standards. Revisions in all three areas were necessary to recognize the realities of current public defense practice, ensure the Standards met Constitutional requirements, and to address public defender attrition and difficulty recruiting new attorneys to the profession.

First, the revised WSBA Standards require, rather than simply recommend, public defense agencies to maintain specific staffing ratios for investigators, mitigation specialists and social workers, and legal assistants and paralegals. These revisions recognize the importance of support staff in public defense cases, particularly given the large volume to evidence and investigation necessary to provide adequate defense.

Second, the revisions to attorney qualification requirements attempt to address the shortage of attorneys qualified to handle the most serious cases. The revisions allow attorneys to gain experience through trial experience even if the trial was not completed through a jury verdict and through training programs. These revisions are to be implemented over the course of the next four years.

Lastly, the revised WSBA Standards implement the caseload standards recommended by the National Public Defense Workload Study (NPDWS). The NPDWS report made clear that the existing caseload standards did not allow attorneys sufficient time to provide representation that met Constitutional requirements. The findings of the NPDWS report were applied to Washington's caseloads through a system that grants a specific number of credits for categories of cases based on the typical time-demands of the case. Attorneys accrue case credits up to a maximum number of credits per year.

The CPD presented proposed the revised WSBA Standards of Indigent Defense to the WSBA Board of Governors on March 8, 2024. The WSBA Board of Governors adopted the revisions and voted to forward the revised WSBA Standards to the Supreme Court with the recommendation that the Court incorporate the WSBA Standards into the Washington Supreme Court Standards for Indigent Defense.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is requested.

F. Supporting Material:

- Cover memo to the WSBA Board of Governors dated February 23, 2024

- Council on Public Defense Report on Revisions to WSBA Standards of Public Defense
- Redline revisions to WSBA Standards of Indigent Defense Services
- Public Comments Received by the WSBA Board of Governors found here:
https://wsbaonline.my.sharepoint.com/:f/r/personal/parise_wsba_org/Documents/Revised%20Standards%20Feedback?csf=1&web=1&e=j1ZUPm (this link will expire April 20, 2024)



Washington State Bar Association

Standards for Indigent Defense Services

[Revised March 8, 2024]

INTRODUCTION

The Washington State Bar Association *Standards for Indigent Defense Services (WSBA Standards)* reflect 50 years of work by national and state experts, practicing attorneys and public defense administrators. They establish the standards necessary to ensure legal representation for clients represented by a public defense attorney meets constitutional, statutory, and ethical requirements.

The *WSBA Standards* detail the minimum requirements for attorneys representing individual clients and for state and local administrators who “manage and oversee”¹ public defense services. The Washington State legislature, in RCW 10.101.030, requires counties and cities to adopt standards for the delivery of public defense services, regardless of whether public defense services are provided by contract, assigned counsel, or a public defender agency or nonprofit office. In doing so, RCW 10.101.030 provides that the *WSBA Standards* should serve as guidelines to local legislative authorities in adopting their standards.²

Compliance with these *WSBA Standards* ensures the consistent delivery of effective representation of individuals who face the loss of liberty or other protected rights. Ineffective representation can result in a wrongful criminal conviction or juvenile court adjudication, inappropriate civil commitment, or unlawful termination of parental rights. Compliance with these *WSBA Standards* protects the public, victims, state and other jurisdictions, as well as public defense attorneys.

The *WSBA Standards* are consistent with, but more comprehensive³ than, the Washington Supreme Court’s [Standards for Indigent Defense](#) that are included in the Washington State Court Rules⁴ and referred, hereafter, as the *Court Rule Standards*. All public defense attorneys must certify every quarter that they comply with the *Court Rule Standards*.⁵ The *WSBA Standards* also include “additional Standards beyond those required for certification as guidance for public defense attorneys in addressing issues identified in *State v. A.N.J.*, 168 Wn.2d 91 (2010), including the suitability of contracts that public defense attorneys may negotiate and sign.”⁶

¹ See Washington State Court Rule [GR 42](#): “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.”

² “Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards.” RCW 10.101.030.

³ See the list of topics addressed in the *WSBA Standards* compared to the list of subjects addressed in the *Court Rule Standards* in Appendix A.

⁴ Specifically, CrR 3.1, CrRLJ 3.1, JuCR 9.2, and CCR 2.1.

⁵ The Preamble to the Supreme Court’s *Court Rule Standards* states: “To the extent that certain Standards may refer to or be interpreted as referring to local governments, the Court recognizes the authority of its Rules is limited to attorneys and the courts. Local courts and clerks are encouraged to develop protocols for procedures for receiving and retaining Certifications.”

⁶ Preamble to the Washington Supreme Court’s [Standards for Indigent Defense](#).

In addition to compliance with both the *WSBA* and *Court Rule Standards*, public defense attorneys must comply with the Washington Rules of Professional Conduct (ethical requirements) and be familiar with and consider Performance Guidelines adopted by the WSBA and others for specific practice areas (adult criminal, juvenile court offender, family defense, civil commitment, and appeals).

DEFINITIONS

1. Assigned Counsel – Attorneys who provide public defense services in a local jurisdiction who are not employees of a Public Defense Agency, often without a formal contract; frequently referred to as panel or conflict attorneys.
2. Case – A “case” is a new court filing or action that names a person who is eligible for appointment of a public defense attorney; for example, an adult criminal charging instrument, a juvenile court offender or BECCA petition, a dependency or termination of parental rights petition, a civil commitment petition, or an appeal. For additional explanation in relation to caseload capacity, refer to Standards 3.H and 3.I.
3. Case Weighting/Credits – A case weighting system assigns higher and lower values or weighted case credits to assigned cases based on the amount of time that is typically required to provide effective representation.
4. Caseload – The number of cases assigned to a public defense attorney in a 12-month period.
5. Co-counsel – An additional public defense attorney assigned to a case with the originally assigned attorney (lead counsel).
6. Defense Investigator – A non-lawyer legal professional who guides and executes the defense investigation of a client's case. Defense Investigators perform substantive work that requires full knowledge of court proceedings, court rules, and Washington State law. A Defense Investigator's review of case evidence requires an understanding of government investigative procedures and regulations, a familiarity with forensic disciplines, the aptitude to stay current with advancements in technology, and an ability to ascertain factual discrepancies. They may interview witnesses identified by the police investigation, as well as identify, locate, and interview witnesses unknown to the State. Defense Investigators may gather evidence useful to the defense by recording witness statements, conducting field investigations, photographing the crime scene, gathering records, and taking screenshots of online materials. A Defense Investigator's preservation of evidence is critical to trial preparations, as they can testify to lay the foundation for that evidence, as well as explain case details and assist with impeachment of witnesses. The use of a Defense Investigator is not limited to criminal cases. Defense Investigators are also important professionals in Dependency proceedings, Sexual Offender Commitment petitions, and other proceedings that affect a client's liberty or other constitutionally protected interest.
7. Experts – Individual persons, firms, or businesses who provide a high level of knowledge or skill in a particular subject matter, such as DNA or crime scene analyses, and assist public defense attorneys in providing legal representation for their client.
8. Flat Fee Agreement – A contract or informal policy agreement where a private attorney or firm agrees to handle an unlimited number of cases for a single flat fee.
9. Fully Supported Defense Attorneys – Public defense attorneys who meet or exceed Standards Four, Five, Six, Seven, Nine, Ten, Thirteen and Fourteen of these *Standards*.

10. Jurisdictions – State, county and city entities that provide public defense services.
11. Legal Assistant – A non-lawyer legal professional who assists the attorney with administrative tasks. Legal Assistants often are responsible for filing pleadings generated by the lawyer or paralegal and ensuring the timely processing of mail and legal documents to meet court mandated deadlines. They may answer phones and assist with communications between the defense team, clients, defense experts, witnesses, and others. Some Legal Assistants are responsible for calendaring, opening and closing case files, updating case management systems, processing legal discovery (electronic or otherwise), and ensuring that critical information is accurately conveyed and recorded, if needed.
12. Lead Counsel – A lead counsel is the main lawyer in charge of a case. They are usually the most experienced and manage any other lawyers working on the case.
13. Mitigation Specialist – A mental health professional, a social worker, or social services provider, with specialized training or experience who gathers biographical, medical, and family history of the client to assist the lawyer, including preparing a document to inform the court and/or prosecutor or State of factors in the client’s life. Mitigation Specialists also help clients navigate social service support and prepare for assessments.
14. Open Caseload – The number of assigned cases a public defender has that are actively open. Open Caseload is a day-in-time snapshot of a public defender’s caseload; whereas, “Caseload” is the number of assigned cases in a year.
15. Paralegal – A non-lawyer legal professional, frequently a graduate of an ABA-approved Paralegal Studies program, who does substantive work that requires familiarity with court proceedings, court rules, and Washington State law. Paralegals are frequently responsible for performing complex legal research and drafting legal documents such as subpoenas, pleadings, and motions and creating discovery binders, preparing exhibits, coordinating witness schedules, and assisting with organization at counsel table. Paralegals may assist the attorney with client communication and act as a liaison with defense experts, prosecutors, bailiffs, and jail officials. They also may track upcoming court hearings, trial dates, and other critical timelines to help with attorney organization.
16. Per Case Agreement – A contract or informal policy agreement where a private attorney or firm agrees to handle cases on a flat, per case amount.
17. Private Attorneys – An attorney who works in private practice who provides public defense services whether by contract, subcontract, assignment, appointment, or other process.
18. Private Firm – For-profit law firm that provides public defense services, whether by contract, subcontract, assignment, appointment, or other process.
19. Public Defender – Any person working as or with a public defense attorney, firm, or public defense agency whether an attorney, social worker, office administrator, investigator, mitigation specialist, paralegal, legal assistant, human resources specialist, data analyst, etc.
20. Public Defense Administrator – Person, whether attorney or not, who is responsible overall for the administration, management, and oversight of public defense.
21. Public Defense Agency – Government and nonprofit offices that only provide public defense representation.

22. Public Defense Attorney – A private attorney, attorney working in a private firm, or an attorney working in a public defense agency who is assigned to represent individuals who are indigent or indigent and able to contribute and have a statutory or constitutional right to court-assigned counsel.
23. Reasonable Compensation – Market rate for similar legal and expert services. Reasonable compensation includes more than attorney wages, salary, benefits, contract payments or hourly rate payments. Reasonable Compensation includes the cost of office overhead (including administrative costs), support staff or services, training, supervision, and other services not separately funded.
24. Significant Portion of a Trial – Planning or participating in essential aspects of a trial which includes, but is not limited to, motions in *limine*, jury selection, opening statements, direct and cross examination, motions and objections, preparation of and advocacy for jury instructions, and closing arguments.
25. Social Worker – A public defense professional with a master’s degree in Social Work who provides professional services to assist the attorney and to help meet the basic and complex needs of the client. Often, this can involve enrolling in health care or other government support services.
26. Trial Academy – An organized trial training program of at least 20 hours of sessions that is presented by the Washington State Office of Public Defense, the Washington Defender Association, the Washington Association of Criminal Defense Attorneys, the National Association of Criminal Defense Lawyers, the National Institute for Trial Advocacy, the National Association for Public Defense, the Gault Center, the National Criminal Defense College, Gideon’s Promise, or any other organization approved for CLE training by the Washington State Bar Association. A trial academy must include defender skills training that may encompass motion practice, opening and closing statements, objections, preserving issues for appeal, direct and cross examination, race bias, client communication, theory of the case, jury selection, and other topics.
27. Workload – The amount of work a public defense attorney has, including direct client representation and work not directly attributable to the representation of a specific client, including, for example, administration, supervision, and professional development.

STANDARD ONE: Compensation

Standard:

1.A. Public Defense Agency Salaries and Benefits.

Employees at public defense agencies shall be compensated at a rate commensurate with their training and experience. Compensation and benefit levels shall be comparable to those of attorneys and staff in prosecution or other opposing party offices in the area. Compensation shall also include necessary administrative costs described in Standard Five, support services costs described in Standard Seven, and training and supervision costs described in Standards Nine and Ten.

1.B. Contract and Assigned Counsel Compensation.

Compensation for public defense attorneys in contract and assigned counsel systems shall reflect the professional experience, time, and labor required for effective and quality representation. Compensation shall also be based on the comparable compensation and benefits associated with

prosecution or other opposing party offices in the area. Compensation shall also include necessary administrative costs described in Standard Five, support services costs described in Standard Seven, and training and supervision costs described in Standards Nine and Ten.

Reasonable compensation shall be provided whether the work is for full-time or part-time public defense attorneys. Reasonable contract or assigned counsel compensation rates shall be set at least on a pro rata basis consistent with the attorney's percentage of a full caseload (see Standard 3). For example, if a jurisdiction allocates \$280,000 per year per full-time equivalent (FTE) prosecuting attorney for all costs associated with that FTE, including but not limited to combined salary, benefits, support staff, administrative, information technology, insurance, bar dues, training, and facilities expenses, then a contract for one-fourth of a full-time public defense caseload should be at least \$70,000.

Contracts and government budgets shall recognize the need to provide reasonable compensation for all public defense attorneys, including but not limited to, those attorneys who are "on call," staff court calendars, or staff specialty or therapeutic courts.

1.C. Flat Fee and Per Case Compensation Agreements.

Attorneys shall not engage in flat fee or per case compensation contracts or agreements. These compensation structures create an actual conflict for the public defense attorney.⁷

Consistent with Washington Rule of Professional Conduct 1.8(m)(1)(ii), public defense attorneys shall not make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel.

1.D. Additional Compensation.

Consistent with RCW 10.101.060(1)(a)(iv), contracts and policies shall provide for additional compensation over and above the base contract amount(s) for cases that require an extraordinary amount of time and preparation.

Situations that require additional compensation include, but are not limited to:

- Days spent in trial, if no per diem is paid
- Testimonial motion hearings
- Interpreter cases
- Cases involving mental health competency and other issues (RCW 10.77)
- Cases with extensive discovery
- Cases that involve a significant number of counts, alleged victims or witnesses
- Cases requiring consultation with experts, including, for example, immigration legal analysis and

⁷ "Counsel should not be paid on a flat fee basis, as such payment structures reward counsel for doing as little work as possible." [ABA Ten Principles of a Public Defense Delivery System](#), Principle 2: Funding, Structure, and Oversight, n. 6 (August 2023) (citing *Wilbur v. Mt. Vernon*, No. C11-1100RSL, U.S.D.C. D. Wash., at 15 (Dec. 4, 2013) (district court finding that a flat fee contract "left the defenders compensated at such a paltry level that even a brief meeting at the outset of the representation would likely make the venture unprofitable."))

advice or DNA testing and analysis.

Attorneys should have the opportunity to submit requests for additional compensation for extraordinary cases and the right to appeal an adverse decision to a judicial officer.

1.E. Substitute Attorney Costs.

Consistent with Washington Rule of Professional Conduct 1.8(m)(1)(i), attorneys who have a conflict of interest shall not be required to bear the cost of the new, substituted attorney.

STANDARD TWO: Duties and Responsibilities of Counsel

Standard:

Jurisdictions that administer public defense services shall ensure that representation be provided in all situations in which the right to counsel attaches, including first appearances and bail decisions, as well as plea negotiations.

Representation shall be prompt and delivered in a professional, skilled manner consistent with minimum standards set forth by these *WSBA Standards*, the Washington Supreme Court's *Court Rule Standards* (CrR 3.1, CrRLJ 3.1, JuCR 9.2, and CCR 2.1), the American Bar Association, the Washington Rules of Professional Conduct, case law and relevant court rules and orders defining the duties of counsel. The applicable WSBA or ABA Performance Guidelines should serve as guidance for attorney performance. The most fundamental responsibility of jurisdictions and public defense attorneys is to promote and protect the stated interests of public defense clients.

STANDARD THREE: Caseload Limits and Types of Cases

Standard:

3.A. 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 and types of cases in which each attorney shall be expected to provide quality representation.

3.B. Quality Representation.

The maximum caseload or workload of public defense attorneys shall allow each attorney to give each client the time and effort necessary to ensure effective representation. Public defense attorneys should not enter into contracts requiring caseloads or workloads that, by reason of their excessive size, interfere with the rendering of quality representation. If the attorney's caseload or workload prevents providing quality representation,⁸ public defense attorneys shall take steps to reduce their caseload, including but

⁸ The American Bar Association's Ethics Opinion 06-441 states in part:

If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments. Once the lawyer is representing a client, the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation.

not limited to seeking co-counsel, reassignment of cases, or requesting a partial or complete stop to additional case assignments or requesting withdrawal from a case(s). If the attorney's workload is within the limits in this standard there is a presumption that they can provide quality representation.

If a public defense agency or nonprofit's workload exceeds the Director's capacity to provide counsel for newly assigned cases, the Director must notify courts and appointing authorities that the provider is unavailable to accept additional assignments and must decline to accept additional cases.⁹

3.C. Open Caseload.

The determination of an attorney's ability to accept new case assignments must include an assessment of the impact of their open caseload on their ability to provide quality representation.

3.D. Fully Supported, Full-Time Public Defense Attorneys.

The maximum caseloads or workloads for public defense attorneys assume an attorney's public defense work is: 1) full-time (exclusively public defense); 2) fully supported; 3) for cases of average complexity and effort for each case type specified; and 4) reasonably evenly distributed throughout the year. "Fully supported, full-time defense attorneys" are attorneys who meet or exceed Standards Four, Five, Six, Seven, Nine, Ten, Thirteen and Fourteen of these Standards.

3.E. Mix of Case Types and Private Practice.

If a public defense attorney accepts appointment to cases from more than one case type, this standard should be applied proportionately to determine a maximum full caseload.

Attorneys should not accept more public defense cases than the percentage of time their other work and commitments allow. The number of public defense cases or case credits should be based on the percentage of time available for the attorney to represent public defense clients. Each individual or organization that contracts to perform public defense services for a county or city shall report to the county or city hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases.¹⁰

3.F. Attorney Experience.

The experience of a particular attorney is a factor in the composition of case types in the attorney's caseload, but it is not a factor in adjusting the applicable numerical caseload limits except as follows: attorneys with less than six months of full-time public defense experience as an attorney should not be assigned more than two-thirds of the applicable maximum numerical caseload limit.

3.G. Impact of Public Defense Time Other Than Case Appointments.

Available at https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-ethics-opinion-06-441.pdf.

⁹ See, [ABA Eight Guidelines of Public Defense Related to Excessive Workloads](#), Guidelines 1, 4, 5, 6, 7, 8 (August 2009).

¹⁰ RCW 10.101.050.

Assessing an attorney's maximum caseload or workload limit must include accounting for work in addition to new cases assigned. Time spent on vacation, sick leave, holidays, training, supervision, administrative duties, and court improvement work groups must also be accounted for.

3.H. Definition of case.

A "case" is a new court filing or action that names a person who is eligible for appointment of a public defense attorney; for example, an adult criminal charging instrument, a juvenile court offender or BECCA petition, a dependency or termination of parental rights petition, a civil commitment petition, or an appeal.

3.I. Adult Criminal and Juvenile Court Offender Trial Court Cases

1. Adult Criminal and Juvenile Court Offender Cases.

- a. An attorney appointed to an Adult Criminal or Juvenile Court Offender case receives the case weight/credit or hours credit toward the attorney's annual caseload that is listed in Standard 3.J. and in Appendix B. In multi-count cases, the charge with the highest case category dictates the case's credit or hourly value. If the highest charge is amended or otherwise changed to a charge that is more serious than originally charged, the attorney(s) shall receive the additional case credit value. In the event a charge is amended to a less serious charge, the attorney shall still be given caseload credit for the original, higher charge as of the time the attorney was appointed to the case.
 - b. A charging document filed against a client arising out of a single event or series of events and being prosecuted together is presumed to be one case. Determining whether a case number is one or multiple cases is determined by the supervisor or appointing agency after reviewing the charging information, amended charging documents, or an order to sever counts.
2. Reappointment. Reappointment of the previously appointed attorney to a case in which a bench warrant was issued does not count as a new case if the warrant was issued within the twelve months prior to the reappointment. New case credits can be awarded as approved by a supervisor or appointment authority on a case-by-case basis.
 3. Partial Representation. The following must be taken into account when assessing an attorney's numerical caseload or when adjusting case credits assigned to attorney: partial case representations (cases in which an attorney withdraws or is substituted pursuant to CrR 3.1(e) and CrRLJ 3.1(e)), sentence or probation violations, cases in specialty or therapeutic courts, transfers, extraditions, representations of material witnesses, pretrial advice including "on-call" availability, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge. Time spent by attorneys representing multiple clients on first appearance, arraignment, or other calendaring hearings must be accounted for in reducing the number of maximum trial cases that can be assigned.
 - a. Transferred Case. When a public defense attorney's representation ends prior to the entry of a final order or judgment (for example, attorney withdrawal pursuant to CrR 3.1(e) or CrRLJ 3.1(e)), the supervising attorney or appointing authority shall determine the case

credit value to be awarded to each attorney based on the amount of time each attorney contributes.

- b. Co-Chairs. When two or more lawyers are assigned as co-chairs, the supervising attorney or appointing authority shall determine the case credit value to be awarded to each attorney based on the amount of time each attorney contributes, including mentoring by the non-supervisor lead counsel.
 - c. Transferred and Co-Chaired cases frequently take more time to complete than the average case. Additional credits may need to be applied. For the case category Felony High-Murder and Felony High-LWOP case types, there is a presumption that two or more lawyers will be assigned as co-chairs.
 - d. Court Calendar Positions.
 - i. Specialty or Therapeutic Courts: a criminal case resulting in admission to a Specialty or Therapeutic Court generally should not count as a case for the attorney covering the Specialty or Therapeutic Court. The case credit shall be applied exclusively to the originally assigned attorney(s) prior to the transfer into a Specialty or Therapeutic Court.
 - ii. Calendar Coverage: A criminal case appearing on a calendar where an attorney provides partial representation with no expectation of additional representation after the initial hearing shall not count as a case for the attorney covering the court calendar. This partial representation can include but is not limited to representing clients on: probable cause or first appearance calendars; arraignment calendars; failures to appear, warrant return, quash, and recommencement of proceedings calendars; preliminary appointments in cases in which no charges are filed; extradition calendars; and other matters or representations of clients that do not involve new criminal charges.
 - iii. Court Calendar Attorney Time: The workload of Specialty and Therapeutic Court attorneys and attorneys designated, appointed, or contracted to represent groups of clients on a court docket, without an expectation of further or continuing representation, shall be assessed and subtracted from the annual, assumed 1,650 hours monitored by the supervising attorney or appointing authority to ensure the attorney does not work more than 1,650 caseload hours in a 12-month period.
4. Probation Violation Cases. Appointment of a public defense attorney to represent a person on one or more original case numbers where a probation violation(s) or show cause order(s) has been filed is presumed to count as 1/3 credit of the Felony or Misdemeanor Case Credit. Additional case credits can be awarded as approved by a supervisor or appointing authority on a case-by-case basis.

3.J. Maximum Case Credit Limit for Adult Criminal and Juvenile Court Offender Cases Each Year.

This Section shall be implemented according to the schedule in Section 3.O.

The maximum number of case credits for a fully supported, full-time public defense attorney each calendar year is based on an assumed 1650-hour "case-related hours" available each year. This number represents

the assumed time an attorney in Washington has available each year to devote to public defense clients' representation. It excludes annual time for leave (for example, vacation, sick, PTO, FMLA) holidays, CLEs and training, supervision, and other time that is not "case-related").¹¹

The maximum annual caseload case credits for each category of Adult Criminal and Juvenile Court Offender cases are based on the *National Public Defense Workload Study* (Sept. 2023).¹²

The maximum annual caseload for a full-time **felony** attorney is 47 case credits.

Case credits for each Felony case category appointment shall be as follows (see Appendix B for case types falling within each category):

Felony High-LWOP: ¹³	8
Felony High-Murder:	7
Felony High-Sex:	5
Felony High:	3
Felony Mid:	1.5
Felony Low:	1

The maximum annual caseload for a full-time **misdemeanor** attorney is 120 case credits.

Case credits for each Misdemeanor case category appointment shall be as follows:

Misdemeanor High:	1.5
Misdemeanor Low:	1

If a case resolves relatively quickly, before an attorney has done significant work on the matter, the attorney will be credited with a proportional, reduced amount of the credits initially assigned.

3.K. Other Case Types.¹⁴

¹¹ See Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study Research Report, 99* (Sept. 2023) (hereinafter *NPDWS*). In addition, the Washington Defender Association *Indigent Defense Standards* (1989) states: "An accepted standard for attorneys is to work 1650 billable hours per year." https://defensenet.org/wp-content/uploads/2017/12/Final-2007-WDA-Standards-with-Commentary_18.12.06.pdf. Similarly, a study for the Massachusetts Committee for Public Counsel Services determined that an appropriate number of hours to spend directly representing clients per year is 1,662 hours, after deducting holidays, vacation time, training, and non-case duties. Center for Court Innovation, *The Committee for Public Counsel Services Answering Gideon's Call Project (2012-DB-BX-0010) Attorney Workload Assessment, 12* (Oct. 2014), available at <https://www.publiccounsel.net/wp-content/uploads/2024/03/Answering-Gideons-Call-Project-Recommendations.pdf>.

¹² *NPDWS*, at 85.

¹³ Felony High-LWOP does not apply to Juvenile Court Offender cases.

¹⁴ The standards under this subsection are under review. To provide guidance in the interim, the prior standards are included only until revisions are approved.

Appeals: 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.)

Family Defense: 80 open dependency/termination of parental rights for parent and child(ren) representation per attorney per year.

Civil Commitment: 250 Civil Commitment cases per attorney per year.

3.L. Additional Considerations.

1. Caseload limits require a reasonably even number of case appointments each month, based on the number of cases appointed in prior months.
2. Resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

3.M. Full-Time Rule 9 Interns.

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

3.N. Attorneys in Jurisdictions that Do Not Follow Case Credit System in Standard 3.J.

Attorneys in jurisdictions that do not use the case credit system in Standard 3.J. shall be employed by, contract with, or be appointed by the local government entity responsible for those functions only if the jurisdiction has adopted and published a numerical caseload or workload maximum that is consistent with the caseload and workload limits set in Standard 3.J. Such a caseload or workload maximum must:

- a) Recognize the greater or lesser workload required for cases compared to an average based on a method that adequately assesses and documents the workload involved;
- b) Be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;
- c) Not institutionalize systems or practices that fail to allow adequate attorney time for competent and diligent representation;
- d) Be periodically reviewed and updated to reflect current workloads; and be filed with the State of Washington Office of Public Defense.

3.O. Implementation of Standards.

Standard 3 shall be implemented in phases and shall go into effect on July 2, 2025. The 2024 revisions to these Indigent Defense Standards shall be implemented on the following schedule:

Until July 2, 2025, the caseload standards as adopted in pre-existing *WSBA Standards of Indigent Defense Services* and *Court Rule Standards of Indigent Defense* shall apply: The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following:

150 Felonies per attorney per year;

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

250 Juvenile Offender cases per attorney per year.

Phase 1:

Beginning July 2, 2025, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 110 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 280 misdemeanor case credits.

Phase 2:

Beginning July 2, 2026, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 90 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 225 misdemeanor case credits.

Phase 3:

Beginning July 2, 2027, and for any twelve-month period following, each full-time felony attorney shall be assigned cases constituting no more than 47 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 120 misdemeanor case credits.

STANDARD FOUR: Responsibility for Expert Witnesses

Standard:

4.A. Expert Witnesses

Jurisdictions that administer public defense services shall provide reasonable compensation for expert witnesses necessary for preparation and presentation of the case. Expert witness costs should be maintained and allocated from funds separate from those provided for attorney legal representation.

Jurisdictions shall adopt and publish procedures to confidentially receive, review, and grant requests for expert witness services. In jurisdictions where attorneys are required to request approval for expert witnesses or other necessary services from the court, such motions shall be *ex parte* and include a motion to seal. The public defense attorney should be free to retain the expert of their choosing and shall not be required to select experts from a list pre-approved by either the jurisdiction, the court, or the prosecution.

4.B. Mitigation Specialists, Social Workers

Mitigation specialists and social workers shall be made readily available to public defense attorneys to provide support, such as release plans, treatment services, housing, health care, and to develop dispositional and sentencing alternatives.

In public defense agencies, by July 3, 2028, a minimum of one full-time mitigation specialist or social worker shall be provided for every three full-time attorneys. Public defense agencies shall make meaningful progress towards this ratio prior to July 3, 2028.¹⁵ Attorneys representing clients in post-

¹⁵ Support staff necessary for effective representation “includes one supervisor for every ten attorneys; one investigator for every three attorneys; one social service caseworker for every three attorneys; one paralegal for every four felony attorneys; and one secretary for every four felony attorneys.” Bureau of Justice Assistance, United

adjudication phases may require different resources. Public defense agencies that do not employ a sufficient number of mitigation specialists or social workers to meet this ratio shall enter into contracts with additional mitigation specialists or social workers to provide the same resource level.

Temporary reductions in agency staff because of illness, disability, or reasonable delay in filling vacancies do not constitute failure to comply with this standard. Attorneys representing clients in post-adjudication phases may require different resources.

Public defense attorneys under contract or in assigned counsel systems should have access to mitigation specialists and social workers, consistent with 4.A.

4.C. Mental Health Professionals for Evaluations

Each public defense agency or attorney shall have access to mental health professionals to perform mental health evaluations.

4.D. Interpreters and Translators

All individuals providing public defense services (attorneys, investigators, experts, support staff, etc.) shall have access to qualified interpreters to facilitate communication with Deaf and hearing-impaired individuals, and persons with limited English proficiency. Similarly, all public defense providers shall have access to translators to translate vital documents and resources from English to the client's primary language.¹⁶

4.E. Cost of Expert Services

Consistent with Washington Rule of Professional Conduct (RPC) 1.8(m)(1)(ii), attorneys shall not be required to bear the costs of expert services.

STANDARD FIVE: Administrative Costs

Standard:

5.A. Administrative Services Necessary for Law Offices

Jurisdictions shall provide funding for administrative costs associated with legal representation. These costs include, but are not limited to, travel, telephones, law library, including electronic legal research, electronic document filing, financial accounting, case management systems, legal system databases and programs, computers and software, equipment, office space and supplies, internet services, training, and other costs necessarily incurred for public defense representation and necessary to comply with the requirements imposed by these standards.

Providing for these costs is necessary for all public defense structures, including agency, contract, and assigned counsel systems.

States Department of Justice's *Keeping Defender Workloads Manageable*, 10 (2001), available at <https://www.ncjrs.gov/pdffiles1/bja/185632.pdf>. See also, National Association for Public Defense Policy Statement on Public Defense Staffing (May 2020), available at <https://publicdefenders.us/resources/policy-statement-on-statement-on-public-defense-staffing/>.

¹⁶ See, RPC 1.4 "Communication."

Administrative costs for contract and assigned counsel services shall be included in compensation rates and agreements.

5.B. Law Offices Must Accommodate Confidential, Prompt, and Consistent Client Communication

All public defense attorneys shall have access to an office that accommodates confidential meetings with clients and receipt of mail, and adequate telephone and electronic services to ensure prompt response to client contact. Public defense attorneys and clients must have prompt and consistent access to interpreter services.

STANDARD SIX: Investigators

Standard:

6.A. Access to Investigation Services

Public defense representation must include access to investigation services. Public defense-led investigation is necessary for representing clients for purposes of verifying facts, identifying and questioning witnesses, and testing the evidence presented by the opposing party.

6.B. Investigation for Public Defense Agencies

In public defense agencies, by July 3, 2028, a minimum of one full-time investigator shall be employed for every three full-time trial court level (adult and/or juvenile) attorneys.¹⁷ Public defense agencies shall make meaningful progress towards this ratio prior to July 3, 2028. Public defense agencies that do not employ a sufficient number of investigators to meet this ratio shall enter into contracts with additional investigators to provide the stated resource level. Temporary reductions in agency staff because of illness, disability, or reasonable delay in filling vacancies do not constitute failure to comply with this standard. Attorneys representing clients in post-adjudication phases may require different investigation resources.

6.C. Investigation for Contract and Assigned Counsel

When public defense attorneys work under contracts or assigned counsel systems, jurisdictions must ensure that they have the same level of access to investigators as described in 6.B. Local jurisdictions shall adopt and publish confidential procedures to receive, review, and grant requests for investigation services. In jurisdictions where attorneys are required to request court approval for investigative services, such motions shall be *ex parte*, consistent with the requirements of Washington Rule of Professional Conduct 1.8(m)(1)(ii) and court rules.

6.D. Investigation for *Pro Se* Litigants

¹⁷ National Association of Public Defense Policy Statement on Public Defense Staffing (May 2020): “Until empirical studies are further able to determine the number of staff necessary to support the lawyer, public defense systems, at a minimum, should provide, one investigator for every three lawyers, one mental health professional, often a social worker, for every three lawyers, and one supervisor for every 10 litigators. Additionally, there should be one paralegal and one administrative assistant for every 4 lawyers.”

All jurisdictions should make conflict free investigation services available to indigent defendants or respondents who are representing themselves in all cases in which the court has approved waiver of their right to court-appointed counsel.

6.E. Cost of Investigation Services

Consistent with Washington Rule of Professional Conduct 1.8(m)(1)(ii), attorneys shall not be required to bear the costs of investigation services.

STANDARD SEVEN: Support Services

Standard:

7.A. Support Services Necessary for Legal Defense

In addition to the necessary resources described in Standards Four, Five, and Six, public defense attorneys shall have adequate legal and administrative support. Legal and administrative support services include, but are not limited to, administrative assistants, legal assistants, paralegals, human resources, finance, reception services, and IT and data management administrators. These professionals are essential for effective legal defense and an operational law office. Jurisdictions shall ensure all public defense attorneys have access to needed support services as provided in this Standard and as required by Washington Rule of Professional Conduct 1.4 to ensure attorney/client communication.

7.B. Providing for Support Services in Contract and Assigned Counsel Compensation

The support services described in 7.A. are required for all public defense attorneys, regardless of their employment, contract or assigned counsel status. Contract and assigned counsel attorneys shall receive compensation at levels that ensure these non-attorney support services are provided.

7.C. Necessary Legal Assistants/Paralegals Ratio

In public defense agencies, by July 3, 2028, a minimum of one full-time legal assistant or paralegal shall be employed for every four full-time attorneys. Public defense agencies shall make meaningful progress towards this ratio prior to July 3, 2028.

Public defense agencies that do not employ a sufficient number of legal assistants or paralegals to meet this ratio should enter into contracts with qualified professionals to provide the same resource level or request authorization of such services *ex parte* or administratively.

Temporary reductions in agency staff because of illness, disability, or reasonable delay in filling vacancies do not constitute failure to comply with this standard. Attorneys representing clients in post-adjudication phases may require different resources.

STANDARD EIGHT: Reports of Attorney Activity

Standard:

Jurisdictions shall require all public defense attorneys use a case-reporting and management information system that includes the number and types of assigned cases, attorney hours and case dispositions. Data from these systems should be routinely reported to public defense administrators in a manner in which

confidential, secret and otherwise non-public information and secrets are not disclosed. Consistent with Standard Eleven, public defense administrators should review these reports on a regular basis to monitor compliance with these Standards.

For attorneys under contract, payment should be made monthly, or at times agreed to by the parties, without regard to the number of cases closed in the period.

STANDARD NINE: Training

Standard:

9.A. Annual Training

All public defense attorneys shall participate in regular training, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice. Training should include relevant topics including training specific to certain case types as required in Standard Fourteen, the types of cases assigned (for example, criminal, dependency, appellate), racial and ethnic disparities, elimination of bias, mental illnesses, improved and effective communication with clients, forensic sciences, and other topics that impact legal representation. Every public defense attorney should attend training that fosters trial or appellate advocacy skills and review professional publications and other media.

9.B. Onboarding and Training of New and Current Attorneys

Public defense agencies and contracted private law firms should develop their own practices and procedures to onboard and train new attorneys. Offices should develop written materials (e.g. manuals, checklists, hyperlinked resources) to inform new attorneys of local rules and procedures of the courts in their jurisdiction.

In offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held to inform them of office procedures and policies. All attorneys should be required to attend regular in-house training programs on developments in their legal representation areas.

9.C Continuing Education for Public Defense Non-Attorneys

Funding for training for all public defense non-attorneys must be provided. A fully supported public defense attorney is one whose staff and expert service providers receive educational opportunities and up-to-date trainings to ensure they can meet their profession's best practices. This may include attendance at national conferences and regular access to online trainings, such as those offered by the Washington State Office of Public Defense, Washington Defender Association, the National Association for Public Defense, the National Legal Aid and Defender Association, the National Alliance of Sentencing Advocates and Mitigation Specialists, the National Defense Investigator Association, the National Federation of Paralegal Associations, and the National Association for Legal Support Professionals.

STANDARD TEN: Supervision

Standard:

In public defense agencies and contracted private law firms, a minimum of one full-time supervisor should be employed for every ten full-time public defense attorneys or one half-time supervisor for every five public defense attorneys. Full-time supervisors should not carry caseloads, but supervisors may act as co-counsel in a limited number of cases to provide mentoring and training experience for their supervisees. Part-time supervisors should limit their caseloads on a pro-rata basis. Supervisors should have training in personnel management and supervision. Supervisors should be qualified under Standard 14 for the practice area(s) they are supervising.

STANDARD ELEVEN: Monitoring and Evaluation of Attorneys

Standard:

All jurisdictions shall provide a mechanism for systematic monitoring of public defense attorneys and their caseloads and ensure timely review and evaluation of public defense services. Monitoring and evaluation should include, but not be limited to, review of reports submitted per Standard Eight, review of time and caseload assignments, in-court observations, periodic conferences, verification of attorney compliance with Standard Nine training requirements, verification of compliance with Certifications of Compliance with the Supreme Court's *Court Rule Standards*, and management of client complaints, consistent with Standard Fifteen.

Attorneys should be evaluated on their skill and effectiveness as advocates, including their communication with clients.

STANDARD TWELVE: Substitution of Counsel

Standard:

12.A. Availability at No Cost to Attorney.

Consistent with Standard 1.E, alternate or conflict public defense attorneys shall be available for substitution in conflict situations at no cost to the attorney declaring the conflict.

12.B. Subcontracting.

Public defense contracts and assigned counsel policies should prohibit counsel from subcontracting with another firm or attorney to provide representation, absent approval of the public defense administrator.

12.C. Attorney Names.

In contract and assigned counsel systems, the public defense administrator should receive the names and experience levels of those attorneys who will be and actually are providing the legal representation, to ensure the attorneys meet the minimum qualifications required by Standard 14.

12.D. Continuing Representation and Client Files.

Public defense contracts and assigned counsel policies shall address the procedures for continuing representation of clients upon the conclusion of the contract or case assignment. Public defense contracts

and assigned counsel policies shall include which attorney or firm or public defense office is responsible for maintaining client files confidentially when a contract terminates or case assignment ends.¹⁸

STANDARD THIRTEEN: Limitations on Private Practice

Standard:

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

STANDARD FOURTEEN: Qualifications of Attorneys

Standard:

14.A. Minimum Qualifications for All Public Defense Attorneys

To ensure that persons entitled to legal representation by public defense attorneys receive the effective assistance of counsel, public defense attorneys shall meet the following minimum professional qualifications:

1. Be admitted to practice law in Washington;
2. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area;
3. Be familiar with the Washington Rules of Professional Conduct;
4. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; when representing youth, be familiar with the Performance Guidelines for Juvenile Defense Representation approved by the Washington State Bar Association; when representing respondents in civil commitment proceedings, be familiar with the Performance Guidelines for Attorneys Representing Respondents in Civil Commitment Proceedings approved by the Washington State Bar Association; when representing respondents in dependency proceedings, be familiar with Dependency (parent/child) performance guidelines referenced in 14.C.2, below;
5. Be familiar with the processes to seek interlocutory relief;
6. Be familiar with the Washington State Guidelines for Appointed Counsel in Indigent Appeals;
7. Attorneys representing adults in criminal cases or children and youth in Juvenile Court cases must be familiar with the consequences of a conviction or adjudication, including but not limited to, the requirement to register as a sex offender, possible immigration consequences and the possibility

¹⁸ See, WSBA Guide to Best Practices for Client File Retention and Management at: [https://www.wsba.org/docs/default-source/resources-services/practice-management-\(lomap\)/guide-to-best-practices-for-client-file-retention-and-management.pdf?sfvrsn=306a3df1_10](https://www.wsba.org/docs/default-source/resources-services/practice-management-(lomap)/guide-to-best-practices-for-client-file-retention-and-management.pdf?sfvrsn=306a3df1_10).

of civil commitment proceedings based on a criminal conviction and possible impacts in future criminal proceedings;

8. Be familiar with the impact of systemic bias and racism and racial disproportionality in the legal system;
9. Be familiar with mental health and substance use issues and be able to identify the need to obtain expert services related to the case and for the client;
10. Attorneys representing children and youth in Juvenile Court cases must have knowledge, training, experience, and the ability to communicate effectively with children and youth, and be familiar with the Juvenile Justice Act;
11. Attorneys representing children and youth in dependency cases must have knowledge, training, experience and the ability to communicate effectively with children and youth; and
12. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

14.B. Additional Information Regarding Qualifications Overall

1. An attorney previously qualified for a category of case under earlier versions of these WSBA Standards, Court Rule Standards, or Washington Supreme Court Emergency Orders remains qualified.
2. Attorneys working toward qualification for a particular category of cases may associate as co-counsel with a lead counsel who is qualified under these standards for that category of case.¹⁹ Co-counseling is encouraged.
3. These qualifications standards require trial experience for most categories of cases – either as lead counsel, or co-counsel, and for handling a significant portion of a trial. A “significant portion of a trial” means planning or participating in essential aspects of a trial which includes, but is not limited to, motions in limine, jury selection, opening statements, direct and cross examination, motions and objections, preparation of and advocacy for jury instructions, and closing arguments.
4. Each attorney should be accompanied at their first trial by a supervisor or a more experienced attorney, if available. If a supervisor or more experienced attorney is not available to accompany the attorney at their first trial, the attorney, before their first trial, must consult about the case with a more experienced attorney in their office or an outside more experienced attorney such as Washington Defender Association resource attorneys.
5. Each attorney must have sufficient resources, including support staff and access to professional assistance, to ensure effective legal representation and regular availability to clients and others involved with the attorney’s public defense work.

¹⁹ Attorneys should keep records of cases in which the attorney served as co-counsel, trials, and attendance at trial academies.

6. These qualifications standards apply to the highest case category or charge at any time in the life of the case; for example, in criminal cases, any time from first appearance or arraignment through sentencing and post-trial motions.
7. Attorneys accepting appointment in the various categories of cases designated in Standard Three shall have the qualifications listed below, in addition to those in 14.A.1–14.A.12.
8. Experience as an Admissions and Practice Rule (APR) 6 or 9 legal intern cannot be used to meet the experience requirements for these qualifications.

14.C. Attorneys' Qualifications by Category/Type of Case and Representation Type (Trial or Appellate)

1. Overview of Adult Criminal and Juvenile Court Cases – Trial Level

- a. These qualifications are based on the following categories of cases:
 - Misdemeanor-Low and Misdemeanor Probation Revocation Hearings
 - Misdemeanor-High
 - Felony-Mid and Low
 - Felony Sex Cases
 - Felony High-Other
 - Felony High-Life Without Parole (LWOP) Sentence and Murder
 - Felony Re-Sentencing, Probation Violation or Revocation, and Reference Hearings
- b. To determine the qualifications standard that applies to a specific offense, the assigning authority should refer to Appendix B to these standards that maps the RCW statutes to the above categories.
 - i. If the legislature designates a felony offense as Class A that is, as of January 1, 2024, in a lower case category, the case category should be presumed to be a Felony-High Other until this standard in Appendix B lists it otherwise.
 - ii. If the legislature, after January 1, 2024, changes an offense from a misdemeanor or gross misdemeanor to a felony, that case category should be presumed to be a Felony-Mid and Low until this standard in Appendix B lists it otherwise.
 - iii. If the legislature, after January 1, 2024, creates a new misdemeanor or gross misdemeanor, that case should be presumed to be a Misdemeanor-High until this standard in Appendix B lists it otherwise.
- c. Until such time as the above case categories are adopted as part of CrR 3.1, CrRLJ 3.1, and JuCr 9.1, the attorney qualifications set out below are largely comparable to case seriousness levels found in the Revised Code of Washington. Attorneys representing clients charged with Life Without Parole (LWOP) cases or in murder or manslaughter cases shall meet the qualifications listed below in Standard 14.C.2. Similarly, Felony-High categories apply to attorneys representing clients in Class A Adult Felony Cases and Adult Sex Offense Cases. The qualifications set out below for the Felony-Mid category apply to attorneys representing clients in Class B Adult Felony Cases and Class B Adult Violent Cases and the qualifications set out below for the Felony-Low category apply to attorneys representing clients in Adult Felony Class C Cases. The qualifications listed below for Felony Re-Sentencing and Revocation and Reference Hearings apply to attorneys representing clients in Felony Probation Revocation cases. The qualifications listed below for DUI-Low category apply to attorneys representing clients in misdemeanor DUI cases. The qualifications listed below for Adult Misdemeanor-Low cases apply to attorneys representing clients in all other adult misdemeanor cases.

2. Adult Criminal Trial Court Cases

- a. **Misdemeanor Low and Misdemeanor Probation Hearings** – Each attorney representing a person accused of Misdemeanor Low cases or Misdemeanor Probation Hearings shall meet the requirements as outlined in Section 14.A.
- b. **Misdemeanor High Cases** – Each lead counsel representing a person accused of:
 - i. A misdemeanor **domestic violence**²⁰ offense shall meet the requirements in Section 14.A and have attended a defense training or CLE on domestic violence representation.
 - ii. A gross misdemeanor **drug offense** shall meet the requirements in Section 14.A and have attended a defense training or CLE on drug offenses.
 - iii. A misdemeanor **sex offense**²¹ shall meet the requirements in Section 14.A; and
 1. Has served one year as a criminal defense attorney or prosecutor;
 2. Has been trial counsel alone or with other trial counsel and conducted a significant portion of either:
 - a. Two criminal cases in which the prosecution has rested, at least one of which was presented to a jury, or
 - b. One criminal trial in which the prosecution has rested and has completed a trial training academy;
 3. Has attended a CLE on sex offenses including training about collateral consequences of sex offense convictions and child hearsay.
 - iv. Each lead counsel representing a person accused of a **misdemeanor DUI** offense shall meet the requirements in Section 14.A and has completed a CLE within the past two years on the topic of DUI defense representation.
- c. **Felony Mid and Felony Low Cases** – Each lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Has served one year as a criminal defense attorney or one year as a prosecutor; and
 - iii. Has been trial counsel alone or with other trial counsel and conducted a significant portion of either:
 1. Two criminal trials in which the prosecution rested, or
 2. One criminal trial in which the prosecution has rested and has completed a trial training academy.
 - iv. Each attorney shall be accompanied at their first felony trial by an attorney who is qualified for this or higher case categories.
- d. **Felony Sex Cases** – Each lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Has served two years as either a criminal defense attorney or prosecutor;

²⁰ Listed in RCW 9.41.040(2)(a)(i)(B-D) or RCW 10.99.020(4).

²¹ Includes a violation of RCW 9.68A.090 (Communicating with a Child for Immoral Purposes), 9A.44.063 (Sexual Misconduct with a Minor in the Second Degree), or an attempt, solicitation, or conspiracy to commit a Class C felony that requires sex offender registration upon conviction pursuant to RCW 9A.44.140.

- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases in which the state has rested, at least one of which was submitted to a jury; and
 - iv. Has attended a CLE on sex offenses, including training about collateral consequences of sex offense convictions and child hearsay.
 - Failure to Register as a Sex Offender cases are in the Felony-Mid and Low Category.
 - e. **Felony High – Other Cases** – Each lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Has served two years as either a criminal defense attorney or prosecutor; and
 - iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases in which the state has rested, at least one of which was submitted to a jury.
 - f. **Felony High – Life Without Parole and Murder Cases** – Each lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. At least three years’ experience in adult felony cases, including at least two years as a defense attorney representing people in adult felony cases;
 - iii. Has been lead counsel or co-counsel in four adult felony trials in which the state has rested, at least one of which was submitted to a jury and at least one of which was a Felony-High case; and
 - iv. Has completed a defense training or CLE on mitigation and challenging prior convictions.
 - g. **Felony Resentencing, Revocation, or Reference Hearing** – Each lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A; and
 - ii. Be qualified to represent the client in a Felony-Mid and Low case.
 - h. **Felony Material Witness Representation** – Each attorney representing a material witness shall be qualified to represent a client in Felony-Mid and Felony-Low cases, unless there is reason to believe the witness has legal exposure for a more serious felony offense to be charged, in which case lead counsel shall be qualified to represent a person accused of that more serious offense.
 - i. **Specialty Courts** – Each attorney representing a client in a specialty court (e.g., mental health court, drug court, veterans court, homelessness court, juvenile therapeutic court, community court, and family therapeutic court) shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Be familiar with mental health and substance use issues, housing, treatment alternatives, and when representing veterans, resources available for veterans.
- 3. Juvenile Trial Court Cases** –The qualification requirements below apply to representation of respondents in Juvenile Court.
- a. **Misdemeanor Low and Misdemeanor Probation Hearings** – Each attorney representing the accused in Misdemeanor-Low case or Misdemeanor Probation Hearings shall meet the requirements as outlined in Section 14.A.
 - b. **Misdemeanor High Cases** – Each lead counsel representing a person accused of:

- i. A misdemeanor **domestic violence**²² offense shall meet the requirements in Section 14.A and have attended a defense training or CLE on domestic violence representation.
- ii. A gross misdemeanor **drug offense** shall meet the requirements in Section 14.A and have attended a defense training or CLE on drug offenses.
- iii. A misdemeanor **sex offense**²³ shall meet the requirements in Section 14.A; and
 - 1. Has served one year as a criminal defense attorney or prosecutor;
 - 2. Has been trial counsel alone or with other trial counsel and conducted a significant portion of either:
 - a. Two criminal cases in which the prosecution has rested, at least one of which was presented to a judge for verdict, or
 - b. The significant portion of one criminal trial in which the prosecution has rested and has completed a trial training academy;
 - 3. Has attended a CLE on sex offenses including training about collateral consequences of sex offense adjudications and child hearsay.
- c. **Felony Mid and Felony Low Cases** – Each lead counsel shall meet the following requirements:
 - i. Meet the requirements set forth in Section 14.A;
 - ii. Has served one year as a criminal defense attorney or one year as a prosecutor; and
 - iii. Has been trial counsel alone or with other trial counsel and conducted a significant portion of either:
 - 1. Two criminal trials in which the prosecution rested; or
 - 2. One criminal trial in which the prosecution has rested and has completed a trial training academy.
 - iv. Each attorney shall be accompanied at their first felony trial by an attorney who is qualified for this or higher case categories.
- d. **Felony Sex Cases** – Each lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Has served two years as either a criminal defense attorney or prosecutor;
 - iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases in which the state has rested; and
 - iv. Has attended a CLE on sex offenses, including training about collateral consequences of sex offense convictions and child hearsay.

Failure to Register as a Sex Offender cases are in the Felony Mid and Low Category.
- e. **Felony High – Other Cases** – Each lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Has served two years as either a criminal defense attorney or prosecutor; and

²² Listed in RCW 9.41.040(2)(a)(i)(B-D) or RCW 10.99.020(4)

²³ Includes a violation of RCW 9.68A.090 (Communicating with a Child for Immoral Purposes), 9A.44.063 (Sexual Misconduct with a Minor in the Second Degree), or an attempt, solicitation, or conspiracy to commit a Class C felony that requires sex offender registration upon conviction pursuant to RCW 9A.44.140.

- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases in which the state has rested, at least one of which was submitted to a judge or jury for verdict.
 - f. **Felony High – Murder Cases** – Each lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. At least three years’ experience in adult felony cases, including at least two years as a defense attorney representing persons in adult felony cases; and
 - iii. Has been lead counsel or co-counsel in four adult felony trials in which the state has rested, at least one of which was submitted to a judge for verdict and at least one of which was a Felony-High case.
 - g. **Felony Resentencing, Revocation, or Reference Hearing** – Each lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A; and
 - ii. Is qualified to represent the client in a Felony-Mid and Low case.
 - h. **Specialty Courts** – Each attorney representing a client in a specialty court (e.g., mental health court, drug court, veterans court, homelessness court, juvenile therapeutic court, community court, and family therapeutic court) shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Be familiar with mental health and substance use issues, housing, treatment alternatives, and when representing veterans, resources available for veterans.
 - i. **Juvenile Court Status Offense Cases** - Each lead counsel representing a client in a Child in Need of Services (CHINS), At-Risk Youth (ARY), Truancy, or other status offense case shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A; and
 - ii. Either:
 - 1. Have represented youth in at least two similar cases under the supervision or consultation with an attorney qualified under this case type, or
 - 2. Completed at least three hours of CLE training specific to Juvenile Status Offense Cases.
- 4. Civil Cases – Trial Court Cases**
- a. **Representing Children and Youth in Dependency Cases** – Attorneys representing children and youth in dependency matters should be familiar with expert services and treatment resources available in dependency cases. Each lead counsel representing children and youth in a dependency matter shall meet the following requirements:
 - i. Meet the minimum requirements set forth in Section 14.A and the requirements for training and experience in the *Representation of Children and Youth in Dependency Cases Practice, Caseload and Training Standards*, Washington Supreme Court Commission on Children in Foster Care, at the Request of the Legislature (Rev. Sept. 2022)²⁴;

²⁴ Available at: <https://www.courts.wa.gov/subsite/CommFC/docs/revise%20practice%20standards%20for%20representation%20of%20children%20and%20youth%20in%20dependency%20cases.pdf>.

- ii. Have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Civil Legal Aid resource attorney or other attorney qualified under this section; and
 - iii. Attorneys representing children and youth in termination of parental rights cases shall have six months' dependency experience or have significant experience in conducting complex litigation.
- b. **Representing Parents in Dependency Cases** – Attorneys representing parents in dependency matters should be familiar with expert services and treatment resources available in dependency cases. Each lead counsel representing children and youth in a dependency matter shall meet the following requirements:
 - i. Meet the minimum requirements as outlined in Section 14.A;
 - ii. Be familiar with the *American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases and the Family Justice Initiative Attributes*; and
 - iii. Attorneys representing parents in termination of parental rights cases shall have either six months' dependency experience or significant experience in handling complex litigation.
- c. **Civil Commitment Cases (RCW 71.05)** – Each lead counsel representing a respondent shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Each lead counsel in a 90- or 180-day commitment hearing shall have prepared and conducted at least five 14-day hearings;
 - iii. Each lead counsel shall be accompanied at counsel's first 90- or 180-day commitment hearing by a supervisor or consult with a qualified attorney before the hearing;
 - iv. Each lead counsel in a civil commitment trial shall have conducted at least two contested 14-day hearings as lead counsel or been co-counsel with a more experienced attorney in two 90- or 180-day contested commitment hearings.
 - v. Have a basic knowledge of the classification of mental disorders, as described in the most recent Diagnostic and Statistical Manual of Mental Disorders ("DSM")²⁵ and other resources, and the ability to read and understand medical terminology related to mental disorders and treatment of persons with a mental illness, substance use disorder, co-occurring disorders, and chemical dependency. Counsel shall have ready access to the most recent DSM, as well as research resources for related medical conditions. Counsel should also have basic knowledge and understanding of common personality disorders and medical conditions that may produce similar symptoms. Counsel shall be familiar with the classes of medication prescribed to treat mental disorders and chemical dependency and the possible effect of those medications on the client's ability to interact with counsel and to participate in court proceedings. Counsel should be

²⁵ Counsel shall be familiar with the diagnostic manual in use by mental health professionals at the time of sentencing and the time of any hearing.

familiar with treatment facilities, both in-patient and out-patient, that provide services to persons with mental illness, including the scope of those services. Counsel should be familiar with local facilities and state hospitals that may be remote from where the client lives. Counsel should be familiar with the limitations on available treatment and transportation obstacles associated with such facilities.

- d. **Representing Clients Acquitted by Reason of Insanity (RCW 10.77)** – Each attorney representing persons who are acquitted by reason of insanity in post-commitment proceedings shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Have at least three years’ experience of either criminal trial experience, dependency experience, or civil commitment proceedings under RCW 71.05; and
 - iii. Has a basic knowledge of the classification of mental disorders, as described in the most recent Diagnostic and Statistical Manual of Mental Disorders (“DSM”) and other resources, related to the treatment of persons with a mental illness and substance use;²⁶ and
 - iv. Each counsel representing persons in this category shall meet qualification requirements established by the Washington State Office of Public Defense for this type of representation.
- e. **Sex Offender Commitment Cases (RCW 71.09)** – There should be two attorneys on each sex offender commitment case. The lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. At least three years’ criminal trial experience;
 - iii. One year experience as a felony trial defense or criminal appeals attorney;
 - iv. One year of appellate experience or demonstrated legal writing ability;
 - v. Has been lead defense counsel in at least one felony trial; and
 - vi. Has experience as defense counsel in cases involving each of the following:
 - 1. Mental health issues;
 - 2. Sexual offenses;
 - 3. Expert witnesses; and
 - 4. Familiarity with the Civil Rules.
 - vii. Other counsel working on a sex offender commitment case should meet the minimum requirements in Section 14.A and have either one year’s experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.
- f. **Contempt of Court Cases (Child Support Enforcement)** – Each lead counsel representing

²⁶ Counsel shall be familiar with the diagnostic manual in use by mental health professionals.

a respondent in a contempt of court case shall meet the following requirements:

- i. The minimum requirements set forth in Section 14.A;
- ii. Each lead counsel shall be accompanied by a supervisor or more experienced attorney at his or her first contempt of court hearing and at his or her first two contested contempt of court hearings and participate in at least one consultation per case for their first five non-contested hearings with a WDA resource attorney or another attorney qualified in this area of practice; and
- iii. Be familiar with the Rules of Civil Procedure.

5. Appellate Cases

a. **Adult Criminal and Juvenile Court Representation in Appellate Courts Other Than Superior Court RALJ Appeals** – Each lead counsel in an appellate matter before the Court of Appeals or Supreme Court shall meet the following requirements:

- i. The minimum requirements set forth in Section 14.A;
- ii. Has filed six appellate briefs as counsel for a party in the Washington Supreme Court or Court of Appeals, or appellate courts of other jurisdictions, including at least five criminal, dependency (RCW 13.34), civil commitment (RCW 71.05) or sex offender commitment (RCW 71.09) cases; or participated in consultation with a qualified attorney in each case until this requirement is satisfied; and
- iii. Each lead counsel representing a client on appeal in a Felony High Murder, Felony High LWOP, Felony High, or Sex Offender Commitment case shall:
 1. Meet the requirements of Standard 14.C.5.a.ii; and
 2. Has filed 15 appellate briefs in criminal cases as counsel for a party in the Washington Supreme Court or Court of Appeals, or appellate courts of other jurisdictions, or shall participate in consultation with a qualified attorney in each case until this requirement is satisfied.

b. **Dependency Representation in Appellate Courts** - Each lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 14.A;
- ii. The requirements in Standard 14.C.5.a.ii; and
- iii. Be familiar with the *American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases and the Family Justice Initiative Attributes*.

c. **RALJ Misdemeanor Appeals and Writs to Superior Court** - Each lead counsel representing a client in an appellate matter to Superior Court from a court of limited jurisdiction shall meet the following requirements:

- i. The minimum requirements set forth in Section 14.A; and
- ii. Either:
 1. Has clerked for an appellate court judge; or
 2. Has represented clients in at least three substantive testimonial motion

hearings or trials; or

3. Has the assistance of a more experienced attorney in preparing and arguing the RALJ appeal.

6. Legal Interns - Legal interns who appear in court shall:

- a. Meet the requirements set out in Section 14.A;
- b. Meet the requirements set out in APR 9;
- c. Receive training and supervision pursuant to APR 9; and
- d. Complete an orientation and training program for legal interns.

STANDARD FIFTEEN: Disposition of Client Complaints

Standard:

15.A. Jurisdictions that administer public defense services shall provide a process for receiving, investigating, and promptly responding to client complaints. Complaints should first be directed to the assigned attorney, firm, or agency that is providing or provided representation.

15.B. Public defense agencies and contractors with multi-attorney private firms shall include investigation and disposition of client complaints in their supervisory services.

15.C. The complaining client should be informed as to the disposition of their complaint in a timely manner.

STANDARD SIXTEEN: Cause for Termination of Defender Services and Removal of Attorney

Standard:

Contracts for public defense services shall include the grounds for termination of the contract by the parties. Termination of a public defense attorney's or private firm's contract unilaterally by the jurisdiction should only be for good cause. Termination for good cause shall include, but not be limited to, the failure of a contract attorney or firm to provide effective or quality representation to clients; the willful disregard of the rights and best interests of the client; and the willful disregard of these *WSBA Standards* or the *Court Rule Standards*.

Removal by the court of an appointed attorney from representation normally should not occur over the objection of the attorney and the client.

STANDARD SEVENTEEN: Non-Discrimination

Standard:

Public defense contracts and assigned counsel policies shall include language prohibiting discrimination by the jurisdiction, contractor, contractor's attorneys, or assigned counsel on the grounds of race, ethnicity, religion, national origin, language, age, marital status, gender identity, sexual orientation, or disability. The

public defense administrator and all public defense attorneys and support staff shall comply with all federal, state, and local non-discrimination requirements.

STANDARD EIGHTEEN: Guidelines for Awarding Defense Contracts

Standard:

Recruitment for public defense contracts and assigned counsel lists should include efforts to achieve a diverse public defense workforce.

Attorneys or firms applying for contracts or placement on assigned counsel lists must demonstrate their ability to meet these Standards and the Supreme Court Standards for Indigent Defense. Their contracts must comply with Washington Rule of Professional Conduct 1.8(m).

The county or city should award contracts for public defense services and select attorneys for assigned counsel lists only after determining that the applicant has demonstrated professional qualifications consistent with both these Standards and the Supreme Court Standards for Indigent Defense. Under no circumstances should a contract be awarded on the basis of cost alone.

Judges, judicial staff, city attorneys, county prosecutors, and law enforcement officers shall not select the attorneys who will be included in a contract or an assigned counsel list.

(The WSBA Board of Governors adopted revisions to Standard 18 in May 2021)

STANDARD NINETEEN: Independence and Oversight of Public Defense Services²⁷

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 terms “manage” and “oversee” include: drafting, awarding, renewing, and terminating public defense contracts; adding attorneys or removing them from assigned counsel lists; developing case weighting

²⁷ See Principle 1 of the ABA Ten Principles of a Public Defense Delivery System and Commentary (August 2023), including the recommendation a nonpartisan commission or advisory board oversee the public defense function, thus safeguarding against undue political pressure while also promoting efficiency and accountability for a publicly funded service.

policies; monitoring attorney caseload limits and case-level qualifications; monitoring quality; monitoring compliance with contracts, policies, procedures, and standards; and recommending compensation.

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)

Appendix A

WSBA Standards for Indigent Defense Services
and CrR 3.1, CrRLJ 3.1, JuCr 9.2, and CCR 2.1, *Supreme Court Standards for Indigent Defense*

Comparison of Topics, as of February 2024*

Standard #	WSBA Standards for Indigent Defense Services	Supreme Court Adopted Standards for Indigent Defense
1	Compensation	Reserved
2	Duties and Responsibilities of Counsel	Reserved
3	Caseload Limits and Types of Cases	Caseload Limits and Types of Cases
4	Responsibility for Expert Witnesses	Reserved, but see RPC 1.8
5	Administrative Costs	Administrative Costs , partially adopted
6	Investigators	Investigators , partially adopted
7	Support Services	Reserved
8	Reports of Attorney Activity	Reserved
9	Training	Reserved
10	Supervision	Reserved
11	Monitoring and Evaluation of Attorneys	Reserved
12	Substitution of Counsel	Reserved
13	Limitations on Private Practice	Limitations on Private Practice
14	Qualifications of Attorneys with revised list of qualifications	Qualifications of Attorneys
15	Disposition of Client Complaints	Reserved
16	Cause for Termination of Defender Services and Removal of Attorney	Reserved
17	Non-Discrimination	Reserved
18	Guidelines for Awarding Defense Contracts	Reserved
19	Independence and Oversight of Public Defense Services	Not included, but addressed in GR 42

* Readers should check for any subsequent amendments

APPENDIX B

Crimes Categorized by Public Defense Case Category

All unlisted misdemeanors are Misdemeanor Low

PD Misdemeanor Case Category	Seriousness Level	Case Value	CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL
Misdemeanor - High	GM	1.5	Aiming or discharging a firearm (RCW 9.41.230)
Misdemeanor - High	GM	1.5	Animal cruelty in the second degree committed under RCW 16.52.207(1)
Misdemeanor - High	GM	1.5	Assault 4 (RCW 9A.36.041(3))
Misdemeanor - High	GM	1.5	Attempt, Solicitation, or Conspiracy of a Class C Felony ((RCW 9A.28.020-040))
Misdemeanor - High	GM	1.5	Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
Misdemeanor - High	GM	1.5	Driving While Under the Influence (RCW 46.61.502(6))
Misdemeanor - High	GM	1.5	H&R Attended (RCW 46.52.020)
Misdemeanor - High	GM	1.5	Harassment (RCW 9A.46.020(1-2))
Misdemeanor - High	GM	1.5	Indecent Exposure to Person Under Age 14 (first offense) (RCW 9A.88.010)
Misdemeanor - High	GM	1.5	Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
Misdemeanor - High	GM	1.5	Possession of a Controlled Substance (RCW 69.50.4013)
Misdemeanor - High	GM	1.5	Reckless Driving RCW 46.61.150
Misdemeanor - High	GM	1.5	Sexual Misconduct with a Minor² (RCW 9A.44.096)
Misdemeanor - High	GM	1.5	Stalking (RCW 9A.46.110(1-5))
Misdemeanor - High	GM	1.5	Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(1))
Misdemeanor - High	GM	1.5	Unlawful carrying or handling of a firearm (RCW 9.41.270)
Misdemeanor - High	GM	1.5	Vehicle Prowling 2 (first or second offense) (RCW 9A.52.100(1-2))
Misdemeanor - High	GM	1.5	Violation of Anti-Harassment Protection Order (RCW 7.105.450)

Misdemeanor - High	GM/M	1.5	Domestic Violence Offense listed in RCW 10.99.020(4) or RCW 9.41.040(2)(a)(i)(B-D)
	GM/M	1.5	Municipal Crimes shall be the same case category as the equivalent State crime. When there is no State crime, a Municipal Gross Misdemeanor is Misdemeanor - High and a Simple Misdemeanor is a Misdemeanor - Felony - Low
Misdemeanor - Low	M	1	Attempt, Solicitation, or Conspiracy to Commit a Gross Misdemeanor (RCW 9A.28.020-040)
Misdemeanor - High	M	1	Minor Driving After Alcohol (RCW 46.61.503)
Misdemeanor - High	M	1	Negligent Driving 1 RCW 46.61.5249

All unlisted felonies are Felony Low

PD Felony Case Category	Seriousness Level	Case Value	CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL
Felony - Low	1	1	Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
Felony - Low	1	1	False Verification for Welfare (RCW 74.08.055)
Felony - Low	1	1	Forgery (RCW 9A.60.020)
Felony - Low	1	1	Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
Felony - Low	1	1	Malicious Mischief 2 (RCW 9A.48.080)
Felony - Low	1	1	Mineral Trespass (RCW 78.44.330)
Felony - Low	1	1	Possession of Stolen Property 2 (RCW 9A.56.160)
Felony - Low	1	1	Reckless Burning 1 (RCW 9A.48.040)
Felony - Low	1	1	Spotlighting Big Game 1 (RCW 77.15.450(3)(b))
Felony - Low	1	1	Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))
Felony - Low	1	1	Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
Felony - Low	1	1	Theft 2 (RCW 9A.56.040)
Felony - Low	1	1	Theft from a Vulnerable Adult 2 (RCW 9A.56.400(2))
Felony - Low	1	1	Theft of Rental, Leased, Lease-purchased, or Loaned Property (valued at \$750 or more but less than \$5,000) (RCW 9A.56.096(5)(b))

Felony - Low	1	1	Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
Felony - Low	1	1	Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
Felony - Low	1	1	Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
Felony - Low	1	1	Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
Felony - Low	1	1	Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
Felony - Low	1	1	Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
Felony - Low	1	1	Unlawful Possession of Payment Instruments (RCW 9A.56.320)
Felony - Low	1	1	Unlawful Production of Payment Instruments (RCW 9A.56.320)
Felony - Low	1	1	Unlawful Releasing, Planting, Possessing, or Placing Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))
Felony - Low	1	1	Unlawful Trafficking in Food Stamps (RCW 9.91.142)
Felony - Low	1	1	Unlawful Use of Food Stamps (RCW 9.91.144)
Felony - Low	1	1	Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))
Felony - Low	1	1	Vehicle Prowl 1 (RCW 9A.52.095)
Felony - Low	1	1	Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b))
Felony - Low	2	1	Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
Felony - Low	2	1	Computer Trespass 1 (RCW 9A.90.040)
Felony - Low	2	1	Counterfeiting (RCW 9.16.035(3))
Felony - Low	2	1	Electronic Data Service Interference (RCW 9A.90.060)
Felony - Low	2	1	Electronic Data Tampering 1 (RCW 9A.90.080)
Felony - Low	2	1	Electronic Data Theft (RCW 9A.90.100)
Felony - Low	2	1	Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))
Felony - Low	2	1	Escape from Community Custody (RCW 72.09.310)
Felony - Low	2	1	Failure to Register as a Sex Offender (first, second, or subsequent offense) (RCW 9A.44.130 prior to June 10, 2010, and RCW 9A.44.132)

Felony - Low	2	1	Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130 prior to June 10, 2010, and RCW 9A.44.132)
Felony - Low	2	1	Health Care False Claims (RCW 48.80.030)
Felony - Low	2	1	Identity Theft 2 (RCW 9.35.020(3))
Felony - Low	2	1	Improperly Obtaining Financial Information (RCW 9.35.010)
Felony - Low	2	1	Malicious Mischief 1 (RCW 9A.48.070)
Felony - Low	2	1	Organized Retail Theft 2 (RCW 9A.56.350(3))
Felony - Low	2	1	Possession of a Stolen Vehicle (RCW 9A.56.068)
Felony - Low	2	1	Possession of Stolen Property 1 (RCW 9A.56.150)
Felony - Low	2	1	Retail Theft with Special Circumstances 2 (RCW 9A.56.360(3))
Felony - Low	2	1	Scrap Processing, Recycling, or Supplying Without a License (second or subsequent offense) (RCW 19.290.100)
Felony - Low	2	1	Theft 1 (RCW 9A.56.030)
Felony - Low	2	1	Theft of a Motor Vehicle (RCW 9A.56.065)
Felony - Low	2	1	Theft of Rental, Leased, Lease-purchased, or Loaned Property (valued at \$5,000 or more) (RCW 9A.56.096(5)(a))
Felony - Low	2	1	Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
Felony - Low	2	1	Trafficking in Insurance Claims (RCW 48.30A.015)
Felony - Low	2	1	Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
Felony - Low	2	1	Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))
Felony - Low	2	1	Unlawful Practice of Law (RCW 2.48.180)
Felony - Low	2	1	Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))
Felony - Low	2	1	Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))
Felony - Low	2	1	Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
Felony - Low	3	1	Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
Felony - Low	3	1	Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))

Felony - Low	3	1	Assault of a Child 3 (RCW 9A.36.140)
Felony - Low	3	1	Bail Jumping with class B or C (RCW 9A.76.170(3)(c))
Felony - Low	3	1	Burglary 2 (RCW 9A.52.030)
Felony - Low	3	1	Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
Felony - Low	3	1	Criminal Gang Intimidation (RCW 9A.46.120)
Felony - Low	3	1	Custodial Assault (RCW 9A.36.100)
Felony - Low	3	1	Cyber Harassment (RCW 9A.90.120(2)(b))
Felony - Low	3	1	Escape 2 (RCW 9A.76.120)
Felony - Low	3	1	Extortion 2 (RCW 9A.56.130)
Felony - Low	3	1	False Reporting 2 (RCW 9A.84.040(2)(b))
Felony - Low	3	1	Harassment (RCW 9A.46.020)
Felony - Low	3	1	Hazing (RCW 28B.10.901(2)(b))
Felony - Low	3	1	Intimidating a Public Servant (RCW 9A.76.180)
Felony - Low	3	1	Introducing Contraband 2 (RCW 9A.76.150)
Felony - Low	3	1	Malicious Injury to Railroad Property (RCW 81.60.070)
Felony - Low	3	1	Manufacture of Untraceable Firearm with Intent to Sell (RCW 9.41.190)
Felony - Low	3	1	Manufacture or Assembly of an Undetectable Firearm or Untraceable Firearm (RCW 9.41.325)
Felony - Low	3	1	Mortgage Fraud (RCW 19.144.080)
Felony - Low	3	1	Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
Felony - Low	3	1	Organized Retail Theft 1 (RCW 9A.56.350(2))
Felony - Low	3	1	Perjury 2 (RCW 9A.72.030)
Felony - Low	3	1	Possession of Incendiary Device (RCW 9.40.120)
Felony - Low	3	1	Possession of Machine Gun, Bump-Fire Stock, Undetectable Firearm, or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
Felony - Low	3	1	Retail Theft with Special Circumstances 1 (RCW 9A.56.360(2))
Felony - Low	3	1	Securities Act violation (RCW 21.20.400)
Felony - Low	3	1	Tampering with a Witness (RCW 9A.72.120)

Felony - Low	3	1	Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
Felony - Low	3	1	Theft of Livestock 2 (RCW 9A.56.083)
Felony - Low	3	1	Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
Felony - Low	3	1	Trafficking in Stolen Property 2 (RCW 9A.82.055)
Felony - Low	3	1	Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))
Felony - Low	3	1	Unlawful Imprisonment (RCW 9A.40.040)
Felony - Low	3	1	Unlawful Misbranding of Fish or Shellfish 1 (RCW 77.140.060(3))
Felony - Low	3	1	Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
Felony - Low	3	1	Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
Felony - Low	3	1	Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))
Felony - Low	3	1	Unlawful Use of a Nondesigned Vessel (RCW 77.15.530(4))
Felony - Low	3	1	Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
Felony - Low	4	1	Driving While Under the Influence (3 or more offenses) (RCW 46.61.502(6))
Felony - Low	4	1	Influencing Outcome of Sporting Event (RCW 9A.82.070)
Felony - Low	4	1	Physical Control of a Vehicle While Under the Influence (three or more offenses) (RCW 46.61.504(6))
Felony - Low	4	1	Theft of Livestock 1 (RCW 9A.56.080)
Felony - Low	4	1	Threats to Bomb (RCW 9.61.160)
Felony - Low	4	1	Trafficking in Stolen Property 1 (RCW 9A.82.050)
Felony - Low	4	1	Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
Felony - Low	4	1	Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
Felony - Low	4	1	Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
Felony - Low	4	1	Unlawful transaction of insurance business (RCW 48.15.023(3))

Felony - Low	4	1	Unlicensed practice as an insurance professional (RCW 48.17.063(2))
Felony - Low	4	1	Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
Felony - Low	4	1	Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3))
Felony - Low	5	1	Abandonment of Dependent Person 2 (RCW 9A.42.070)
Felony - Low	5	1	Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
Felony - Low	5	1	Air bag diagnostic systems (RCW 46.37.660(2)(c))
Felony - Low	5	1	Air bag replacement requirements (RCW 46.37.660(1)(c))
Felony - Low	5	1	Bail Jumping with class A (RCW 9A.76.170(3)(b))
Felony - Low	5	1	Extortionate Extension of Credit (RCW 9A.82.020)
Felony - Low	5	1	Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
Felony - Low	5	1	Manufacture or import counterfeit, nonfunctional, damaged, or previously deployed air bag (RCW 46.37.650(1)(c))
Felony - Low	5	1	Perjury 1 (RCW 9A.72.020)
Felony - Low	5	1	Possession of a Stolen Firearm (RCW 9A.56.310)
Felony - Low	5	1	Rendering Criminal Assistance 1 (RCW 9A.76.070)
Felony - Low	5	1	Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(c))
Felony - Low	6	1	Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
Felony - Low	6	1	Bribery (RCW 9A.68.010)
Felony - Low	6	1	Intimidating a Judge (RCW 9A.72.160)
Felony - Low	6	1	Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
Felony - Low	6	1	Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
Felony - Low	6	1	Theft from a Vulnerable Adult 1 (RCW 9A.56.400(1))
Felony - Low	6	1	Theft of a Firearm (RCW 9A.56.300)
Felony - Low	6	1	Unlawful Storage of Ammonia (RCW 69.55.020)
Felony - Low	7	1	Air bag diagnostic systems (causing bodily injury or death) (RCW 46.37.660(2)(b))

Felony - Low	7	1	Air bag replacement requirements (causing bodily injury or death) (RCW 46.37.660(1)(b))
Felony - Low	7	1	Civil Disorder Training (RCW 9A.48.120)
Felony - Low	7	1	False Reporting 1 (RCW 9A.84.040(2)(a))
Felony - Low	7	1	Malicious placement of an explosive 3 (RCW 70.74.270(3))
Felony - Low	7	1	Manufacture or import counterfeit, nonfunctional, damaged, or previously deployed air bag (causing bodily injury or death) (RCW 46.37.650(1)(b))
Felony - Low	7	1	Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(b))
Felony - Low	7	1	Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
Felony - Low	7	1	Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
Felony - Low	7	1	Use of a Machine Gun or Bump-fire Stock in Commission of a (RCW 9.41.225)
Felony - Low	8	1	Theft of Ammonia (RCW 69.55.010)
Felony - Low		1	Attempt, Solicitation, or Conspiracy of a Class B Felony (RCW 9A.28.020-040)
Felony - Mid	4	1.5	Arson 2 (RCW 9A.48.030)
Felony - Mid	4	1.5	Assault 2 (RCW 9A.36.021)
Felony - Mid	4	1.5	Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
Felony - Mid	4	1.5	Assault 4 (third domestic violence offense) (RCW 9A.36.041(3))
Felony - Mid	4	1.5	Assault by Watercraft (RCW 79A.60.060)
Felony - Mid	4	1.5	Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
Felony - Mid	4	1.5	Cheating 1 (RCW 9.46.1961)
Felony - Mid	4	1.5	Commercial Bribery (RCW 9A.68.060)
Felony - Mid	4	1.5	Counterfeiting (RCW 9.16.035(4))
Felony - Mid	4	1.5	Endangerment with a Controlled Substance (RCW 9A.42.100)
Felony - Mid	4	1.5	Escape 1 (RCW 9A.76.110)
Felony - Mid	4	1.5	Hate Crime (RCW 9A.36.080)

Felony - Mid	4	1.5	Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
Felony - Mid	4	1.5	Hit and Run—Injury (RCW 46.52.020(4)(b))
Felony - Mid	4	1.5	Identity Theft 1 (RCW 9.35.020(2))
Felony - Mid	4	1.5	Residential Burglary (RCW 9A.52.025)
Felony - Mid	4	1.5	Robbery 2 (RCW 9A.56.210)
Felony - Mid	4	1.5	Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
Felony - Mid	5	1.5	Domestic Violence Court Order Violation (RCW 7.105.450, 10.99.040, 10.99.050, 26.09.300, 26.26B.050, or 26.52.070)
Felony - Mid	5	1.5	Extortion 1 (RCW 9A.56.120)
Felony - Mid	5	1.5	Kidnapping 2 (RCW 9A.40.030)
Felony - Mid	5	1.5	Persistent prison misbehavior (RCW 9.94.070)
Felony - Mid	5	1.5	Stalking (RCW 9A.46.110)
Felony - Mid	5	1.5	Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
Felony - Mid	7	1.5	Burglary 1 (RCW 9A.52.020)
Felony - Mid	7	1.5	Drive-by Shooting (RCW 9A.36.045)
Felony - Mid	7	1.5	Introducing Contraband 1 (RCW 9A.76.140)
Felony - Mid	9	1.5	Explosive devices prohibited (RCW 70.74.180)
Felony - Mid	9	1.5	Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
Felony - Mid	9	1.5	Malicious placement of an explosive 2 (RCW 70.74.270(2))
Felony - Mid	10	1.5	Malicious explosion 3 (RCW 70.74.280(3))
Felony - Mid	10	1.5	Sexually Violent Predator Escape (RCW 9A.76.115)
Felony - Mid		1.5	Attempt, Solicitation, or Conspiracy of a Class A Felony (RCW 9A.28.020-040)
Felony - Mid	DG2	1.5	Felony Offense with Firearm Enhancement or Deadly Weapon Enhancement that becomes a Strike (RCW 9.94A.030(32)(s) and 9.94A.825)
Felony - High	8	3	Arson 1 (RCW 9A.48.020)
Felony - High	9	3	Abandonment of Dependent Person 1 (RCW 9A.42.060)
Felony - High	9	3	Assault of a Child 2 (RCW 9A.36.130)

Felony - High	9	3	Robbery 1 (RCW 9A.56.200)
Felony - High	10	3	Criminal Mistreatment 1 (RCW 9A.42.020)
Felony - High	10	3	Kidnapping 1 (RCW 9A.40.020)
Felony - High	10	3	Leading Organized Crime (RCW 9A.82.060(1)(a))
Felony - High	12	3	Assault 1 (RCW 9A.36.011)
Felony - High	12	3	Assault of a Child 1 (RCW 9A.36.120)
Felony - High	12	3	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
Felony - High	13	3	Malicious explosion 2 (RCW 70.74.280(2))
Felony - High	13	3	Malicious placement of an explosive 1 (RCW 70.74.270(1))
Felony - High	14	3	Trafficking 1 (RCW 9A.40.100(1))
Felony - High	15	3	Malicious explosion 1 (RCW 70.74.280(1))
Felony - Sex	2	5	Voyeurism 1 (RCW 9A.44.115)
Felony - Sex	3	5	Promoting Prostitution 2 (RCW 9A.88.080)
Felony - Sex	4	5	Indecent Exposure to Person Under Age 14 (subsequent sex offense) (RCW 9A.88.010)
Felony - Sex	4	5	Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
Felony - Sex	4	5	Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))
Felony - Sex	5	5	Child Molestation 3 (RCW 9A.44.089)
Felony - Sex	5	5	Criminal Mistreatment 2 (RCW 9A.42.030)
Felony - Sex	5	5	Custodial Sexual Misconduct 2 (RCW 9A.44.170)
Felony - Sex	5	5	Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
Felony - Sex	5	5	Incest 2 (RCW 9A.64.020(2))
Felony - Sex	5	5	Rape 3 (RCW 9A.44.060)
Felony - Sex	5	5	Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
Felony - Sex	5	5	Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
Felony - Sex	5	5	Sexually Violating Human Remains (RCW 9A.44.105)
Felony - Sex	6	5	Incest 1 (RCW 9A.64.020(1))

Felony - Sex	6	5	Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
Felony - Sex	6	5	Rape of a Child 3 (RCW 9A.44.079)
Felony - Sex	7	5	Child Molestation 2 (RCW 9A.44.086)
Felony - Sex	7	5	Custodial Sexual Misconduct 1 (RCW 9A.44.160)
Felony - Sex	7	5	Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
Felony - Sex	7	5	Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
Felony - Sex	8	5	Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
Felony - Sex	8	5	Promoting Prostitution 1 (RCW 9A.88.070)
Felony - Sex	9	5	Sexual Exploitation (RCW 9.68A.040)
Felony - Sex	10	5	Child Molestation 1 (RCW 9A.44.083)
Felony - Sex	10	5	Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Felony - Sex	11	5	Rape 2 (RCW 9A.44.050)
Felony - Sex	11	5	Rape of a Child 2 (RCW 9A.44.076)
Felony - Sex	12	5	Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
Felony - Sex	12	5	Rape 1 (RCW 9A.44.040)
Felony - Sex	12	5	Rape of a Child 1 (RCW 9A.44.073)
Felony - Sex	12	5	Trafficking 2 (RCW 9A.40.100(3))
Felony - Sex		5	Any Felony Offense where a Special Allegation of Sexual Motivation is alleged pursuant (RCW 9.94A835)
Felony - Sex		5	Attempt, Solicitation, or Conspiracy to Commit a Sex Offense (RCW 9A.28.020)
Felony - Murder	7	7	Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
Felony - Murder	7	7	Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
Felony - Murder	7	7	Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)

Felony - Murder	8	7	Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
Felony - Murder	8	7	Manslaughter 2 (RCW 9A.32.070)
Felony - Murder	9	7	Hit and Run—Death (RCW 46.52.020(4)(a))
Felony - Murder	9	7	Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
Felony - Murder	11	7	Manslaughter 1 (RCW 9A.32.060)
Felony - Murder	11	7	Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
Felony - Murder	11	7	Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
Felony - Murder	14	7	Murder 2 (RCW 9A.32.050)
Felony - Murder	15	7	Homicide by abuse (RCW 9A.32.055)
Felony - Murder	15	7	Murder 1 (RCW 9A.32.030)
Felony - Murder	16	7	Aggravated Murder 1 (RCW 10.95.020)
Felony - Murder		7	Attempt, Solicitation, or Conspiracy to Commit Murder (RCW 9A.28.020-040)
Felony - LWOP		8	Any "Third Strike" or final offense where a life sentence could be imposed (RCW 9.94A575)

Appendix C

Adult Criminal Cases

Case Type	Previous Attorney Experience	Previous Trial Experience	Special Training	Other
A. Misdemeanor Low and Probation Violations	-	-	-	<ul style="list-style-type: none"> 14.A. Requirements
B. Misdemeanor High a. Domestic Violence, Violation of	a. b. c. Sex Offense - Has served	a. b. c. Sex Offense - Two criminal	a. Domestic violence - DV training or CLE.	<ul style="list-style-type: none"> 14.A. Requirements Knowledge, skills and abilities to

<p>No Contact Order, Harassment, or Stalking</p> <p>b. Drug Offenses</p> <p>c. Sex Offenses</p> <p>d. DUI</p>	<p>as defense attorney or prosecutor for one year.</p> <p>d.</p>	<p>cases in which the prosecution has rested, <i>or</i> One criminal trial in which the prosecution has rested and completed a trial training academy.</p> <p>d.</p>	<p>b. Drug offenses - Drug training or CLE.</p> <p>c. Sex Offenses – Has attended a training or CLE on collateral consequences of sex convictions and on child hearsay.</p> <p>d. DUI – CLE or Training on DUI Defense representation in the last two years.</p>	<p>effectively communicate with youth, or co-counsel with one who does.</p>
<p>C. Felony Mid and Low Cases</p>	<p>One year of prosecution or criminal defense.</p>	<p>As lead or co-counsel handling a significant portion, where the state has rested, either:</p> <ul style="list-style-type: none"> • Two criminal trials; or • One criminal trial and has completed a trial training academy. 		<ul style="list-style-type: none"> • 14.A. Requirements • Shall be accompanied at first felony trial by a felony-qualified attorney, if available.
<p>D. Felony Sex Cases</p>	<p>Two years of prosecution or criminal defense.</p>	<p>As lead or co-counsel handling a significant portion, where the state has rested:</p> <ul style="list-style-type: none"> • Three felony trials, of which at least one was submitted to a jury. 	<ul style="list-style-type: none"> • Collateral Consequences of Sex offenses • Child hearsay 	<ul style="list-style-type: none"> • 14.A. Requirements

E. Felony High Other Cases	Two years of prosecution or criminal defense.	As lead or co-counsel handling a significant portion, where the state has rested: <ul style="list-style-type: none"> • Three felony trials, of which at least one was submitted to a jury. 		<ul style="list-style-type: none"> • 14.A. Requirements
F. Felony High Murder and LWOP	Three years in adult felony cases, of which: <ul style="list-style-type: none"> • Two years as felony defense counsel. 	As lead or co-counsel for the defense, where the state has rested: <ul style="list-style-type: none"> • Four adult felony trials in which the state has rested; • At least one of which was submitted to a jury; and • At least one of which was Felony High Other or from this category. 	<ul style="list-style-type: none"> • Mitigation 	<ul style="list-style-type: none"> • 14.A. Requirements • Training or experience in challenging prior convictions.
G. Felony Re-Sentencing, Revocation, and Reference Hearings	One year of prosecution or criminal defense.	As lead or co-counsel handling a significant portion, where the state has rested, either: <ul style="list-style-type: none"> • Three criminal trials; or • Two criminal trials and has completed a trial training academy. 		<ul style="list-style-type: none"> • 14.A. Requirements
H. Material Witness Representation				<ul style="list-style-type: none"> • All requirements

				for Felony Low cases, or the higher risk category associated with the witnesses' potential charges.
I. Specialty Courts				<ul style="list-style-type: none"> • 14.A. Requirements • Be familiar with mental health and substance use issues, housing, treatment alternatives, and when representing veterans, resources available for veterans

Juvenile Court Cases

Case Type	Previous Attorney Experience	Previous Trial Experience	Special Training	Other
<p>A. Misdemeanor Low and Probation Violations</p>				<ul style="list-style-type: none"> • 14.A. Requirements • Knowledge, skills and abilities to effectively communicate with youth, or co-counsel with one who does.
<p>B. Misdemeanor High a. Domestic Violence, Violation of No Contact Order, Harassment, or Stalking b. Drug Offenses c. Sex Offenses d. DUI</p>	<p>a. b. c. Sex Offense - Has served as defense attorney or prosecutor for one year. d.</p>	<p>a. b. c. Sex Offense - Two criminal cases in which the prosecution has rested, <i>or</i> One criminal trial in which the prosecution has rested and completed a trial training academy. d.</p>	<p>e. Domestic violence - DV training or CLE. f. Drug offenses - Drug training or CLE. g. Sex Offenses – Has attended a training or CLE on collateral consequences of sex convictions and on child hearsay. d. DUI – CLE or Training on DUI Defense representation in the last two years.</p>	<ul style="list-style-type: none"> • 14.A. Requirements • Knowledge, skills and abilities to effectively communicate with youth, or co-counsel with one who does.
<p>C. Felony Mid and Felony Low Cases</p>	<p>One year of prosecution or criminal defense.</p>	<p>As lead or co-counsel handling a significant portion, where the state has rested, either:</p>		<ul style="list-style-type: none"> • 14.A. Requirements • Knowledge, skills and abilities to effectively

		<ul style="list-style-type: none"> • Two criminal trials; or • One criminal trial and has completed a trial training academy. 		communicate with youth, or co-counsel with one who does.
J. Felony Sex Cases	Two years of prosecution or criminal defense.	As lead or co-counsel handling a significant portion, where the state has rested: <ul style="list-style-type: none"> • Three felony trials, of which at least one was submitted to a jury. 	<ul style="list-style-type: none"> • Collateral Consequences of Sex offenses • Child hearsay 	<ul style="list-style-type: none"> • 14.A. Requirements • Knowledge, skills and abilities to effectively communicate with youth, or co-counsel with one who does.
K. Felony High Other Cases	Two years of prosecution or criminal defense.	As lead or co-counsel handling a significant portion, where the state has rested: <ul style="list-style-type: none"> • Three felony trials, of which at least one was submitted to a jury. 		<ul style="list-style-type: none"> • 14.A. Requirements • Knowledge, skills and abilities to effectively communicate with youth, or co-counsel with one who does.
L. Felony High Murder and LWOP	Three years in adult felony cases, of which: <ul style="list-style-type: none"> • Two years as felony defense counsel. 	As lead or co-counsel for the defense, where the state has rested: <ul style="list-style-type: none"> • Four adult felony trials in which the state has rested; • At least one of which was submitted to a jury; and • At least one of which was 	<ul style="list-style-type: none"> • Mitigation 	<ul style="list-style-type: none"> • 14.A. Requirements • Training or experience in challenging prior convictions.

		Felony High Other or from this category.		
D. Felony Re-Sentencing, Revocation, and Reference Hearings	One year of prosecution or criminal defense.	As lead or co-counsel handling a significant portion, where the state has rested, either: <ul style="list-style-type: none"> • Three criminal trials; or • Two criminal trials; and has completed a trial training academy. 	<ul style="list-style-type: none"> • Sex offenses • Child hearsay • Consequences of adjudications 	<ul style="list-style-type: none"> • 14.A. Requirements • Knowledge, skills and abilities to effectively communicate with youth, or co-counsel with one who does.
E. Specialty Courts				<ul style="list-style-type: none"> • 14.A. Requirements • Be familiar with mental health and substance use issues, housing, treatment alternatives, and when representing veterans, resources available for veterans
F. Material Witness Representation	-		-	<ul style="list-style-type: none"> • All requirements for Felony Low cases, or the higher risk category associated with the witnesses' potential charges.
G. Juvenile Court Status Offense Cases	<ul style="list-style-type: none"> • Have represented youth in two similar cases while under supervision; or 			<ul style="list-style-type: none"> • 14.A. Requirements

	<ul style="list-style-type: none">• Have attended three hours of Status Offense training; or• Participates in at least one consultation per case with a qualified attorney.	<ul style="list-style-type: none">• Knowledge, skills and abilities to effectively communicate with youth, or co-counsel with one who does.
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Civil Cases

Case Type	Previous Attorney Experience	Specialized Training and Other Requirements	Other
<p>A. Youth Representation in Dependency Cases</p>	<p>Before handling a termination case:</p> <ul style="list-style-type: none"> • Six months' dependency experience or significant experience in complex litigation. 	<p>Shall meet requirements in Section 14.A. and the training/experience requirements in "Representation of Children and Youth in Dependency Cases Practice, Caseload, and Training Standards" developed by the WA Supreme Court Commission on Children in Foster Care.</p>	<ul style="list-style-type: none"> • 14.A. Requirements • Knowledge, skills and abilities to effectively communicate with youth, or consult with a qualified attorney. • Be familiar with expert services and treatment resources available in dependency cases.
<p>B. Parents Representation in Dependency Cases</p>	<p>Before handling a termination case:</p> <ul style="list-style-type: none"> • Six months' dependency experience; or significant experience in complex litigation; or certified by a parents representation training program. 	<p>Attorneys shall comply with the American Bar Association's "Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases," and the "Family Justice Initiative Attributes."</p>	<ul style="list-style-type: none"> • 14.A. Requirements • Be familiar with expert services and treatment resources available in dependency cases.
<p>C. RCW 71.05 Civil Commitment Cases</p>	<p>Before handling a 90-day or 180-day commitment hearing:</p>	<ul style="list-style-type: none"> • At first 90 day or 180-day commitment hearing, the attorney must either: <ul style="list-style-type: none"> ○ Be accompanied by a supervisor; or ○ Consult in advance with a qualified attorney. 	<ul style="list-style-type: none"> • 14.A. Requirements

	<ul style="list-style-type: none"> • Lead counsel for give 14-day hearings. <p>Before handling a jury trial:</p> <ul style="list-style-type: none"> • Two contested 14-day hearings as lead counsel, or • Two 90 or 180-day commitment hearings as co-counsel. 	<ul style="list-style-type: none"> • Must have basic knowledge of: <ul style="list-style-type: none"> ○ The classifications of mental disorders; ○ Mental disorder medical terminology and research resources; ○ Medications; and ○ Treatment facilities. 	
D. RCW 71.09 Sex Offender Commitment Cases	<p>Lead counsel must have:</p> <ul style="list-style-type: none"> • Three years criminal trial experience; and • One year felony defense or criminal appeals experience; and • Experience as lead counsel in one felony trial. 	<ul style="list-style-type: none"> • Experience in cases involving: <ul style="list-style-type: none"> ○ Mental health issues; ○ Sex offenses; and ○ Expert witnesses. • Familiarity with the Rules of Civil Procedure. • One year appellate experience or demonstrated legal writing ability. 	<ul style="list-style-type: none"> • 14.A. Requirements • Second chair counsel must have one year public defense or significant criminal experience.
E. Contempt of Court Cases	-	<ul style="list-style-type: none"> • Must be accompanied by supervisor or experienced attorney at first contempt of court hearing. • Consult with experienced counsel prior to each of first two contested contempt of court hearings. • Familiarity with the Rules of Civil Procedure. 	<ul style="list-style-type: none"> • 14.A. Requirements
F. RCW 10.77 Post Commitment Not Guilty by Reason of Insanity Cases	<p>Three years' experience in:</p> <ul style="list-style-type: none"> • Criminal trial; and/or • Dependencies; and/or • Civil commitment proceedings under RCW 71.05. 	<ul style="list-style-type: none"> • Basic knowledge of classified mental health disorders. • Compliance with qualification requirements established by the WA State Office of Public Defense. 	<ul style="list-style-type: none"> • 14.A. Requirements

Appellate Cases

Case Type	Specific Training or Experience Requirements	Other
A. Criminal Appeals in WA Supreme Court or WA Court of Appeals	<ul style="list-style-type: none"> • Appellate counsel must consult with a qualified attorney on each appellate case until having filed six appellate briefs as counsel for a party, of which: <ul style="list-style-type: none"> ○ At least five of the six appellate briefs must be in any of the following case categories: criminal, family defense, civil commitment (RCW 71.05), or sex offender civil commitment (RCW 71.09). • In addition to the above, if representing a client on appeal in any Felony High category or Sex Offender Civil Comment (RCW 71.09), the appellate counsel must consult with a qualified attorney until the appellate counsel has: <ul style="list-style-type: none"> ○ Filed fifteen briefs in criminal cases as counsel for a party in the WA supreme Court, WA Court of Appeals, or equivalent courts of another jurisdiction. 	<ul style="list-style-type: none"> • 14.A. Requirements
B. Family Defense Appeals	<p>Appellate counsel must:</p> <ul style="list-style-type: none"> • Have previously acted as counsel in a trial-level family defense case; or • Consult with counsel already qualified for Family Defense Appeals until they have filed six briefs in this category and have consulted with qualified counsel in each one. 	<ul style="list-style-type: none"> • 14.A. Requirements
C. RALJ Misdemeanor Appeals and Writs to Superior Courts	<p>Appellate counsel must:</p> <ul style="list-style-type: none"> • Have clerked for an appellate court judge; or • Have represented clients in three testimonial motion hearings or trials; or • Be assisted by a more experienced attorney. 	<ul style="list-style-type: none"> • 14.A. Requirements

Legal Interns

- Shall meet the requirements of 14.A. (b) – (g);
- Shall meet the requirements set out in Admissions to Practice Rule 9;
- Shall receiving training and supervision pursuant to APR 9; and
- Should complete an orientation and training program for legal interns.

Appendix D: Related Public Defense Standards

The Washington State Bar Association *Standards for Indigent Defense Services* are informed and complemented by other standards and guidelines which bear on public defense attorneys and agencies. Some of those related standards and guidelines are cited in the Standards' text. Others are included here.

Standard 1

- American Bar Association, *Standards for Criminal Justice*, 5-2.4 and 5-3.1.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.7 and 13.11.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-4.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard III-10 and III-11.
- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline No. 6.

Standard 2

- American Bar Association, *Standards for Criminal Justice*, 4-1.1, 5-5.1 and 5-1.1.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.1.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard II-2.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-18.

Standard 3

- *National Public Defense Workload Study Report*, Published by the RAND Corp. and American Bar Association, Sept. 12, 2023
- American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.
- 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.
- The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007).
- American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*.
- 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* (August 2023).
- American Bar Association *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-1.
- National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002).
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- City of Seattle Ordinance Number: 121501 (2004).
- 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).
- *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001).

Standard 4

- American Bar Association, *Standards for Criminal Justice*, 5-1.4.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV 2d, 3.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1983, Standard III-8d.
- National Advisory Commission, Task Force on Courts, 1973, Standard 13.14.

Standard 5

- American Bar Association, *Standards for Criminal Justice*, Providing Defense Services.
- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, (1976), Guideline 3.4.
- National Legal Aid and Defender Association, *Standards for Defender Services*, 1976 I-3, IV 2a-e, IV 5.

Standard 6

- American Bar Association, *Standards for Criminal Justice*, 4-4.1 and 5-1.14.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.14.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-3.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-9.
- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 8.

Standard 7

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- National Advisory Committee on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.14.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-3. 9
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-8.
- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 7.

Standard 8

- American Bar Association, *Standards for Criminal Justice*, 5-3.3 (b) xii, *The Report to the Criminal Justice Section Council from the Criminal Justice Standards Committee*, 1989.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984 Standard III-22.
- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, Guideline 3.4, 4.1, and 5.2.

Standard 9

- American Bar Association, *Standards for Criminal Justice*, 5-1.4.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.16.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard V.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard III-17.
- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 3.

Standard 10

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- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contract*, 1984, Standard III-16.
- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 4.

Standard 11

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- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, Recommendations 5.4 and 5.5.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.9.

Standard 12

- American Bar Association, *Standards for Criminal Justice*, Standard 5-5.2.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.1.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-23.

Standard 13

- American Bar Association, *Standards for Criminal Justice*, 4-1.2(d), 5-3.2.

- 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.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.7.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard III-3 and IV-1.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Guideline III-6.

Standard 14

- *National Public Defense Workload Study Report*, Published by the RAND Corp. and American Bar Association, Sept. 12, 2023
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.15.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Public Defense Contracts*, 1984, Standard III-7.

Standard 15

- American Bar Association, *Standards for Criminal Justice*, 4-5.1 and 4-5.2.

Standard 16

- American Bar Association, *Standards for Criminal Justice*, Standard 5-1.3, 5-5.3.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-5.
- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, Recommendations 2.12 and 2.14.
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Standard 17

- American Bar Association, *Standards for Criminal Justice*, Providing Defense Services, Standard 5-3.1.
- National Legal Aid and Defender Association, *Standards for Defender Services*, 1976, Standard III-8.

Standard 18

- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard IV-3.
- King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Statement of Purpose.

Standard 19

- American Bar Association, *Ten Principles of a Public Defense Delivery System*, Principle 1 (August 2023).
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts, The Defense*, 1973, Chapter 1.3.
- American Bar Association *Standards for Criminal Justice*, Providing Defense Services, 1992, Standards 5-1.3, 5-1.6, 5-4.1.
- National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems*, 1989, Standards 2, 3.2.1.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, 1984, Guidelines II-1, II-2, II-3, IV-2.
- National Conference of Commissioners on State Law, *Model Public Defender Act*, 1970, Section 10(d).
- Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties*, 1979, Standards 2.1(D), 3.2.
- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States 1976*, Guidelines 2.8, 2.10-2.13, 2.18, 5.13.
- Michigan Indigent Defense Commission, 2020, *Minimum Standard 5*.

WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors
CC: Terra Nevitt, Executive Director
FROM: Jason Schwarz, Chair WSBA Council on Public Defense
Maia Vanyo, Vice-Chair WSBA Council on Public Defense
DATE: February 23, 2024
RE: Indigent Defense Standards

ACTION: Adopt revisions to the WSBA Standards for Indigent Defense Services and recommend adoption of the Standards by the Washington Supreme Court.

Summarize the problem and the proposed solution in the first paragraph(s).

The WSBA Council on Public Defense (CPD) has approved the attached updated and revised WSBA Standards for Indigent Defense Services. We ask that the Board of Governors review and adopt these revised WSBA Standards. We also ask that you approve transmission of the Standards to the Washington Supreme Court with the recommendation that the Standards be adopted in the Supreme Court Standards for Indigent Defense, codified in CrR 3.1, CrRLJ 3.1, JuCR 9.1, and CCR 2.1.

Public defense in Washington is facing a crisis of attrition and inability to recruit brought about by excessive workloads and poor compensation. Repeatedly, we hear from law students that they do not want to enter public defense because of the volume of work with little staff support. And we hear from our resigning colleagues that they cannot continue the work given the volume of cases they are expected to handle, with or without improved compensation. Moreover, defendants in criminal prosecutions have a Constitutional right to representation by counsel and that representation must be meaningful. Not only do untenable caseloads create a personal career crisis for dedicated public defense civil servants, but they create a Constitutional crisis when there are insufficient numbers of public defense lawyers to represent the accused and others who are eligible for appointed counsel.

This crisis is not a distant fear. These proposed revisions are prompted by an unignorable shift in workloads and working conditions in public defense nationwide that has brought public defense to a very public crisis. Post-COVID, some Washington jurisdictions have experienced a surge in criminal case filings and simply do not have enough qualified defense attorneys. In other jurisdictions, public defense lawyers are within caseload limits, but the exponential increase in the time required to review the large volumes of electronic and technical discovery generated in each case demonstrates that the current caseload standards are outdated.

The current criminal caseload standards are based on 50-year-old national standards. They put public defenders in an unsustainable position where attorneys simply lack the time and resources necessary to provide Constitutionally adequate defense to their clients. The deprivation of the Sixth Amendment right to counsel can

result in dismissal of cases or, worse, the months-long pretrial detention of the innocent accused while awaiting appointment of an attorney.

Defenders recognize that high caseloads and the low level of staff support prevent them from meeting their ethical responsibilities, including to respond promptly to their clients and opposing counsel and to investigate cases. These conditions have made for dreadful working conditions and our public defenders are rapidly leaving the profession. In a three-month span, the King County Department of Public Defense lost ten Class A qualified lawyers and eighteen total lawyers requiring the transfer of 700 cases from departing attorneys to remaining staff attorneys. Benton and Franklin Counties were unable to recruit enough attorneys to represent charged defendants such that the accused sat in jails for months waiting for a lawyer for an arraignment.

Washington is not alone in this crisis. Nationally, jurisdictions have arrived at this point due to decades of insufficient funding for public defense lawyers and other essential staff and functions. For example, Oregon is facing a public and political reckoning brought about by years of underfunding public defense. In Washington, the problem is exacerbated by the minimal investment in public defense provided by the State. Moreover, the diverse and decentralized delivery of public defense in Washington presents significant challenges to ensuring that the quality of representation does not vary by geography. Given this backdrop, informed state-wide standards that reflect the current demands of public defense are necessary to meet the Constitutional and ethical requirements to provide competent defense to individuals eligible for public defense services. While this crisis was not created overnight and will take time to correct, the CPD believes the adoption of these Standards will begin to bring our public defense delivery system into alignment with Sixth Amendment standards.

With this backdrop, in January of 2022, the CPD Standards Committee convened public defense lawyers, investigators, and administrators; directors of Washington's public defense agencies; and law professors with expertise in public defense to discuss responses to increased caseloads. We held a listening session and heard public defense practitioners overwhelmingly speak of the need for support staff to assist lawyers, investigators, and social workers in responding to increased discovery (particularly hours of police body camera footage and other digital discovery), pleadings, and other tasks. We gathered this feedback and began a lengthy process of revising the Indigent Defense Standards with the modern public defense practice in mind.

Our work to provide revised Indigent Defense Standards that comply with the Sixth Amendment was further informed by the publication in September 2023 of a National Public Defense Workload Study (NPDWS). Published by a coalition of the RAND Corporation, the American Bar Association, the National Center for State Courts, and nationally recognized public defense expert Steve Hanlon, this report is a groundbreaking national study into public defense workload standards that meet Constitutional requirements. The NPDWS employed quantitative research techniques with a panel of thirty-three expert criminal defense attorneys to reach a consensus on the number of hours required to provide effective defense in several categories of criminal cases. The resulting product is a valuable tool for understanding the significant gap between the time available now for attorneys to spend on cases compared to the amount of time necessary to spend on cases. The NPDWS also assists with forecasting current and future staffing needs. The NPDWS effectively concludes that the current caseload standards used by a majority

of states, including Washington, do not meet the Constitutional standards for effective public defense delivery. Given the robust foundations for the NPDWS conclusions, we have incorporated the NPDWS standards into the proposed revision of criminal public defense attorney caseload standards.

Although the CPD's revisions to the Standards began two years ago in a discussion session hosted by the CPD and our revisions are comprehensive, our work has become increasingly pressing as we face the mounting crisis in public defense. Following the release of the NPDWS report, the WSBA received a request by the Justices of the Washington State Supreme Court for Proposed Revisions to CrR 3.1, CrRLJ 3.1, and JuCr 9.1 - Public Defense Caseload Standards. The Justices, cognizant of the shortage of lawyers and the consequences to the criminal legal system, asked for updated caseload standards by November of 2023. The CPD asked for and was granted additional time to adapt the NPDWS workload measures to Washington law and to gather feedback from public defense professionals.

Taking into consideration the evolution of defense practice since the last time a holistic review of the Standards was conducted, these revised Standards address three distinct concerns:

1. SUPPORT STAFF

At the first January 2022 meeting of public defense Directors and lawyers convened by CPD's Standards Committee, attendees asked for additional clarification about the expectation that each defense attorney is fully supported by staff, investigators, and social workers who can provide expertise and efficiencies that the lawyers do not possess. This request was driven by changes in the practice, which involved increased management of digital discovery as well as increased demands for mitigation and other social work services. Many public defense lawyers are contractors who run small or solo practitioner firms with little to no staff support and little access to funds to retain such support. The lack of support staff, including access to investigators and social workers, is often centralized to rural and smaller jurisdictions, particularly where public defense is not administered by a lawyer with knowledge of and an obligation to fulfill these Standards. The CPD continued to gather input on these issues throughout our revision process. The CPD's Standards Committee members include non-lawyer public defenders who provided input from their SEIU-supported staff. We also conducted a survey of public defenders (lawyers and non-lawyers) for feedback on these revisions. Responses to that survey from both lawyers and non-lawyers showed overwhelming support for our revisions to the sections impacting support staff.

2. ATTORNEY QUALIFICATIONS:

The Indigent Defense Standards provide the required qualifications attorneys must meet prior to handling cases at various stages of difficulty. Revisions to these standards are needed due to the attrition of attorneys qualified to represent clients in the most serious cases throughout the State. The COVID-19 pandemic made matters worse by preventing attorneys from becoming trial-qualified while cases were put on hold. Therefore, the CPD's goal was to balance providing a clearer and faster path for attorneys to qualify to handle cases of increasing difficulty, while ensuring lawyers have the experience necessary to represent clients at those levels. If lawyers can more easily become qualified to represent the accused in

more serious cases, there will be a larger pool of lawyers available to take those cases, averting the shortages that result in unrepresented defendants. Our revisions incorporate changes in practice and the need for additional training and supervision to supplement trial experience, particularly in jurisdictions where trials are relatively rare. The revision of the qualifications standard was approved by the CPD. They are overwhelmingly supported by surveyed public defense practitioners.

3. CASELOADS

The NPDWS report was published in September 2023. The Study proposes new national caseload standards for public defense using rigorous, consensus-building research techniques with 33 experienced, well-respected lawyers with decades experience in criminal defense and public defense. The NPDWS also compared its results to 19 prior studies of public defense lawyers' time on criminal cases. In October 2023, the CPD received a letter from the Supreme Court of Washington asking the CPD for revised public defense Caseload Standards by November of 2023. Given the extensive nature of reviewing the NPDWS and incorporating it and other revisions, the Court granted CPD additional time to review and adapt the NPDWS into Standard 3.

The revised Standards represent two years of work by members of the CPD comprised of law professors, private and public defense attorneys from every level of court, public defense administrators, retired defenders, prosecutors, judges, impacted community members and professionals, and public defense investigators. The Standards are a product of years of feedback from Washington public defense practitioners, prosecutors, judges, community members, and other legally adjacent professionals. We have heard from over 300 public defense practitioners (lawyers, paralegals, investigators, social workers, and administrators) and they overwhelmingly support our revisions to these Standards. Their support is critical to getting in front of this crisis.

For too long, public defense attorneys have not seen a light at the end of their career tunnel, with no caseload relief in sight. Attorneys who in the past chose public defense as their practice area on admission to the WSBA increasingly are choosing other practice areas, primarily due to excessive public defense caseloads, lack of sufficient support services, and compensation. These revised Standards will provide that hope and will allow us to immediately retain qualified lawyers and begin *nationally* recruiting a new generation of public defenders. Most importantly, these Standards reflect the work needed to effectively represent the thousands of individuals entitled to public defense representation each year.

Lastly, changes to these Standards are only one piece in a web of complex public defense systems statewide, primarily in delivery systems administered and funded on a county and city level. Additional work by a diverse range of stakeholders will be necessary to bring Washington out of this public defense crisis. These additional efforts, however, go beyond the scope of the present revision of the Standards. The CPD's and BOG's primary role is to promulgate standards for public defense practice. But the CPD cannot implement the Standards locally or advocate for funding with State or local funders. The CPD alone is not capable of requiring changes to local delivery systems to bring them into alignment with recommendations or best practices. Nonetheless, the proposed revisions to the Standards of Indigent Defense are an important and necessary first step in that process.

Please see the attached report for additional information about the proposed revisions.

Background

Provide the procedural background as well as any supporting data or information in this section. Describe the proposing entity and any relevant policies, procedures, rules or court orders that impact this decision or grant authority to take action. This information will help inform the Risk Analysis.

- *Has the request come to the Board before? If so, what has been done since then? How has the proposal changed?*

The BOG has previously adopted and subsequently revised public defense standards. The BOG has adopted the following policies developed by the CPD concerning the Standards:

- WSBA Standards for Indigent Defense Services, adopted in 2011, most recent revision September 2021
- Implementation of the Standards for Indigent Defense During the Coronavirus Emergency, September 2020
- Council on Public Defense Advisory Notice: Response to the Emergency Caused by Pandemic-Driven Increase in Public Defender Caseloads, January 2021
- Council on Public Defense Statement on Workloads, January 2022
- Council on Public Defense Statement: Public Defense Lawyers Should Seek Relief From Excessive Workloads, July 2022

These have been indispensable to public defense providers and their funders in responding to challenges resulting from the COVID-19 pandemic. The current proposal is for a complete revision of the existing Standards..

- *Has WSBA ever taken a position on this issue/had a program to address this? What was it? Has anything changed since then?*

As outlined above, the BOG has long been involved in the adoption of public defense standards. The Board of Governors first adopted the Washington Defender Association Standards for Public Defense Services in 1984, and a revised version in January 1990. The BOG adopted revisions to Standard 18 and a new Standard 19 in May 2021. The caseload standards, however, have not substantially changed since they were first adopted in 1984, at levels first issued nationally in the early 1970s.

Much has changed in public defense since the last major revision of the WSBA Standards. Changes in technology, COVID backlogs, and “upstream” changes to police and prosecution practices result in heavy workloads that have led to significant challenges in providing a Constitutionally acceptable level of defense, and relatedly, in recruiting and retaining public defense attorneys. A corollary of this problem is that many accused persons have languished in jail awaiting appointment of counsel because the local defense lawyers had reached their caseload limits and could not take new cases. The revised Standards are necessary to address the current demands of public defense cases.

- *How did you learn about the problem?*

Excessively high caseloads and a lack of public defense support staff have long been concerns for public defense providers in Washington and across the nation. After COVID-19 created an additional backlog of unresolved criminal prosecutions, the CPD began exploring a revision of the Standards of Indigent Defense. The CPD

consistently heard from attorneys about the challenges posed by excessive caseloads and staffing shortages at the following outreach events:

- Listening Sessions
 - January 2022 – PD lawyers and administrators discuss support staff shortages and overwhelming digital discovery processing demands
 - October 2023, December 2023, and February 2024 – Open Listening Session in response to Revisions in Support Staff and Qualifications Standards.
 - January 2024 – Technical Listening Session with King and Whatcom Co attorneys about RCW and NPDWS case-type classifications
 - January 2024 – Listening Session in response to Revisions by WDA Board of Directors and County-level public defense agency directors
- CLEs
 - April 2023 – CLE by Professor Boruchowitz about the NPDWS Standards compared to current WSBA Standards
 - December 2023 – Ethics CLE by CPD Chair Jason Schwarz about the ethical standards and assumptions in the NWPDS setting new standards for public defense practice
- Surveys
 - April 2023 – State OPD survey showing practitioners’ largest concerns impacting their employment was being underpaid and having excessive workloads
 - February 2024 – CPD survey where over 300 respondents overwhelmingly supported revisions to the standards
- Open Meetings
 - All CPD Standards Meetings are open. We have received increased attendance and participation by practitioners and directors throughout the process.
 - We have received countless emails and phone calls from colleagues recommending substantive and technical changes throughout the two-year process.

Notes were taken at all these meetings. Survey results and all comments and emails were sent to the CPD Standards Committee for review, deliberation, and potential adoption. The Standards Committee scheduled over 60 hours of volunteer meeting time in 2023 in addition to time spent at CPD meetings, other listening sessions and small group standards drafting sessions. Feedback from practitioners, particularly non-lawyer staff, were essential to determining necessary support staff language.

- ***What data or information supports the existence of a problem?***

As previously noted, untenable caseloads and staffing shortages are a longstanding problem in public defense. This is confirmed by many sources including the NPDWS workload study, as well as similar studies of public defense workloads in 19 other states. Specifically in Washington, these issues have been repeatedly raised by public defense practitioners and documented in news articles throughout Washington in 2023 about defendants going unrepresented because of the shortage of qualified public defense attorneys.

- ***What steps have been taken to arrive at the proposed solution? Were any alternative solutions considered and why were they rejected?***

Please refer to the CPD Report on Proposed Revisions to the Standards of Indigent Defense for a thorough discussion of the methodology and data that was considered while formulating the revisions.

SUPPORT STAFF & QUALIFICATIONS: The CPD has spent two years revising the Standards. During that revision, the Standards Committee members spoke with practitioners in specific practice areas about needed qualifications and standards for support staff. The Standards Committee is made of public defenders, private defense attorneys, public defense administrators, law school professors, public defense investigators, all of whom brought their extensive experience to the development of the revised Standards.

CASELOADS: The revisions to caseload standards, were informed by the NPDWS report. Current Washington standards assume a maximum caseload limit of 150 felony cases per attorney or 400 misdemeanor non-weighted cases. The current standards make no distinction between the seriousness of cases, such that each felony is valued the same even though some case types take more time, experience, and skill to resolve. The workloads included in the NPDWS report better reflect the actual time required to adequately investigate and defend cases at several levels of difficulty. Making a distinction between case types will allow public defense administrators to distribute cases more equitably and better forecast future attorney and staffing needs. In this way, the NPDWS more closely aligns with the reality of public defense and allocation of the time necessary to effectively represent individuals, as opposed to the amount of time public defense attorneys can triage workloads that allow minimal time to represent clients.

The NPDWS report recommends, and the CPD undertook, to adapt the NPDWS numbers to Washington law, as well as to account for the actual annual hours available to lawyers to devote to client representation. Local laws can impact the amount of time a lawyer spends on a particular case type. To adapt the NPDWS to Washington law required 1) mapping the criminal code to the NPDWS Case Categories (*See Appendix B*); 2) comparing national hour assumptions with available local data or commencing a timekeeping study; and 3) creating implementation standards for estimating future FTE needs, expected annual billable hours worked and means of regulation in a decentralized public defense system with a variety of public defense delivery systems (government agencies, non-profit public defense firms, for-profit public defense firms, solo practitioners or small firms who take some public defense, flat-fee contractors, hourly contractors, etc.).

The NPDWS was adapted to Washington by members of the Standards Committee with review and feedback provided by: practitioners through a survey, meetings with practitioners and public defense Directors, CLE presentations to Washington Defender Association members, and public defenders who solicited emails and other less formal suggestions (of which there were many). In preparation for the NPDWS publication, the CPD heard presentations from authors, accountants, experts, and participants in the NPDWS and other state public defense workload studies, including from local experts on topics such as the disparities between legal outcomes for rural v. urban defendants, and understanding new technology that allows defenders to access data on disproportionate sentencing outcomes for BIPOC clients. We have also heard from experts about the impact of secondary trauma on defenders and how that trauma can, in turn, result in less just outcomes and worse experiences for their clients in the legal system.

As mentioned above, there is a current shortage of public defense attorneys and adding increased demand to short supply will only result in more defendants being charged with crimes without there being enough defense

attorneys to represent the accused. Without intervention, this pattern will continue and increase. Thus, the CPD is recommending a multi-year implementation to allow local jurisdictions time to plan for additional costs and spread costs over multiple years without creating immediate excessive unfillable demand resulting in unrepresented defendants. Without question, the implementation portion of this revision has been the most discussed and contested. While there is pressing need to implement these standards immediately, the CPD sought to weigh this need against the practical concerns of public defense administrators and local jurisdictions who worry about the cost and ability to secure funding to bring their jurisdiction into compliance with the revised standards. An additional practical concern is the general shortage of lawyers facing many public service law firms and government offices. Revisions to the caseload standards should provide some additional assistance in recruiting. Other states have opted for a multi-year study of local timekeeping habits before revising and implementing standards, but many of those states have centralized public defense delivery systems that require that lawyers keep time. Concerns about accessing sufficient local and state funding to meet qualifications is not new in public defense; few jurisdictions are currently in full compliance with the WSBA Standards. Adoption of these Standards will spark increased funding for public defense, supporting increased compliance. This correction in funding is critical and long overdue, though it will admittedly be a challenge for local public defense administrators, local governments and the State.

- *Have you considered the issue through an equity lens? How has that informed your understanding of the problem and/or the proposed solution?*

The CPD Standards Committee has been grounded in our awareness that these revisions most greatly impact public defense clients. While revisions in Standards will assist in retaining and recruiting future public defenders, it will have the greatest impact on public defense clients. These clients are indigent, often suffering from trauma, mental illness and/or addiction, and are disproportionately Black, Indigenous, and other people of color. Public defenders have historically served these populations, but attorney and non-attorney staffing and funding have been insufficient to provide the level of representation that meets modern standards of practice. The CPD itself is a diverse body composed of public defenders, prosecutors, judges from District, Superior, and the Supreme Court, professors, public defense investigators, and formerly legally involved people. Among the presentations that have informed our discussions are trainings by the Washington State OPD DEI Trainer, Barbara Harris, as well as sponsorship and participation in CLEs about the role of an attorney in advocating system change for racial justice by Jeffrey Robinson. Additional presentations also informed the CPD about the role that secondary trauma has on defenders, creating unjust legal outcomes as well as real human resource concerns for offices and law firms representing the accused.

- *Any barriers to the proposed solution? How will they be addressed?*

Although there do not appear to be barriers to adopting the revised Standards, the CPD recognizes that implementing the Standards in local jurisdictions will increase the cost of public defense services. The CPD's role, however, is limited and we do not have authority to address funding concerns at either the local or state level. To alleviate some of the funding pressures, the revised Standards provide for a gradual implementation to allow time for agencies to request additional funding and hire staff and for counties and cities to adjust budgets. The changes

will impact jurisdictions differently and each of those unique impacts must be navigated. As part of our work, the CPD has created spreadsheets for local practitioners to forecast future FTE needs as well as real-time case assignment management tools for supervisors and lawyers.

Information for Fiscal Analysis

Provide information to help inform the Fiscal Analysis.

- *Is a similar project or program already in the WSBA budget?*

No

- *If implemented, what is your estimated budget for the project?*

None

- *If implemented, will this project require staff time?*

No

- *Is this a new technology? Have other similar technologies been explored?*

No

- *If implemented, will this project save the WSBA money?*

No

- *Would this project bring in any revenue?*

No

Information for Equity Analysis

The purpose of the equity assessments is to understand entities incorporated an equity lens into the action items presented to the Board of Governors. Equity is meeting impacted parties according to their needs to produce fair and equal outcomes for all. Please answer all questions completely in order to receive a comprehensive equity assessment.

- *IMPACTED GROUPS: Please describe the direct and indirect impacts of 1) the overall work of your entity and 2) this specific action on the categories below. If you do not believe the action has a direct or indirect impact on any of these categories, please explain why.*
 - *The general WSBA membership*

The overall work of the CPD and the revised Standards will increase access to justice and provide better assistance of appointed counsel. Our work provides the Standards by which public defense lawyers assess their own work and understand their obligations. Bringing our Standards into alignment with Constitutional and national norms enhances the general WSBA membership's reputation and the perception of our profession as committed and hard-working lawyers.

- *WSBA staff*

The revisions will not have an impact on WSBA Staff.

- *A subgroup of WSBA membership (e.g. LLLTs, family law practitioners, Minority Bar Association members, legal professionals from specific marginalized and underrepresented communities)*

As written at length above, these revisions will have a profound impact on public defense lawyers.

- *Members of the public in need of legal services (if applicable, please include specific client communities)*

The accused and others facing the loss of their liberty or other protected rights are disproportionately poor, BIPOC, and suffering from acute trauma or illness. Studies show that poor public defense representation results in lengthier prison sentences and the incarceration of the innocent. The most important impact of these revisions will be to assure that Washington is providing effective and timely assistance of counsel. Failure to attend to our clients results in our clients' perception of the criminal legal system as failing them personally – loss of faith in the legal system due to underfunded civil servants is an easily avoidable PR problem. Most importantly, when the public defense system fails, we become purveyors of an injustice that almost solely impacts the accused. These revisions will ensure greater access to justice for the most marginalized communities.

- *PROCESS: How did you collaborate with impacted groups identified above? How did you integrate input or leadership from impacted groups into this project or proposed action? If you did not collaborate with or integrate input from impacted groups identified above, please explain why. What resources do you need to sustain relationships with impacted groups? If you do not plan to sustain relationships with impacted groups, please explain why.*

CPD engaged with the impacted groups identified above during the listening sessions, CLEs, surveys, and many meetings held with stakeholders. In addition, the CPD has collaborated with our colleagues in advance of the adoption of these revised Standards to assure effective implementation. The Washington Defender Association is planning to devote portions of its Spring Conference CLE to understanding and administering the Standards, if approved; State OPD is planning to expand its existing trial training academy to meet some of the training needs referenced in the Standard 14 – Attorney Qualifications. Materials and PowerPoint presentations from the relevant CLEs have been available to Public Defense Agency Directors to use in presentations to their local funding authorities. State OPD will continue to provide caseload calculator worksheets and other tools on its website as these Standards are implemented.

- *OUTCOMES: What are the intended outcomes of this specific action? Are there potential unintended consequences? Of the impacted groups outlined above, who benefits most from this action? Conversely, are there groups who may be burdened?*

The primary goal of these revisions is to bring public defense workloads and support staff in Washington into alignment with data-driven national and ethical norms that are consistent with Sixth and Fourteenth Amendments and Washington caselaw.

There will be short- and long-term unintended consequences, but they have been considered. The CPD takes seriously the concern about consequences and encourages the BOG's attention and consideration of the

consequences. Adopting these changes to caseload standards will, in the short term, result in attorney shortages that could result in the accused going unrepresented until qualified counsel are available. For example, changing caseload standards would create immediate need for more lawyers. This would occur each year of the phased implementation. If that need for immediate lawyers is unmet, there will be insufficient public defense attorneys to represent the accused. This will result in delayed representation.

To be clear, this is already occurring in jurisdictions throughout Washington. If the current Standards are not revised, the number of unrepresented defendants will still continue to rise due to public defense attorney attrition due to excessive caseloads and poor pay. While the revised Standards may lead to these short-term consequences, they are nonetheless necessary to provide a long-term solution. Continuing under the current caseloads is simply unsustainable.

The CPD cannot predict which jurisdictions will face these shortages, how deep the shortages will be, or the impact. Some jurisdictions are already preparing for the changes to these Standards and will continue to be able to provide timely representation. But the history of implementation of similar standards in other states informs us that we should be prepared for the revised Standards to impact the ability to provide timely legal representation to the accused. This similarly occurred in 2011 when the BOG approved the original Indigent Defense Standards.

To best prepare, the CPD is recommending a phased implementation. The phased implementation is designed to defer the costs over four years. In addition, implementation would not begin until July of 2025, giving local governments over a year before any budget changes could occur. We have been and will continue to work to support State OPD's budget and raise awareness at the local and state level of expected changes to these standards such that no jurisdiction should be surprised. CPD members have spoken to elected representatives from every branch of government about the need to revise the Standards and the need for State and local cooperation. We have been providing FTE and caseload forecasting worksheets to Public Defense Directors and Supervisors to assist in forecasting and caseload management. We will continue to collaborate with State OPD and WDA to communicate with defenders and provide necessary trainings mentioned in the updated qualifications portions of the Standards.

In the long-term, the changes in these Standards will assure that the accused do not go unrepresented. The changes should assure a workload that allows defenders to commit their talents and knowledge to their clients consistent with our Constitutional duties and commitment to the values of equity which understand that each person deserves a quality defense, not just those who can pay for it. The Standards, if approved, should staunch the bleeding of retiring and resigning defenders, and allow agencies to recruit attorneys with the assurance of a livable workload that competes with other public service legal work.

In the end, these changes are meant to improve the quality of representation to the accused. They will be assured a criminal legal system where the accused will have access to a lawyer with the caseload capacity to litigate their case as the public would expect of public defenders. The legal system itself will be improved by less stressed and traumatized public defenders who will have the capacity to work and advocate for their clients with the assurance of time, professional training, and capacity for supervision, mentorship, and increased qualifications.

The group most burdened by these changes will be public defense administrators and local jurisdictions who fund public defense.

- ***EVALUATION: How will you measure the impact of the action, including unintended consequences and disparities among impacted groups? What resources do you need to evaluate the impact of this action and track any unintended consequences or disparities?***

These Standards will provide detailed data about public defense work that will assist in supervising and improving representation. It will also provide improved forecasting of future changes in public defense workload patterns, as well as attorney and non-attorney needs.

In order to effectively evaluate these Standards, we need to propose an effective system of public defense caseload and qualifications enforcement. The only current tool is the public defense lawyer certifications required by the Washington Supreme Court under CrR 3.1, CrRLJ 3.1, and JuCr 9.1. The CPD intends to convene a group of practitioners to report back to the CPD to make recommendations for changes in enforcement of compliance with Standards. We will seek broad representation from the WSBA, State OPD, trial court judges, public defenders and public defense administrators.

- ***FUTURE LEARNING: Learning to lead with an equity lens is an ongoing process. Please reflect on how you might improve on how you collaborate with impacted groups for future projects and actions. What additional trainings or resources would be helpful to your entity to improve in this area?***

We need to pay non-lawyer volunteers. The CPD has historically sought the participation of people impacted by the legal system. While we have had no challenges recruiting former clients, their participation is limited by their financial ability to leave work to attend bar association meetings. In 2023, the CPD welcomed a non-lawyer staff investigator to our membership who is also an SEIU Steward. Her participation has profoundly transformed our work and its inclusivity. But it also comes at a cost to her because she is not regulated by the WSBA and has no place in her work structure for pro bono or volunteer paid hours. She is taking PTO for every CPD meeting and is now out of PTO. We need to value the diverse experiences and knowledge of non-lawyer community members and pay them for their volunteer work in our profession.

We need additional staff support. The CPD still must respond to the Justice's request for suggestions for more robust public defense standards under the Court's rules and qualifications enforcement mechanism. At the request of practitioners and the State Office of Public Defense, we will begin discussing workloads for family defense public defense lawyers and civil commitment lawyers. Each of these tasks will take considerable work by volunteers. While our volunteers are amazing, we must respect their professional and personal demands by providing sufficient support and administrative guidance by WSBA staff. The CPD needs additional staff support to coordinate our volunteers in these (and other) actively working subcommittees with deadlines and accountable demands from the judicial branch and our practitioners.

WSBA RISK ANALYSIS: This section is to be completed by the Office of General Counsel, with input from the proposing entity or individual.

WSBA FISCAL ANALYSIS: This section is to be completed by the Finance Department, with input from the proposing entity or individual.

NA

WSBA EQUITY ANALYSIS: This section is to be completed by the Equity and Justice Team, with input from the proposing entity or individual.

We do not see any immediate equity concerns with the action in front of the Board of Governors to update the Standards. The CPD has demonstrated that they have been able to gather input from a diversity of perspectives, including front line public defenders and staff who see firsthand the impact of the criminal justice system on people from marginalized, within their limited capacity, and significant time and attention has been put into this effort.

However, as CPD noted, the successful implementation of these updated Standards will require sustained investment, funding, and coordinated efforts. It is evident that client communities reliant on public defense will be most affected by the consequences of these updated Standards without comprehensive support for implementation. The well-being and retention of public defenders and other public defense staff who are dealing with excessive workloads and systemic barriers to providing representation is essential to a criminal legal system that does not continue to oppress communities who have been historically marginalized.

We agree with CPD's recommendation that to effectively support the implementation of the revised Standards, the WSBA should seriously consider providing increased CPD staffing who have specialized expertise in legal and client community outreach and engagement. By supporting the CPD's leadership in this area, the WSBA could play a pivotal role in convening stakeholders and those impacted to ensure successful implementation of the Standards.

Attachments

The Council on Public Defense Report on Proposed Revisions to the Standards for Indigent Defense Services.

Council on Public Defense Report on Revisions to WSBA Standards of Public Defense

Executive Summary:

1. Washington's public defense system is in crisis. High caseloads and defense attorney attrition have stressed the criminal judicial system to the breaking point. With these problems in mind, the WSBA Council on Public Defense (CPD) has undertaken a comprehensive revision of the WSBA Standards for Indigent Defense Services ("WSBA Standards"). (pgs. 2-5)
2. Based on data and public responses gathered by the CPD, the CPD made significant revisions to the WSBA Standards in three primary areas:
 - a. Attorney Qualifications (pg. 5)
 - The WSBA Standards provide the required qualifications attorneys must meet prior to handling cases at various stages of difficulty.
 - Many of the defense attorneys who meet the qualifications to handle the most serious cases are resigning and there are not enough attorneys qualified under the current standards to take on those serious cases. The COVID-19 pandemic made matters worse by preventing attorneys from becoming trial-qualified while trials were put on hold.
 - The CPD's revisions to attorney qualification standards seek to balance providing a clearer and faster path for attorneys to become qualified to handle cases of increasing difficulty, while ensuring lawyers have the experience necessary to represent clients at those levels.
 - b. Support Staff Requirements (pgs. 5-8)
 - Support staff, such as social workers, investigators, and mitigation specialists, are an indispensable part of the public defense system.
 - At present, Washington's rules recommend that some types of support staff be available to public defenders, but do not require specific staffing ratios.
 - During listening sessions and in responses to surveys, Washington public defenders informed CPD that mandating specific staffing levels was necessary and would assist with encouraging funders to provide for those services.
 - The revised WSBA Standards phase in requirements that agencies maintain specific support staff ratios.
 - c. Caseload Standards (pgs. 8-17)
 - Individuals accused of crimes have a Constitutional right to adequate defense. This means that an attorney must have the time necessary to thoroughly investigate a client's case and to communicate with the client.
 - Changes in the types of evidence used in criminal cases and research on caseload standards have made clear that Washington's standards are outdated and do not permit attorneys to fulfill their Constitutional and ethical obligations to their clients.
 - The proposed revisions phase in reduced caseloads and are urgently needed to bring Washington into compliance with public defense requirements.

I. Introduction

Public defense in Washington is facing a crisis of attrition and an inability to recruit staff brought about by excessive workloads and poor compensation. Repeatedly, law students in Washington report that they do not want to enter public defense because of the volume of work with little staff support and low salaries. Attorneys are resigning from the public defense profession in droves because they cannot continue the work given the volume of cases. Moreover, defendants in criminal prosecutions have a Constitutional right to representation by counsel and that representation must be meaningful. Not only do untenable caseloads create a personal career crisis for dedicated public defender civil servants, but they create a Constitutional crisis where there are insufficient numbers of public defense lawyers to represent the accused.

This crisis is not a distant fear. These proposed revisions are prompted by an unignorable shift in workloads and working conditions in public defense nationwide that has brought public defense to a very public crisis. Post-COVID, some Washington jurisdictions have experienced a surge in criminal case filings and have been unable to appoint qualified defenders to represent the accused. In other jurisdictions, public defense lawyers may be within caseload limits, but the exponential increase in the time required to review the large volumes of electronic and technical discovery generated in each case demonstrates that the current caseload standards are outdated.

The current caseload standards put public defenders in an unsustainable position where they simply lack the time and resources necessary to provide Constitutionally adequate defense to their clients. Moreover, the deprivation of the Sixth Amendment right to counsel for the accused can result in dismissal of cases or, worse, the monthslong pretrial detention of the innocent accused while awaiting appointment of an attorney.

Defenders in Washington recognize that high caseloads and the low level of staff support prevent them from meeting their ethical obligation to efficiently respond to their clients and opposing counsel and investigate cases. These conditions have made for dreadful working conditions and Washington's public defenders are rapidly leaving the profession. In a three-month span, the King County Department of Public Defense lost ten Class A qualified lawyers and eighteen total lawyers requiring the transfer of 700 cases from departing attorneys to other staff. Benton and Franklin Counties were unable to recruit enough attorneys to represent charged defendants such that the accused sat in jails for months waiting for a lawyer for an arraignment.

Washington is not alone in this crisis. Nationally, jurisdictions have arrived at this point due to decades of insufficient funding for public defense lawyers and other essential staff and functions. For example, Oregon is facing a public and political reckoning brought about by years of understaffing public defense. In Washington, the problem is exacerbated by the minimal investment in public defense provided by the State. Moreover, the diverse and decentralized delivery of public defense in Washington presents significant challenges to ensuring that the quality of representation does not vary by geography. Given this backdrop, informed standards that reflect the current demands of public defense are necessary to meet the Constitutional and ethical requirements to provide competent defense to individuals facing criminal prosecution.

The revised WSBA Standards represent two years of work by a diverse cohort of law professors, public and private defense attorneys, public defense administrators, prosecutors, judges, formerly incarcerated

people, and public defense investigators. In addition, the revisions are a product of years of feedback from Washington’s public defense practitioners, prosecutors, judges, community members, and others involved in the public defense system. WSBA’s Council on Public Defense (CPD) heard from more than 300 public defense practitioners, who overwhelmingly supported the proposed revisions. For too long, there has been no light at the end of the tunnel for public defenders and no relief in sight. While this crisis was not created overnight and will take time to correct, the CPD believes the adoption of the proposed WBA Standards will begin to remedy the crisis and bring Washington’s statewide public defense delivery system into alignment with Constitutional standards.

II. Washington Supreme Court Request for Revisions

In January 2022, the Council on Public Defense began its review of the WSBA Standards for Indigent Defense Services by convening public defense lawyers, investigators, and administrators; directors of Washington’s public defense agencies; and law professors with expertise in criminal defense to discuss responses to increased caseloads. Simultaneously, a team of researchers with the RAND Corporation, the National Center for State Courts, the American Bar Association Standing Committee on Legal Aid and Indigent Defense, and public defense expert Attorney Stephen F. Hanlon began a nationwide examination of public defense caseload standards. In September 2023, this team published the National Public Defense Workload Study, setting forth their findings that the caseload standards used by the majority of jurisdictions—including Washington—were far too high to allow defense attorneys to provide Constitutionally adequate representation.

In recognition of the mounting public defense crisis, in October 2023, the Justices of the Washington Supreme Court also requested that the CPD specifically address caseload standards. The Justices, cognizant of the shortage of lawyers and the consequences to the criminal legal system, requested updated caseload standards by November 2023. As this would be a significant undertaking, the CPD asked for and was granted additional time to develop standards to Washington law and to gather feedback from public defense professionals. This report details the CPD’s process, the data considered, and the reasoning for the proposed revisions.

III. Public Engagement in Revision Process

a. Listening Sessions

The CPD sought to engage the public and, in particular, members of the public defense community at each stage of the revisions process. In January 2022, the CPD held a listening session with public defense lawyers and administrators to discuss staff shortages. At that session, the CPD also heard from public defenders about developments in digital discovery, such as video footage and phone call recordings and the overwhelming amount of time required to review that discovery.

While developing recommendations to revisions of the Standards, the CPD requested feedback on the revisions during additional listening sessions. Sessions held in October 2023, December 2023, and February 2024, specifically addressed revisions to support staff requirements and attorney qualifications.

One additional listening session, held in January 2024, sought input from director-level administrators of public defense offices. The CPD heard from Directors about the funding and implementation impacts of the proposed revisions. A second January 2024 session with King County and Whatcom County attorneys addressed case classifications similar to those used in the NPDWS study discussed below.

b. Public Education

The CPD organized two continuing legal education sessions which focused specifically on the updated caseload standards proposed in the National Public Defender Workload Study (NPDWS). In April 2023, at the annual Washington Defender Association (WDA) Defender Conference, Professor Robert Boruchowitz led a CLE detailing the NPDWS study that was underway at that time. In December 2023, CPD Chairperson and Director of the Snohomish County Office of Public Defense Jason Schwartz conducted a CLE on public defense ethical standards and the NPDWS caseload standards at a second WDA-sponsored event. In addition to providing information to Washington attorneys about the updated standards for public defense caseloads, these CLEs were an opportunity for attendees to share their thoughts on the standards and the state of Washington public defense more generally. Many attorneys at these sessions voiced their frustration with Washington's high caseloads.

c. Surveys

To begin with, a 2023 study conducted by the Washington State Office of Public Defense (OPD) asked former public defenders in Washington about their reason for leaving the profession.¹ Low pay and high caseloads were the top reasons respondents cited for leaving²

In February 2024, CPD sought input from attorneys, administrators, and support staff practicing in the area of criminal defense through a survey. The survey presented respondents with the proposed revisions to support staff requirements, attorney qualifications, and the NPDWS caseload recommendations and asked respondents to provide feedback on the proposals. The survey was widely disseminated to individuals working in public defense, including to all members of the Washington Defender Association.

In total, 322 people submitted answers to the survey, although not all respondents answered every question. Of those individuals, nearly three-quarters (72%) were employed by federal, city, county, or non-profit defense agencies, with the remainder coming from private public defense contract attorneys (11%) and solo practitioners (13%). Similarly, close to three-quarters (74%) of respondents were attorneys. The remainder were social workers, mitigation experts, or social services providers (5%); investigators (5%); supervisors (4%); and directors or others in lead management roles (3%).

The survey responses to the proposed updates to the WSBA Standards were overwhelmingly positive. This report discusses the responses to specific proposed revisions in more detail below. However, overall, when asked to compare the proposed revisions to the current standards, 92% of survey respondents reported that the proposed revisions reflected the standards needed to meet their legal and ethical obligations to their clients better than the current standards.

d. CPD Composition and Meetings

Lastly, the CPD itself is made up of a diverse group of individuals who work or have worked in the criminal legal system. For example, members of the CPD include law professors, Washington Supreme Court Justices, public defenders, and prosecuting attorneys. These members' knowledge and experience was invaluable to the CPD during this revision process.

¹ See OPD Memorandum to Justices of the Washington State Supreme Court, 3 (Nov. 27, 2023).

² *Id.*

CPD meetings are advertised on the WSBA website and are open to the public. There was a noticeable increase in attendance and participation of non-Council attorneys during discussions of the standards revisions. In addition, CPD members received many emails and phone calls from public defense practitioners who added input to the revision process. Those communications were taken into consideration by the CPD.

IV. Revisions to Attorney Qualifications Standards

The Indigent Defense Standards provide the required qualifications attorneys must meet prior to handling cases at various stages of difficulty. For instance, to represent a client charged with an adult Class A felony, the current Standards require an attorney to have a minimum of two years' experience as a prosecutor or public defender and have handled a significant portion of three trials in felony cases.³

Revisions to these standards are needed because the standards as currently drafted do not reflect the types of experience actually available to attorneys and are contributing to the shortage of public defense lawyers. There has been a significant attrition of attorneys qualified to represent clients in the most serious cases throughout the State. The COVID-19 pandemic only served to make the shortage worse because attorneys were unable to gain the trial experience required for higher levels of representation while trials were on hold. The lack of attorneys qualified for higher levels of representation under the Standards contributes to the vicious cycle of high caseloads and further attrition.

The CPD's goal, therefore, was to balance the need for a clearer and faster path for attorneys to become qualified to handle cases of increasing difficulty, while also ensuring defense lawyers have the experience necessary to represent clients at those levels. If lawyers can more easily become qualified to represent the accused in more serious cases, the pool of attorneys available to take such cases will grow, relieving the shortages that lead to underrepresentation for defendants.

The revisions also reflect changes in practice and the need for additional or alternative training and supervision to supplement trial experience. Many of the current standards require extensive trial experience. While such experience is invaluable, trials are increasingly less common and, therefore, the experience is difficult to acquire. For this reason, the revised standards place a greater emphasis on acquiring experience through training and other in-court practice.

Practitioners have indicated that the revised qualifications remain sufficient to provide attorneys with the necessary experience to defend clients at each level. The February 2024 survey asked if the proposed revisions to attorney qualifications reflected the qualifications needed to effectively represent client charged with each category of offense. 67% of respondents answered "yes" with respect to qualifications for misdemeanor cases and 62% answered "yes" for qualifications for felony cases.

V. Revisions to Support Staff Requirements

The CPD has also proposed revisions to the sections of the WSBA Standards addressing the recommended ratio of support staff to attorneys. At present, Washington's WSBA Standards, Court Rules, and other practice guidance provide few requirements with respect to the support staff necessary for

³ See WSBA Standards for Indigent Defense Services, Standard 14.2.A, available at https://wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/standards-for-indigent-defense-services-approved-by-bog-revised-september-2021.pdf?sfvrsn=b40d17f1_4.

agencies to provide public defense services. The current WSBA Standards recommend, but do not require, that public defense offices employ a minimum of one investigator and legal assistant for every four attorneys.⁴ The Supreme Court Standards for Indigent Defense merely state that “[p]ublic defense attorneys shall use investigation services as appropriate,”⁵ and Washington provides no guidance on the appropriate ratio of social workers or mitigation specialists.

The present WSBA and Court Standards do not fully reflect the important role support staff play in ensuring defendants receive adequate representation. Defendants are entitled to meaningful defense. “To receive this representation, clients must be provided attorneys who have the basic tools of an adequate defense. Necessarily, this includes adequate staff to support the work of the lawyer.”⁶ Support staff—which may encompass social workers, legal assistants, investigators, and mitigation specialists—benefit the public defense system by providing skills that attorneys may not possess and by freeing up attorney time for tasks that require the particularized skill set of a lawyer. For example, client interviews may be conducted by a social worker while the attorney performs legal research and appears in court. Especially with the increase in digital records, such as video footage from police body cameras, support staff are an indispensable resource for attorneys who have limited time to review such evidence on their own.⁷

The early involvement of investigators, mitigation specialists, and social workers can also lead to earlier resolution of cases and more appropriate sentencing, benefiting the health of the entire criminal legal system. For instance, “[t]he earlier an investigator can uncover facts that exculpate a client, the sooner the prosecution can determine that pursuing the case is not the best use of its resources. Similarly, the sooner a client is presented with facts that inculpate him or her, the earlier the client can make an informed decision about the wisdom of a plea.”⁸ Similarly, “social workers can very often provide important assistance in advocating for alternatives to incarceration, by identifying substance-abuse problems, informing the court about the client’s relevant history, and locating possible treatment programs that address the client’s needs. By identifying clients for whom placement in a program is appropriate, [the public defense agency] not only benefits individual clients, but also decreases the heavy costs borne by the state associated with incarceration.”⁹ Access to investigators is also crucial because of the evidence admissibility challenges that can arise when an attorney both defends a case and gathers evidence.¹⁰

⁴ WSBA Standards for Indigent Defense, Standard 6.1.

⁵ CrR 3.1, Standard 6.1.

⁶ National Association for Public Defense, *Policy Statement on Public Defense Staffing*, 1 (May 2020) (available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://publicdefenders.us/app/uploads/2023/10/NAPD_Policy-Statement-on-Public-Defense-Staffing.pdf).

⁷ See *Id.*, at 10 (The need for support staff for defense attorneys is even more crucial due to “[r]ecent changes in police and prosecution practices, including the widespread use of police video camera recordings” which “have increased the need for investigator and paralegal assistance for defender lawyers.”)

⁸ Legal Aid Society, *Analysis of Time and Resources Necessary for an Effective Defense*, 3 (Aug. 29, 2014), available at <https://www.nycourts.gov/courts/ad1/Committees&Programs/IndigentDefOrgOversightComm/IDOO%20FY%2012-13%20Report,%20Addendum%20and%20Appendix.pdf>.

⁹ *Id.* at, 32.

¹⁰ See, e.g., ABA Model Rule of Professional Conduct 3.7: Lawyer as Witness: “A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client.”

Given the importance of adequate support staff to providing the Constitutionally-required standard of representation, the CPD's proposed revisions to the WSBA Standards would require public defense agencies to provide a minimum of one full-time mitigation specialist or social worker for every three full-time attorneys and one full-time legal assistant or paralegal for every four full-time attorneys.¹¹ The revised Standards also require, rather than recommend, that agencies employ one investigator for every three attorneys.¹²

Agencies would be required to implement these support staff ratios by no later than July 3, 2028, but must make meaningful progress towards these requirements prior to that date.¹³ Revisions to the caseload standards discussed in more detail below will necessitate changes to attorney staffing levels in most jurisdictions over the next three years. Because support staff levels are based on the number of defense attorneys at an agency, the revised Standards allow for public defense providers to come into compliance with support staff ratios within one year following full adoption of the revised caseload standards. This is intended to allow jurisdictions to better plan for funding such positions.

These proposed ratios are in line with the recommendations of rigorous studies of public defense staffing and staffing ratios adopted by other states. First, in 2020, the National Association of Public Defenders recommended that public defense providers should provide one investigator and mental health professional, typically a social worker, for every three attorneys, and one paralegal and administrative assistant for every four attorneys.¹⁴

Likewise, a study by New York's Legal Aid Society (LAS) and the law firm Davis, Polk, & Wardwell, LLP, recommended public defense agencies employ one social worker and one investigator for every three attorneys based on a comprehensive analysis of support staff needs in cases assigned to public defenders.¹⁵ The study concluded that insufficient support staff levels were "inconsistent with the reality of the criminal justice system today."¹⁶

To determine the level of support staff that would meet Constitutional requirements, the LAS study convened two task forces of investigators, social workers, and attorneys.¹⁷ The task forces identified the proportion of cases assigned to the public defense agency that would require investigative or social work services, and estimated the amount of time support staff would require to perform those services.¹⁸ The task forces erred on the side of conservatively estimating these case times.¹⁹ The task forces then calculated the total number of support staff needed by dividing the total investigative and social work case

¹¹ Proposed WSBA Standards of Indigent Defense Services, Standards 4.B, 7.C.

¹² *Id.*, Standard 6.B.

¹³ *Id.*, Standards 4.B, 6.B, 7.C.

¹⁴ National Association for Public Defense, *Policy Statement on Public Defense Staffing*, 1 (May 2020) (available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://publicdefenders.us/app/uploads/2023/10/NAPD_Policy-Statement-on-Public-Defense-Staffing.pdf).

¹⁵ Legal Aid Society, *Analysis of Time and Resources Necessary for an Effective Defense* (Aug. 29, 2014), available at <https://www.nycourts.gov/courts/ad1/Committees&Programs/IndigentDefOrgOversightComm/IDOOOC%20FY%2012-13%20Report,%20Addendum%20and%20Appendix.pdf>.

¹⁶ *Id.*, at 8.

¹⁷ *Id.*, at 10.

¹⁸ *Id.*, at 12-16, 34-59.

¹⁹ *Id.*, at 16, 29, 37.

time required for all cases assigned to the agency by the total number of cases a single investigator or social worker is capable of handling in one year.²⁰ Based on these calculations, the LAS Study concluded the public defense agency would need one investigator for every 2.9 attorneys and one social worker for every 2.6 attorneys to meet the needs of the agency.²¹

The ratios proposed by the CPD also closely track standards adopted in several other states. At the time of the LAS study, Colorado, Connecticut, New Hampshire, New Jersey, and Vermont maintained a ratio of at least one investigator for every four attorneys.²² Indiana’s Indigent Defense Guidelines go even farther and consider offices that do not employ one secretary/paralegal, paralegal investigator, *and* one other litigation support staff position for every four attorneys (total of 0.75 support staff for every one attorney) to have inadequate staff and generally prohibits such offices from taking on a full caseload.²³

Lastly, when asked in the February 2024 CPD survey to comment on increasing the proportion of support staff to public defenders, Washington practitioners overwhelmingly approved of the updated Standards (91% and 88% for investigators and social worker/mitigation experts, respectively). These responses indicate there is a pressing, unfulfilled need for additional support staff for Washington’s public defenders.

VI. Revisions to Caseload Capacity Standards

Perhaps the most consistent concern raised by attorneys during the CPD’s review of Washington’s Indigent Defense Standards was that the maximum caseloads permitted under the current standards were far too high. When public defenders are overburdened, defendants do not receive the representation guaranteed to them by the United States and Washington Constitutions. Due in part to the untenable position in which these high caseloads place public defenders, many attorneys are leaving the profession, which only leaves more cases for the attorneys remaining. For those attorneys who remain in public defense, caseload standards that do not reflect the actual time necessary to effectively represent a client put those attorneys at risk of violating their ethical duties to their clients.

a. Constitutional and Ethical Obligations of Public Defense Attorneys

The right to an attorney for those subject to criminal prosecution has been a fundamental tenet of our justice system since the formation of this country. This protection is enshrined in the Sixth Amendment to the United States Constitution, which provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.”²⁴ Similarly, the Washington Constitution states that “[i]n criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel.”²⁵

²⁰ *Id.*, at pg. 30, Ex. 7.

²¹ *Id.*, at pgs. 931, 60.

²² *Id.*, at pg. 8.

²³ Indiana Public Defender Commission, Standards for Indigent Defense Services in Non-Capital Cases, Standard J, Table 2 (June 14, 2023) (available at <https://www.in.gov/publicdefender/files/Commission-Standards-2-current-as-of-Aug-25,-2023.pdf>).

²⁴ U.S. Const. Amend. VI.

²⁵ Wash. Const. Art. I, § 22; *see also State v. A.N.J.*, 225 P.3d 956, 959 (Wash. 2010) (“The right of effective counsel and the right of review are fundamental to, and implicit in, any meaningful modern concept of ordered liberty.”).

Moreover, the U.S. Supreme Court made clear in *Strickland v. Washington*, 446 U.S. 668 (1984), that even if a defendant is represented by an attorney, that representation does not meet Constitutional standards unless it is adequate and meaningful.²⁶ As one Washington judge has explained,

If counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, if there is no opportunity for appointed counsel to confer with the accused to prepare a defense, or circumstances exist that make it highly unlikely that any lawyer, no matter how competent, would be able to provide effective assistance, the appointment of counsel may be little more than a shall and an adverse effect on the reliability of the trial process will be presumed.²⁷

A number of ethics opinions and standards elaborate on what it means to provide adequate meaningful defense. The WSBA Performance Guidelines for Criminal Defense Representation, for example, require "conscientious ardent, and quality representation . . . at all stages of the criminal process"²⁸ Among many other responsibilities, the WSBA Guidelines direct defense attorneys to communicate regularly with clients;²⁹ and "conduct an independent investigation regardless of the client's admissions or statements to the lawyer of facts constituting guilt."³⁰ Substantial investigation and evaluation of evidence is required of defense attorneys even in cases that will not result in a trial. Prior to considering a plea deal, the WSBA Guidelines also direct that "[u]nder no circumstances should defense counsel recommend to a client acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial."³¹

Excessively high caseloads, however, interfere with defense attorneys' ability to provide the required level of representation. The Washington Defender Association's comments to the 2007 version of the Washington caseload standards hold true today: "Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their workloads are unmanageable. Without reasonable caseloads, even the most dedicated lawyers cannot do a consistently effective job for their clients."³²

Perhaps due to the persistent problem of excessive caseloads, defense attorneys are required by multiple ethical standards to ensure they do not take on more clients than they have time to represent. In any representation, Washington Rule of Professional Conduct (RPC) 1.1 requires a lawyer to "provide competent representation to a client." Competent representation "requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."³³ Similarly, RPC 1.3 requires

²⁶ *Strickland v. Washington*, 446 U.S. 668, 685 (1984) ("That a person who happens to be a lawyer is present at trial alongside the accused, . . . is not enough to satisfy the constitutional command.")

²⁷ *Wilbur v. City of Mt. Vernon*, 989 F. Supp. 2d 1122, 1131 (W.D. Wash. 2013) (citing *United States v. Cronin*, 466 U.S. at 658-60, *Avery v. Alabama*, 308 U.S. 444, 446 (1940)).

²⁸ WSBA Performance Guidelines for Criminal Defense Representation, Guideline 1.1 (2020).

²⁹ *Id.*, Guideline 1.4.

³⁰ *Id.*, Guideline 4.1

³¹ *Id.*, Guideline 6.1(c).

³² Washington Defender Association Comments to Standards for Public Defense Services, at 13 (available at https://defensenet.org/wp-content/uploads/2017/12/Final-2007-WDA-Standards-with-Commentary_18.12.06.pdf.)

³³ RPC 1.1.

an attorney to “act with reasonable diligence and promptness in representing a client” and the commentary to the rule states that “[a] lawyer’s work load must be controlled so that each matter can be handled competently.” RPC 1.7, which addresses conflicts of interest, also prohibits attorneys from representing clients where “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client.” The ABA has concluded that assignment of more cases to an attorney than that person is capable of handling, “create[s] a concurrent conflict of interest as a lawyer is forced to choose among the interests of various clients, depriving at least some, if not all clients, of competent and diligent defense services.”³⁴

With respect to criminal cases specifically, the Court Standards mandate that “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.”³⁵ The WSBA Standards of Indigent Defense likewise require the same standard of caseload management.³⁶

The ABA’s practice standards likewise warn against high caseloads. For instance, the ABA Criminal Justice Standards state that “[n]either defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.”³⁷ In circumstances where acceptance of a case will prevent a lawyer from fulfilling his or her obligations to that client or another client, the ABA’s Criminal Justice Standards require the lawyer to refuse the case.³⁸ The ABA instructs courts “not [to] require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.”³⁹

Similarly, the ABA’s *Ten Principles of a Public Defense Delivery System*, states that workload standards “should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology. Jurisdiction-specific workload standards may be employed when developed appropriately, but national workload standards should never be exceeded.”⁴⁰

It is abundantly clear from caselaw and ethical rules, that if caseload standards require attorneys to take on excessive caseloads, those standards violate the Constitutional guarantee of effective representation of counsel and put attorneys at risk of violating their professional duties.

a. Current Standards

With respect to felony and misdemeanor cases, the current Washington Indigent Defense Standards permit attorneys to take on caseloads of up to 150 felony cases; 300 misdemeanor cases if the jurisdiction

³⁴ ABA, *Ten Principles of a Public Defense Delivery System*, Principle 3: Control of Workloads, n. 1 (Aug. 23, 2023).

³⁵ CrRLJ 3.1, CrRLJ 3.1, JuCR 9.2, and CCR 2.1 Stds, Standard 3.2.

³⁶ WSBA Standards for Indigent Defense Services, Standard 3.2.

³⁷ ABA, Criminal Justice Standard 5-5.3(a).

³⁸ ABA, Criminal Justice Standard 5-5.3(b).

³⁹ ABA, Criminal Justice Standard 5-5.3(b).

⁴⁰ ABA, *Ten Principles of a Public Defense Delivery System*, Principle 3: Control of Workloads (Aug. 23, 2023).

employs case weighting and, if not, 400 misdemeanor cases; and 250 juvenile court offender cases.⁴¹ At the time they were adopted, the Washington caseload standards constituted a watershed in public defense practice in Washington and helped move Washington to a more uniform defense practice across the state. However, it is now apparent these caseload standards are based on outdated, widely criticized standards, and do not account for the actual time necessary to provide Constitutionally adequate defense.

In 1984, the WSBA Board of Governors first adopted caseload standards very similar to the ones that are still in place today.⁴² These standards were primarily based on caseload guidelines recommended by a 1973 study published by the National Advisory Commission on Criminal Justice Standards and Goals (NAC)⁴³ and the 1984 Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts published by the National Legal Aid and Defender Association (NLADA).⁴⁴ The present standards for felony, misdemeanor, and juvenile caseloads are essentially unchanged from those adopted in 1984.

Although widely adopted by jurisdictions across the country, the 1973 NAC standards upon which Washington's standards are based have been criticized as unworkable and lacking evidence-based foundations almost since the day they were proposed.⁴⁵ As the authors of the 2023 National Public Defense Workload Study (NPDWS) note, a 1978 NLADA study of public defense systems in the United States stated of the NAC standards that "one is hard put to imagine carefully investigating every case, as is required by American Bar Association Standards Relating to the Defense Function, if the lawyers are handling 150 felony cases per year, or 400 misdemeanors per year."⁴⁶

Indeed, the most significant problem with the NAC—and by extension, Washington—standards is that they vastly underestimate the time necessary to provide Constitutionally adequate defense. Under Washington's current standards, even if an attorney were to devote forty hours every week of the year to case time with no holidays, no vacation time, and no sick leave, that attorney handling a full felony caseload of 150 cases would have just 13.9 hours to spend on each case—less than two working days. An

⁴¹ WSBA Standards of Indigent Defense Services, Standard 3.4; *see also* CrRLJ 3.1, CrRLJ 3.1, JuCR 9.2, CCR 2.1, Standard 3.s4.

⁴² *See* WSBA Board of Governors Sept. 11, 1984 Meeting Minutes, 10.

⁴³ The NAC caseload standards recommended that defense attorney caseloads not exceed 150 felonies, 400 misdemeanors, 200 juvenile court cases, 200 Mental Health Act cases, or 25 appeals per year. These standards were later incorporated into standards provided by other organizations such as NLADA and the ABA. *See* Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study Research Report*, 15-17 (Sept. 2023).

⁴⁴ *See* WSBA Board of Governors Sept. 11, 1984 Meeting Public Materials, pg. G-1; *see also* WSBA Board of Governors Jan. 12-13 1990 Meeting Public Materials, pgs. R-17 ("The caseload levels recommended here follow closely those caseload guidelines specified by two national studies, the National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, 1973, and the National Legal Aid and Defender Association Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts (1984).").

⁴⁵ Based on a review of the manner in which the NAC devised their recommendations, the NPDWS report concluded that "the empirical foundations of the NAC caseload standards are not compelling ones." *See* Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study Research Report*, 22 (Sept. 2023).

⁴⁶ *See* Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study Research Report*, 20 (Sept. 2023) (quoting Shelvin Singer, Beth Lynch, and Karen Smith, *Indigent Defense Systems Analysis (IDSA)*, National Legal Aid and Defender Association, 1978, p. 52).

attorney handling a full weighted caseload of 300 misdemeanors would have just seven hours to spend on each case, and only 5.2 hours for an unweighted caseload of 400 misdemeanors.

The current standards clearly do not reflect public defense realities. Few, if any, felony cases are capable of resolution in 13.9 hours. This distance between the current caseload standards and reality has only grown as the demands of public defense practice have significantly increased since the NAC and Washington standards were crafted. Criminal defense practice, especially for those who qualify for appointment of a public defender, has become more time consuming. Beyond connecting clients to social workers and public health workers, the complexity of forensic and digital discovery has altered the demands on public defenders’ time. The use of dash- and body-cam footage, cell tower data, cell phone data, advances in understandings of mental health and youth development all increase the amount of pretrial investigation required of today’s public defenders. As detailed above, such comprehensive investigation and evaluation of evidence is required of public defenders. The NAC standards on which Washington’s are based “reflect a criminal justice system that no longer exists and professional responsibilities that have since been greatly expanded.”⁴⁷ Under the current caseload standards, it is simply inconceivable that a public defense lawyer with a caseload at maximum capacity could provide the kind of defense contemplated by the Supreme Court in *Strickland v. Washington*.

b. 2023 National Public Defense Workload Study

With so many public defenders around the country facing unsustainable caseloads under NAC-based standards, a collaborative team from the RAND Corporation, the National Center for State Courts, the American Bar Association Standing Committee on Legal Aid and Indigent Defense, and Attorney Stephen F. Hanlon, undertook a thorough examination of public defense caseload standards. The goal of this study was to give public defense agencies realistic estimates of the time necessary to provide adequate representation to defendants in criminal proceedings and to give jurisdictions a tool to craft reasonable caseloads and estimate staffing needs. The results of this research, the National Public Defense Workload Study (NPDWS), were published on September 12, 2023.

To arrive at updated caseload standards, the NPDWS researchers analyzed seventeen prior state-level public defense workload studies from 2005 to 2022. The researchers also employed quantitative research techniques with a panel of thirty-three expert criminal defense attorneys to reach a consensus on the number of hours required to provide effective defense in several categories of cases. Participants in the expert panel reviewed the seventeen prior workload studies, the applicable professional and ethical standards, and other caseload research before arriving at their results.⁴⁸ The expert panel participants were instructed to estimate the average attorney time necessary to provide representation in eleven categories of cases, assuming access to support staff. The results of this research are reproduced in the table below:⁴⁹

Case Type	Case Type Description	NPDWS Average Case Time (in hours)	Average Case Time Under Current WA
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⁴⁷ *Id.*, at 32.

⁴⁸ *Id.*, at 69-71.

⁴⁹ *Id.*, at 59, 85.

			Standards (in hours)
Felony-High-Life Without Parole (LWOP)	Felonies with possible sentences of LWOP	286.0	13.9
Felony-High-Murder	Non-LWOP felonies involving the intentional killing of a person	248.0	
Felony-High-Sex	Non-LWOP felonies involving serious sex offenses	167.0	
Felony-High-Other	Non-LWOP felonies (including DUIs resulting in death) other than charges falling into the high felony categories for murder or serious sex offenses	99.0	
Felony-Mid	Felonies (including DUIs resulting in death) including serious property crimes, serious drug distribution crimes, and less serious violent crimes	57.0	
Felony-Low	Felonies (including DUIs resulting in death) including less serious property crimes, less serious drug felonies, and minor crimes of violence	35.0	
DUI-High	Repeat DUIs, serious DUIs, and DUIs causing nonfatal injuries (can be a felony or a misdemeanor)	33.0	N/A
DUI-Low	First or successive DUIs (typically misdemeanors)	19.0	N/A
Misdemeanor-High	Serious misdemeanors (other than DUIs) involving enhanceable misdemeanors (such as misdemeanors triggering repeat offender sentencing), sex misdemeanors, or violent misdemeanors	22.3	5.2
Misdemeanor-Low	Less serious misdemeanors (other than DUIs or those falling into the high misdemeanor category)	13.8	
Probation and Parole Violations	Probation or parole violations derived from either felony or misdemeanor offenses	13.5	N/A

Clearly, the estimates of the time necessary to adequately defend most case types are significantly higher than the current Washington standards. The NPDWS estimates more accurately reflect the time required to provide a Constitutionally acceptable level of representation for defendants in criminal case. In the February 2023 CPD survey of Washington public defense professionals, respondents were presented with the NPDWS caseload time estimates. Seventy-three percent of survey respondents agreed that the NPDWS caseload standards for felony-type cases better reflected the actual time necessary to meet their legal and ethical obligations to their clients, and sixty-nine percent agreed that the NPDWS standards for misdemeanor-type cases were a better reflection of actual case times.

Apart from more realistic estimates of case times, the NPDWS standards have other benefits. To begin with, the NPDWS standards are based on a defensible methodology. In addition, unlike the NAC-based caseload standards which simply categorized cases as either felonies or misdemeanors, the NPDWS standards categorize cases by severity with estimates of case times for each category. This more granular case breakdown better reflects the variability in time required for cases of differing complexity.

Given the improvement the NPDWS case time estimates provided over the current Washington standards, the study estimates were the primary basis for the CPD's proposed revisions to the current caseload standards.

c. Revised Standards

To convert the NPDWS estimated case times into useable caseload standards for Washington public defenders, the CPD first calculated the estimated annual case time available to public defense attorneys. Next the CPD mapped Washington criminal offense types onto the NPDWS case categorizations. Based on the hours required to handle each type of case, the CPD then calculated the relative weight of each case type and assigned "case credits" to the case types that corresponded to their weight. Lastly, using the calculated annual case time available to public defense attorneys, the CPD calculated the maximum number of case credits an attorney could be expected to handle per year.

i. Calculation of total annual case-related time

The first step to arrive at appropriate case weights was to calculate the number of hours per year that a typical public defense attorney has to devote to case time. For the sake of simplicity, the NPDWS report assumed 2,080 hours of casework-specific time for each attorney per year.⁵⁰ The report, however, explicitly states that this is not a realistic assumption of the number of case-time hours an attorney has each year.⁵¹ Public defense attorneys do not spend their entire working day on case time. The assumption of 2,080 hours of case-specific work time fails to include holidays, vacation time, sick leave, training time, and time spent on non-case work. Rather, the NPDWS report explains that devising caseload standards requires a "jurisdiction-dependent decision" as to the number of case-related hours available to public defense attorneys on an annual basis.⁵²

Consequently, the CPD does not recommend caseload standards based on the 2,080 case hours per year used in the NPDWS report, but rather undertook its own calculation of the case-related time available to Washington public defense attorneys. Based on information received from public defense offices around the state, the CPD estimated that the average public defense attorney would receive eleven holidays, twenty-two vacation days,⁵³ and twelve sick leave days⁵⁴ per year. In addition, Washington attorneys are required to complete fifteen hours of mandatory professional continuing legal education every year.⁵⁵ The CPD also assumed conservatively that attorneys would spend one hour per week on non-case specific work, such as meetings or administrative tasks. Given these estimations, the CPD calculated that public defense attorneys would spend 427 hours per year on non-case-related work. Subtracting this non-case time from the total 2,080 yearly work hours available to a full-time employee, the CPD calculated

⁵⁰ *Id.*, at 98-99.

⁵¹ *Id.*, at 33, n. 124 ("The 2,080 annual hours assumption is extremely conservative; it does not account for time not spent working during normal business hours (such as legal holidays, vacation time, sick leave, and other absences) or for work time spent on non-case related activities (such as travel time, training time, administrative time, and supervisory time). If such adjustments were made to the 2,080 hours assumption, additional public defense attorneys would be required in the examples shown here.")

⁵² *Id.*, at 33, 98-99.

⁵³ At an accrual rate of 14.67 hours per month.

⁵⁴ At an accrual rate of 8 hours per month.

⁵⁵ APR 11.

1,653 as the total number of case-related hours available to public defense attorneys each year. The CPD has rounded that number to 1,650 to simplify calculations based on this number.

1,650 case-related hours aligns with prior Washington standards and is in keeping, or more conservative, than standards employed in other states. The WSBA Standards for Indigent Defense Services have long been based on the assumption that public defense attorneys spend at most 1,650 hours per year on case time.⁵⁶ A recent study of Kansas public defenders' caseloads also estimates that non-supervisory public defenders in the state have approximately 1,480 hours per year to devote to case-related activities.⁵⁷ Massachusetts likewise caps billable hours for appointed counsel at 1,650 hours and generally prohibits attorneys from accepting new appointments in nonhomicide cases if they have already billed 1,350 hours that year.⁵⁸

ii. Applying NPDWS case categories to Washington law

Next, CPD largely adopted the case categories used in the NPDWS report, and categorized Washington criminal charges according to the modified case categories. Some case types identified by the NPDWS do not track seamlessly to Washington's criminal legal system. Therefore, to make the caseload standards usable for Washington practitioners, CPD mapped Washington offenses to the case types in the NPDWS. The CPD consulted with lawyers, public defense agency directors and administrators, and law professors from around the State to make recommendations about how to best correspond Washington-specific offenses to the NPDWS case type categories. In making categorization recommendations, the focus was on the amount of attorney hours required to defend certain types of cases.

In a few instances, the CPD chose to deviate from the NPDWS guidelines. First, CPD sought to simplify the standards by merging categories with similar time expectations. Specifically, CPD subsumed offenses that would be included in the NPDWS DUI-High and DUI-Low categories into the appropriate Felony-Mid, Felony-Low, or Misdemeanor-High cases according to the severity of the charge. Second, the CPD opted to not use the Probation Violation Case Type. In general, the NPDWS report overestimates the amount of time necessary to handle probation violation cases in Washington due to unique state and local circumstances that make our probation violation hearings different than other jurisdictions. This is in keeping with the NPDWS findings that there are significant differences across states in the procedures and complexity for representing clients in parole and probation violation cases.⁵⁹

The resulting recommendations about how to categorize many commonly charged Washington offenses are included in Appendix B of the revised Standards. Appendix B will allow attorneys to appropriately identify the type into which their cases fall and assign the appropriate credits to each case.

iii. Calculating relative case weights and case credits

⁵⁶ See WSBA Board of Governor Jan. 12-13 1990 Meeting Public Materials, Comment to Standard 3 of WSBA Standards of Indigent Defense Services, pg. R-17 ("An accepted national standard for attorneys is to work 1650 billable hours per year.")

⁵⁷ Kansas State Board of Indigents' Defense Services, *Kansas Public Defense Workloads Report, Part One: Criminal Defense in Crisis*, 30 (Dec. 2023).

⁵⁸ See Mass. Gen. Laws Ann. Ch. 211D, § 11(a).

⁵⁹ See Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study Research Report*, 84 (Sept. 2023).

Using the NPDWS estimates for the number of hours required to handle each of the types of cases, the CPD next calculated the relative weight of each case type and assigned “case credits” to the felony case types and misdemeanor case types that corresponded to their weight. Here, the least time-consuming felony and misdemeanor case types within the broader felony and misdemeanor categories were assigned one case credit each:

Case Type	NPDWS Average Case Time (in hours)	Case Credits
Felony-Low	35.0	1 felony case credit
Misdemeanor-Low	13.8	1 misdemeanor case credit

Using the NPDWS average case time for the baseline Felony-Low and Misdemeanor-Low case types, the more time-intensive case types were assigned more case credits within the felony and misdemeanor groupings. The number of credits for more complex cases was calculated relative to the Felony-Low and Misdemeanor-Low case types. For example:

$$286.0 \text{ (case Time for Felony-High-LWOP)} \div 35.0 \text{ (case time for Felony-Low)} = 8.17 \text{ felony credits}$$

Or

$$22.3 \text{ (case time for Misdemeanor-High)} \div 13.8 \text{ (case time for Misdemeanor-Low)} = 1.62 \text{ misdemeanor credits}$$

In other words, one Felony-High-LWOP case is equivalent in terms of time demands to 8.17 Felony-Low cases. Performing this calculation on all case types resulted in the following case credits, rounded to the nearest 0.5:

Case Type	NPDWS Average Case Time (in hours)	Case Credits
Felony-High-LWOP	286.0	8
Felony-High-Murder	248.0	7
Felony-High-Sex	167.0	5
Felony-High	99.0	3
Felony-Mid	57.0	1.5
Felony-Low	35.0	1
Misdemeanor-High	22.3	1.5
Misdemeanor-Low	13.8	1

Using this system, an attorney assigned to a new case would be awarded the number of credits assigned to that case type and could calculate when they had reached the maximum allowable annual case credits.

Lastly, using the calculated annual case time available to public defense attorneys, the CPD calculated the maximum number of case credits an attorney could be expected to handle per year. Again taking Felony-Low and Misdemeanor-Low cases as the baseline, the maximum number of case credits an

attorney can be expected to take on in one year was calculated by dividing the 1,650 annual case time hours calculated above by the average case time for Felony-Low and Misdemeanor-Low case:

$$1,650 \text{ available case time hours} \div 35.0 \text{ (case time for Felony-Low)} = 47.14 \text{ case credits}$$

$$1,650 \text{ available case time hours} \div 13.8 \text{ (case time for Misdemeanor-Low)} = 119.57 \text{ case credits}$$

Put differently, assuming an attorney has 1,650 hours available each year to devote to case work, the attorney has space to take on felony cases worth up to 47.14 case credits or misdemeanor cases worth up to 119.57 case credits. Based on these calculations, the CPD has recommended maximum caseloads of 47 felony case credits and 120 misdemeanor case credits per year.

iv. Implementation

While there is pressing need to implement these standards immediately, the CPD recognizes that the revisions to caseload standards will put additional demands on jurisdictions for funding and staffing. Therefore, the CPD has recommended a multi-year implementation to allow local jurisdictions time to plan for these additional costs and spread costs over multiple years. The proposed caseload revisions would first go into effect in July 2025, allowing jurisdictions approximately one year to seek any additional funding they may need and hire additional staff, if necessary. The revised caseload standards would then be phased in gradually over the course of the following three years. Beginning July 2025, attorney caseloads should not exceed 110 felony cases or 280 misdemeanor case credits. Beginning July 2026, caseloads should not exceed 90 felony case credits or 225 misdemeanor case credits, and beginning July 2027, the revised caseload standards would come into full effect, with caseloads of no more than 47 felony case credits or 120 misdemeanor case credits.⁶⁰ The CPD, Washington Defender Association, and Washington State Office of Public Defense will be publishing calculators to assist jurisdictions with determining their staffing needs based on the number of cases assigned in those jurisdictions.

VII. Future Work

a. Funding

CPD understands that adoption of the proposed revised standards, while a first step to alleviating some problems, will place additional pressures on an already stressed public defense system. Adequate funding is a longstanding problem for public defense in Washington. In acknowledgement of this, CPD is recommending phased implementation of the costliest revisions. CPD is well aware, however, that pulling Washington's public defense system out of crisis will require far more than the adoption of improved caseload standards and support staff requirements. Rather, truly addressing this crisis will require legislative action to increase state funding for public defense and policies that decrease the demand for public defense services. The CPD encourages the Courts and other public defense organizations to engage with legislators and local funders to increase funding of public defense services. Jurisdictions should also be encouraged to defray some of the costs by engaging in conversations around pre-charging diversion and other alternatives to traditional prosecution. For example, Seattle-based LEAD is a nationwide leader in providing social services to those interacting with law enforcement in a way that can avoid the cost of prosecution.

⁶⁰ WSBA Proposed Standards For Indigent Defense Services, Standard 3.O.

Nonetheless, public defense in Washington is in crisis now and steps towards resolving this crisis cannot wait. It is clear that updates to the WSBA and Court Standards, particularly with respect to caseload standards, are required by the U.S and Washington Constitutions and by public defenders' ethical duties to their clients. The recent changes in client needs, evidentiary demands, and the time required to represent defendants highlights just how out far current standards—both in Washington and across the nation—have deviated from the Constitutional standard of adequate defense. Moreover, public defense agencies are struggling to retain staff due to excessive caseloads and inadequate support. Leaving these problems unaddressed will only lead Washington's public defense system deeper into crisis and will likely result in greater costs to implement solutions in the future.⁶¹

The CPD's role in public defense and the WSBA and Court Standards for Indigent Defense are only one piece of a complex public defense delivery system. Fixing the entire public defense system may not be within the scope of the WSBA Board of Governors or Washington Supreme Court alone, but adopting more realistic, workable standards for Washington's public defenders is a concrete step the Board and Court can take to start addressing the problem. As Justice Richard Sanders stated in concurrence in *State v. A.N.J.*, 225 P.3d 956, 959 (Wash. 2010):

The judiciary should accept no shortcuts when it comes to discharging its constitutional obligation to appoint effective attorneys to represent indigent criminal defendants. If no such attorney is to be found because adequate funding is not available, then no attorney should be appointed and the case dismissed. It is not up to the judiciary to tax or appropriate funds; these are legislative decisions. However, it *is* up to the judiciary to facilitate a fair proceeding with effective appointed counsel if there is to be one.

Without significant changes in the way Washington funds public defense, the proposed revisions to the Standards will undoubtedly create hardship for public defense administrators, at least in the short term. It is the CPD's hope that these revisions provide a tool for administrators to advocate for additional funding. Regardless, the imperatives of the federal and state Constitutions require that Washington's public defense system recognize the realities of public defense. Adoption of the proposed revised standards is a crucial first step of many more steps that must come to ensure Washington has a well-functioning public defense system that better serves its clients and staff.

b. Caseload Standards for Additional Case Types

Several types of cases handled by appointed counsel in Washington were not covered by the NPDWS research. These include criminal appellate cases, Family Defense cases, and Involuntary Treatment Act cases. At present, revisions to the appellate caseload standards are under consideration by the Washington Appellate Project and OPD. Revisions to caseload standards for Family Defense cases and Involuntary Treatment Act cases requires additional data and research that was outside the scope of the current Standards revisions. CPD intends to examine standards for these types of cases in the coming year. For the sole purpose of providing guidance to practitioners in the meantime, the current caseload standards have been maintained until revised standards can be adopted.

⁶¹ For instance, because the national consensus on acceptable caseload standards has been shifting to significantly reduced caseloads, failing to adapt Washington's standards to the realities of current case demands runs the risk of creating additional litigation challenging the current standards. Already, Washington is facing a lawsuit by the Washington State Association of Counties challenging the lack of funding by the state for public defense.

c. Enforcement of the Standards

In the October 2023 request for caseload revisions, the Washington Supreme Court also asked the CPD to comment on an updated method to enforce the court rules and indigent defense standards. At present, the primary enforcement mechanism is the requirement that attorneys sign a certification that they are in compliance with the Supreme Court Standards for Indigent Defense.⁶²

A closer study of mechanisms to enforce the indigent defense standards is needed. However, such study is beyond the capacity of the CPD at the moment. It is possible that undertaking will require the involvement of stakeholders beyond those represented on the CPD, such as the Office of Public Defense, the Washington courts, and local and state legislators. The CPD plans to convene a workgroup to provide recommendations for proceeding with an evaluation of enforcement mechanisms.

VIII. Conclusion

CPD's revision of the WSBA Standards of Indigent Defense has been a vast undertaking. Changes in the demands of public defense cases in recent years have made clear that revisions to the WSBA Standards of Indigent Defense Services are necessary to stem the flood of defense attorneys leaving the profession and to ensure clients receive the excellent representation to which they are entitled. These changes cannot wait. In our adversary system of justice, well-functioning public defense services are essential to the health of the criminal adjudication system. The CPD encourages the WSBA Board of Governors to adopt the proposed revisions and for the Washington Supreme Court to consider adapting the Court Standards of Indigent Defense to reflect the changes to the WSBA Standards.

⁶² See Washington Supreme Court Standards for Indigent Defense, Certification of Compliance.

WSBA Standards for Indigent Defense Services

INTRODUCTION

The Washington State Bar Association (WSBA) Standards for Indigent Defense Services reflect 50 years of work by national and state experts, practicing attorneys and public defense administrators. They establish the standards necessary to ensure legal representation for clients represented by a public defense attorney meets constitutional, statutory, and ethical requirements.

The WSBA Standards detail the minimum requirements for attorneys representing individual clients and for state and local administrators who “manage and oversee”¹ public defense services. The Washington State legislature, in RCW 10.101.030, requires counties and cities to adopt standards for the delivery of public defense services, regardless of whether public defense services are provided by contract, assigned counsel, or a public defender agency or nonprofit office. In doing so, RCW 10.101.030 provides that the WSBA Standards should serve as guidelines to local legislative authorities in adopting their standards.²

Compliance with these WSBA Standards ensures the consistent delivery of effective representation of individuals who face the loss of liberty or other protected rights. Ineffective representation can result in a wrongful criminal conviction or juvenile court adjudication, inappropriate civil commitment, or unlawful termination of parental rights. Compliance with these WSBA Standards protects the public, victims, state and other jurisdictions, as well as public defense attorneys.

The WSBA Standards are consistent with, but more comprehensive³ than, the Washington Supreme Court’s Standards for Indigent Defense that are included in the Washington State Court Rules⁴ and referred, hereafter, as the Court Rule Standards. All public defense attorneys must certify every quarter that they comply with the Court Rule Standards.⁵ The WSBA Standards also include “additional Standards beyond

¹ See Washington State Court Rule GR 42: “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.”

² “Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards.” RCW 10.101.030.

³ See the list of topics addressed in the WSBA Standards compared to the list of subjects addressed in the Court Rule Standards in Appendix A.

⁴ Specifically, CrR 3.1, CrRLJ 3.1, JuCR 9.2, and CCR 2.1.

⁵ The Preamble to the Supreme Court’s Court Rule Standards states: “To the extent that certain Standards may refer to or be interpreted as referring to local governments, the Court recognizes the authority of its Rules is limited to attorneys and the courts. Local courts and clerks are encouraged to develop protocols for procedures for receiving

those required for certification as guidance for public defense attorneys in addressing issues identified in *State v. A.N.J.*, 168 Wn.2d 91 (2010), including the suitability of contracts that public defense attorneys may negotiate and sign.”⁶

In addition to compliance with both the *WSBA* and *Court Rule Standards*, public defense attorneys must comply with the Washington Rules of Professional Conduct (ethical requirements) and be familiar with and consider Performance Guidelines adopted by the WSBA and others for specific practice areas (adult criminal, juvenile court offender, family defense, civil commitment, and appeals).

DEFINITIONS

1. Assigned Counsel – Attorneys who provide public defense services in a local jurisdiction who are not employees of a Public Defense Agency, often without a formal contract; frequently referred to as panel or conflict attorneys.
2. Case – A “case” is a new court filing or action that names a person who is eligible for appointment of a public defense attorney; for example, an adult criminal charging instrument, a juvenile court offender or BECCA petition, a dependency or termination of parental rights petition, a civil commitment petition, or an appeal. For additional explanation in relation to caseload capacity, refer to Standards 3.H and 3.I.
3. Case Weighting/Credits – A case weighting system assigns higher and lower values or weighted case credits to assigned cases based on the amount of time that is typically required to provide effective representation.
4. Caseload – The number of cases assigned to a public defense attorney in a 12-month period.
5. Co-counsel – An additional public defense attorney assigned to a case with the originally assigned attorney (lead counsel).
6. Defense Investigator – A non-lawyer legal professional who guides and executes the defense investigation of a client's case. Defense Investigators perform substantive work that requires full knowledge of court proceedings, court rules, and Washington State law. A Defense Investigator's review of case evidence requires an understanding of government investigative procedures and regulations, a familiarity with forensic disciplines, the aptitude to stay current with advancements in technology, and an ability to ascertain factual discrepancies. They may interview witnesses identified by the police investigation, as well as identify, locate, and interview witnesses unknown to the State. Defense Investigators may gather evidence useful to the defense by recording witness statements, conducting field investigations, photographing the crime scene, gathering records, and taking screenshots of online materials. A Defense Investigator's preservation of evidence is critical to trial preparations, as they can testify to lay the foundation for that evidence, as well as explain case details and assist with impeachment of witnesses. The use of a Defense Investigator is not limited to criminal cases. Defense Investigators are also important professionals in Dependency proceedings, Sexual Offender Commitment petitions, and other proceedings that affect a client's liberty or other constitutionally protected interest.
7. Experts – Individual persons, firms, or businesses who provide a high level of knowledge or skill in a particular subject matter, such as DNA or crime scene analyses, and assist public defense attorneys in providing legal representation for their client.
8. Flat Fee Agreement – A contract or informal policy agreement where a private attorney or firm agrees to handle an unlimited number of cases for a single flat fee.

and retaining Certifications.”

⁶ Preamble to the Washington Supreme Court's *Standards for Indigent Defense*.

9. Fully Supported Defense Attorneys -Public defense attorneys who meet or exceed Standards Four, Five, Six, Seven, Nine, Ten, Thirteen and Fourteen of these *Standards*.
10. Jurisdictions – State, county and city entities that provide public defense services.
11. Legal Assistant - A non-lawyer legal professional who assists the attorney with administrative tasks. Legal Assistants often are responsible for filing pleadings generated by the lawyer or paralegal and ensuring the timely processing of mail and legal documents to meet court mandated deadlines. They may answer phones and assist with communications between the defense team, clients, defense experts, witnesses, and others. Some Legal Assistants are responsible for calendaring, opening and closing case files, updating case management systems, processing legal discovery (electronic or otherwise), and ensuring that critical information is accurately conveyed and recorded, if needed.
12. Lead Counsel – A lead counsel is the main lawyer in charge of a case. They are usually the most experienced and manage any other lawyers working on the case.
13. Mitigation Specialist - A mental health professional, a social worker, or social services provider, with specialized training or experience who gathers biographical, medical, and family history of the client to assist the lawyer, including preparing a document to inform the court and/or prosecutor or State of factors in the client’s life. Mitigation Specialists also help clients navigate social service support and prepare for assessments.
14. Open Caseload – The number of assigned cases a public defender has that are actively open. Open Caseload is a day-in-time snapshot of a public defender’s caseload; whereas, “Caseload” is the number of assigned cases in a year.
15. Paralegal – A non-lawyer legal professional, frequently a graduate of an ABA-approved Paralegal Studies program, who does substantive work that requires familiarity with court proceedings, court rules, and Washington State law. Paralegals are frequently responsible for performing complex legal research and drafting legal documents such as subpoenas, pleadings, and motions and creating discovery binders, preparing exhibits, coordinating witness schedules, and assisting with organization at counsel table. Paralegals may assist the attorney with client communication and act as a liaison with defense experts, prosecutors, bailiffs, and jail officials. They also may track upcoming court hearings, trial dates, and other critical timelines to help with attorney organization.
16. Per Case Agreement - A contract or informal policy agreement where a private attorney or firm agrees to handle cases on a flat, per case amount.
17. Private Attorneys – An attorney who works in private practice who provides public defense services whether by contract, subcontract, assignment, appointment, or other process.
18. Private Firm – For-profit law firm that provides public defense services, whether by contract, subcontract, assignment, appointment, or other process.
19. Public Defender – Any person working as or with a public defense attorney, firm, or public defense agency whether an attorney, social worker, office administrator, investigator, mitigation specialist, paralegal, legal assistant, human resources specialist, data analyst, etc.
20. Public Defense Administrator – Person, whether attorney or not, who is responsible overall for the administration, management and oversight of public defense.
21. Public Defense Agency - Government and nonprofit offices that only provide public defense representation.
22. Public Defense Attorney – A private attorney, attorney working in a private firm, and an attorney working in a public defense agency who is assigned to represent individuals who are indigent or indigent and able to contribute and have a statutory or constitutional right to court-assigned counsel.
23. Reasonable Compensation – Market rate for similar legal and expert services. Reasonable compensation includes more than attorney wages, salary, benefits, contract payments or hourly

rate payments. Reasonable Compensation includes the cost of office overhead (including administrative costs), support staff or services, training, supervision, and other services not separately funded.

24. Significant Portion of a Trial – Planning or participating in essential aspects of a trial which includes, but is not limited to, motions in *limine*, jury selection, opening statements, direct and cross examination, motions and objections, preparation of and advocacy for jury instructions, and closing arguments.
25. Social Worker - A public defense professional with a master’s degree in Social Work who provides professional services to assist the attorney and to help meet the basic and complex needs of the client. Often, this can involve enrolling in health care or other government support services.
26. Trial Academy - An organized trial training program of at least 20 hours of sessions that is presented by the Washington State Office of Public Defense, the Washington Defender Association, the Washington Association of Criminal Defense Attorneys, the National Association of Criminal Defense Lawyers, the National Institute for Trial Advocacy, the National Association for Public Defense, the Gault Center, the National Criminal Defense College, Gideon’s Promise, or any other organization approved for CLE training by the Washington State Bar Association. A trial academy must include defender skills training that may encompass motion practice, opening and closing statements, objections, preserving issues for appeal, direct and cross examination, race bias, client communication, theory of the case, jury selection, and other topics.
27. Workload – The amount of work a public defense attorney has, including direct client representation and work not directly attributable to the representation of a specific client, including, for example, administration, supervision, and professional development.

STANDARD ONE: Compensation

Standard:

1.A. Public Defense Agency Salaries and Benefits

Employees at public defense agencies shallPublic defense attorneys and staff should be compensated at a rate commensurate with their training and experience. Compensation and benefit levels shallTo attract and retain qualified personnel, compensation and benefit levels should be comparable to those of attorneys and staff in prosecution or other opposing party prosecutorial offices in the area. Compensation shall also include necessary administrative costs described in Standard Five, support services costs described in Standard Seven, and training and supervision costs described in Standards Nine and Ten.

1.B. Contract and Assigned Counsel Compensation

For assigned counsel, reasonable compensation should be provided. Compensation should reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the case. Assigned counsel should be compensated for out-of-pocket expenses.

Contracts should provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation, including, but not limited to, death penalty cases. Services which require extraordinary fees shall be defined in the contract.

Attorneys who have a conflict of interest shall not have to compensate the new, substituted attorney out of their own funds.

Compensation for public defense attorneys in contract and assigned counsel systems shall reflect the professional experience, time, and labor required for effective and quality representation. Compensation shall also be based on the comparable compensation and benefits associated with prosecution or other opposing party offices in the area. Compensation shall also include necessary administrative costs described in Standard Five, support services costs described in Standard Seven, and training and supervision costs described in Standards Nine and Ten.

Reasonable compensation shall be provided whether the work is for full-time or part-time public defense attorneys. Reasonable contract or assigned counsel compensation rates shall be set at least on a pro rata basis consistent with the attorney's percentage of a full caseload (see Standard 3). For example, if a jurisdiction allocates \$280,000 per year per full-time equivalent (FTE) prosecuting attorney for all costs associated with that FTE, including but not limited to combined salary, benefits, support staff, administrative, information technology, insurance, bar dues, training, and facilities expenses, then a contract for one-fourth of a full-time public defense caseload should be at least \$70,000.

Contracts and government budgets shall recognize the need to provide reasonable compensation for all public defense attorneys, including but not limited to, those attorneys who are "on call," staff court calendars, or staff specialty or therapeutic courts.

~~Flat fees, caps on compensation, and lump-sum contracts for trial attorneys are improper in death penalty cases. Private practice attorneys appointed in death penalty cases should be fully compensated for actual time and service performed at a reasonable hourly rate with no distinction between rates for services performed in court and out of court. Periodic billing and payment should be available. The hourly rate established for lead counsel in a particular case should be based on the circumstances of the case and the attorney being appointed, including the following factors: the anticipated time and labor required in the case, the complexity of the case, the skill and experience required to provide adequate legal representation, the attorney's overhead expenses, and the exclusion of other work by the attorney during the case. Under no circumstances should the hourly rate for lead counsel, whether private or public defender, appointed in a death penalty case be less than \$125 per hour (in 2006 dollars).~~

1.C. Flat Fee and Per Case Compensation Agreements

Attorneys shall not engage in flat fee or per case compensation contracts or agreements. These compensation structures create an actual conflict for the public defense attorney.⁷

Consistent with Washington Rules of Professional Conduct 1.8(m)(1)(ii), public defense attorneys shall not make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically

⁷ "Counsel should not be paid on a flat fee basis, as such payment structures reward counsel for doing as little work as possible." ABA Ten Principles of a Public Defense Delivery System, Principle 2: Funding, Structure, and Oversight, n. 6 (August 2023) (citing *Wilbur v. Mt. Vernon*, No. C11-1100RSL, U.S.D.C. D. Wash., at 15 (Dec. 4, 2013) (district court finding that a flat fee contract "left the defenders compensated at such a paltry level that even a brief meeting at the outset of the representation would likely make the venture unprofitable."))

designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel.

1.D. Additional Compensation

Consistent with RCW 10.101.060(1)(a)(iv), contracts and policies shall provide for additional compensation over and above the base contract amount(s) for cases that require an extraordinary amount of time and preparation.

Situations that require additional compensation include, but are not limited to:

- Days spent in trial, if no per diem is paid
- Testimonial motion hearings
- Interpreter cases
- Cases involving mental health competency and other issues (RCW 10.77)
- Cases with extensive discovery
- Cases that involve a significant number of counts, alleged victims or witnesses
- Cases requiring consultation with experts, including, for example, immigration legal analysis and advice or DNA testing and analysis.

Attorneys should have the opportunity to submit requests for additional compensation for extraordinary cases and the right to appeal an adverse decision to a judicial officer.

1.E. Substitute Attorney Costs

Consistent with Washington Rules of Professional Conduct 1.8(m)(1)(i), attorneys who have a conflict of interest shall not be required to bear the cost of the new, substituted attorney.

Related Standards:

~~American Bar Association, *Standards for Criminal Justice*, 5-2.4 and 5-3.1.~~

~~American Bar Association, *Guidelines for the Appointment and Performance in Death Penalty Cases*, 1988, Standard 10-1.~~

~~National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.7 and 13.11.~~

~~National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-4.~~

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard III-10 and III-11. 2~~

~~Seattle King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline No. 6.~~

STANDARD TWO: Duties and Responsibilities of Counsel

Standard:

~~The legal representation plan shall require that defense services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to promote and protect the interests of the client.~~

Jurisdictions that administer public defense services shall ensure that representation be provided in all situations in which the right to counsel attaches, including first appearances and bail decisions, as well as plea negotiations.

Representation shall be prompt and delivered in a professional, skilled manner consistent with minimum standards set forth by these *WSBA Standards*, the Washington Supreme Court's *Court Rule Standards* (CrR 3.1, CrRLJ 3.1, JuCR 9.2, and CCR 2.1), the American Bar Association, the Washington Rules of Professional Conduct, case law and relevant court rules and orders defining the duties of counsel. The applicable WSBA or ABA Performance Guidelines should serve as guidance for attorney performance. The most fundamental responsibility of jurisdictions and public defense attorneys is to promote and protect the stated interests of public defense clients.

Related Standards:

~~American Bar Association, *Standards for Criminal Justice*, 4-1.1, 5-5.1 and 5-1.1.~~

~~National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.1.~~

~~National Legal Aid and Defender Association, *Standards for Defender Services*, Standard II-2.~~

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-18.~~

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

STANDARD THREE: Caseload Limits and Types of Cases

Standard:

3.A1. 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 and types of cases in which each attorney shall be expected to ~~handle~~provide quality representation.

3.B2. **Quality Representation.** The maximum caseload or workload of public defense attorneys shall allow each ~~lawyer-attorney~~ to give each client the time and effort necessary to ensure effective representation. ~~Neither defender organizations, county offices, contract attorneys nor assigned counsel~~Public defense attorneys should not enter into contracts requiring caseloads or accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. If the attorney's caseload or workload prevents providing quality representation,⁸ public defense attorneys shall take steps to reduce their

⁸ The American Bar Association's Ethics Opinion 06-441 states in part:

If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments. Once the lawyer is representing a client, the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation.

Available at https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-ethics-opinion-06-441.pdf.

~~caseload, including but not limited to seeking co-counsel, reassignment of cases, or requesting a partial or complete stop to additional case assignments or requesting withdrawal from a case(s). If the attorney's workload is within the limits in this standard there is a presumption that they can provide 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.~~

~~If a public defense agency or nonprofit's workload exceeds the Director's capacity to provide counsel for newly assigned cases, the Director must notify courts and appointing authorities that the provider is unavailable to accept additional assignments and must decline to accept additional cases.⁹~~

~~**3.C. General Considerations: Open Caseload.** The determination of an attorney's ability to accept new case assignments must include an assessment of the impact of their open caseload on their ability to provide quality representation.~~

~~**3.D. Fully Supported, Full-Time Public Defense Attorneys.** Caseload limits reflect the maximum caseloads for The maximum caseloads or workloads for public defense attorneys assume an attorney's public defense work is: 1) full-time (exclusively public defense); 2) fully supported; 3) full-time defense attorneys for cases of average complexity and effort for in each case type specified; and 4) Caseload limits assume a reasonably evenly distributedion of cases throughout the year. "Fully supported, full-time defense attorneys" are attorneys who meet or exceed Standards Four, Five, Six, Seven, Nine, Ten, Thirteen and Fourteen of these Standards.~~

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

~~**3.E. Mix of Case Types and Private Practice.** If a public defense attorney accepts appointment to If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of casescase type, thise standards should be applied proportionately to determine a maximum full caseload.~~

~~Attorneys should not accept more public defense cases than the percentage of time their other work and commitments allow In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the The number of public defense cases or case creditscaseload should be based on the percentage of time the lawyer devotes toavailable for the attorney to represent public defense clients. Each individual or organization that contracts to perform public defense services for a county or city shall report to the county or city hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases.¹⁰~~

⁹ See, ABA Eight Guidelines of Public Defense Related to Excessive Workloads, Guidelines 1, 4, 5, 6, 7, 8 (August 2009).

¹⁰ RCW 10.101.050.

3.F. Attorney Experience. The experience of a particular attorney is a factor in the composition of cases types in the attorney's caseload, but it is not a factor in adjusting the applicable numerical caseload limits except as follows: attorneys with less than six months of full-time public defense experience as an attorney should not be assigned more than two-thirds of the applicable maximum numerical caseload limit.

3.G. Impact of Public Defense Time Other Than Case Appointments. Assessing an attorney's maximum caseload or workload limit must include accounting for work in addition to new cases assigned. Time spent on vacation, sick leave, holidays, training, supervision, administrative duties, and court improvement work groups must also be accounted for.

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 material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

3.H. Definition of case: A "case" is defined as the a new court filing or action that of a document with the court namesing a person who is eligible for appointment of a public defense attorney; for example, an adult criminal charging instrument, a juvenile court offender or BECCA petition, a dependency or termination of parental rights petition, a civil commitment petition, or an appeal 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.

3.I Adult Criminal and Juvenile Court Offender Trial Court Cases

1. Adult Criminal and Juvenile Court Offender Cases

a. An attorney appointed to an Adult Criminal or Juvenile Court Offender case receives the case weight/credit or hours credit toward the attorney's annual caseload that is listed in Standard 3.J. and in Appendix B. In multi-count cases, the charge with the highest case category dictates the case's credit or hourly value. If the highest charge is amended or otherwise changed to a charge that is more serious than originally charged, the attorney(s) shall receive the additional case credit value. In the event a charge is amended to a less serious charge, the attorney shall still be given caseload credit for the original, higher charge as of the time the attorney was appointed to the case.

b. A charging document filed against a client arising out of a single event or series of events and being prosecuted together is presumed to be one case. Determining whether a case number is one or multiple cases is determined by the supervisor or appointing agency after reviewing the charging information, amended charging documents, or an order to sever counts.

2. Reappointment. Reappointment of the previously appointed attorney to a case in which a bench warrant was issued does not count as a new case if the warrant was issued within the twelve months prior to the reappointment. New case credits can be awarded as approved by a supervisor or appointment authority on a case-by-case basis.

3. Partial Representation. The following must be taken into account when assessing an attorney's numerical caseload or when adjusting case credits assigned to attorney: partial case representations (cases in which an attorney withdraws or is substituted pursuant to CrR 3.1(e) and CrRLJ 3.1(e)), sentence or probation violations, cases in specialty or therapeutic courts, transfers, extraditions, representations of material witnesses, pretrial advice including "on-call" availability, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge. Time spent by attorneys representing multiple clients on first appearance, arraignment, or other calendaring hearings must be accounted for in reducing the number of maximum trial cases that can be assigned.

a. Transferred Case. When a public defense attorney's representation ends prior to the entry of a final order or judgment (for example, attorney withdrawal pursuant to CrR 3.1(e) or CrRLJ 3.1(e), the supervising attorney or appointing authority shall determine the case credit value to be awarded to each attorney based on the amount of time each attorney contributes.

b. Co-Chairs. When two or more lawyers are assigned as co-chairs, the supervising attorney or appointing authority shall determine the case credit value to be awarded to each attorney based on the amount of time each attorney contributes, including mentoring by the non-Supervisor Lead Counsel.

c. Transferred and Co-Chaired cases frequently take more time to complete than the average case. Additional credits may need to be applied. For the case category Felony High - Murder and Felony High – LWOP case types, there is a presumption that two or more lawyers will be assigned as co-chairs.

d. Court Calendar Positions.

i. Specialty or Therapeutic Courts: a criminal case resulting in admission to a Specialty or Therapeutic Court generally should not count as a case for the attorney covering the Specialty or Therapeutic Court. The case credit shall be applied exclusively to the originally assigned attorney(s) prior to the transfer into a Specialty or Therapeutic Court.

ii. Calendar Coverage: A criminal case appearing on a calendar where an attorney provides partial representation with no expectation of additional representation after the initial hearing shall not count as a case for the attorney covering the court calendar. This partial representation can include but is not limited to representing clients on: probable cause or first appearance calendars; arraignment calendars; failures to appear, warrant return, quash, and recommencement of proceedings calendars; preliminary appointments in cases in which no charges are filed; extradition calendars; and other matters or representations of clients that do not involve new criminal charges.

iii. Court Calendar Attorney Time: The workload of Specialty and Therapeutic Court attorneys and attorneys designated, appointed, or contracted to represent groups

of clients on a court docket, without an expectation of further or continuing representation, shall be assessed and subtracted from the annual, assumed 1,650 hours monitored by the supervising attorney or appointing authority to ensure the attorney does not work more than 1,650 hours in a 12-month period.

4. Probation Violation Cases. Appointment of a public defense attorney to represent a person on one or more original case numbers where a probation violation(s) or show cause order(s) has been filed is presumed to count as 1/3 credit of the Felony or Misdemeanor Case Credit. Additional case credits can be awarded as approved by a supervisor or appointing authority on a case-by-case basis.

3.J. Maximum Case Credit Limit for Adult Criminal and Juvenile Court Offender Cases Each Year.

This Section shall be implemented according to the schedule in Section 3.O.

The maximum number of case credits for a fully supported, full-time public defense attorney each calendar year is based on an assumed 1650-hour “case-related hours” available each year. This number represents the assumed time an attorney in Washington has available each year to devote to public defense clients’ representation. It excludes annual time for leave (for example, vacation, sick, PTO, FMLA) holidays, CLEs and training, supervision, and other time that is not “case-related”).¹¹

The maximum annual caseload case credits for each category of Adult Criminal and Juvenile Court Offender cases are based on the National Public Defense Workload Study (September 2023).¹²

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 numerical case weighting 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

¹¹ See National Public Defense Workload Study, p. 99 (2023). In addition, the Washington Defender Association Indigent Defense Standards (1989) states: “An accepted standard for attorneys is to work 1650 billable hours per year.” https://defensenet.org/wp-content/uploads/2017/12/Final-2007-WDA-Standards-with-Commentary_18.12.06.pdf. Similarly, a study for the Massachusetts Committee for Public Counsel Services determined that an appropriate number of hours to spend directly representing clients per year is 1,662 hours, after deducting holidays, vacation time, training, and non-case duties. Center for Court Innovation, *The Committee for Public Counsel Services Answering Gideon’s Call Project (2012-DB-BX-0010) Attorney Workload Assessment 12* (Oct. 2014), available at <https://www.publiccounsel.net/cfo/wp-content/uploads/sites/8/2014/12/Attorney-Workload-Assessment.pdf>.

¹² National Public Defense Workload Study, p. 85 (2023)

~~1 Active Death Penalty trial court case 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.~~

The maximum annual caseload for a full-time **felony** attorney is 47 case credits.

Case credits for each Felony case category appointment shall be as follows (see Appendix B for case types falling within each category):

Felony High-LWOP:¹³ 8

Felony High-Murder: 7

Felony High-Sex: 5

Felony High: 3

Felony Mid: 1.5

Felony Low: 1

The maximum annual caseload for a full-time **misdemeanor** attorney is 120 case credits.

Case credits for each Misdemeanor case category appointment shall be as follows:

Misdemeanor High: 1.5

Misdemeanor Low: 1

If a case resolves relatively quickly, before an attorney has done significant work on the matter, the attorney will be credited with a proportional, reduced amount of the credits initially assigned.

3.K. Other Case Types.¹⁴

¹³ Felony-High LWOP does not apply to Juvenile Court Offender cases.

¹⁴ The standards under this subsection are under review. To provide guidance in the interim, the prior standards are included only until revisions are approved.

Appeals. 36 a 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.)

Family Defense. 80 open dependency/termination of parental rights for parent and child(ren) representation per attorney per year.

Civil Commitment. 250 Civil Commitment cases per attorney per year.

~~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 a numerical case weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:~~

~~A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;~~

~~B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;~~

~~C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and~~

~~D. be periodically reviewed and updated to reflect current workloads; and~~

~~E. be filed with the State of Washington Office of Public Defense.~~

~~Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.~~

3.L. Additional Considerations.

1. Caseload limits require a reasonably even number of case appointments each month, based on the number of cases appointed in prior months.

1.2. Notwithstanding any case weighting system, rResolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

~~6. **Case Weighting:** The following are some examples of situations where case weighting might result in representations being weighted 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 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 might justify representations being weighted 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.~~

~~i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).~~

~~ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions, representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.~~

~~iii. 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 weight or more.~~

~~iv. 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). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.~~

~~v. 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 weighted as at least 1/3 of a case.~~

3.M. **Full-Time Rule 9 Interns.** Rule 9 interns who have not graduated from law school may not have caseloads or workloads that exceed twenty-five percent (25%) of the maximum limits established for full-time attorneys.

3.N. **Attorneys in Jurisdictions that Do Not Follow Case Credit System in Standard 3.J.** Attorneys in jurisdictions that do not use the case credit system in Standard 3.J shall be employed by, contract with, or be appointed by the local government entity responsible for those functions only if the jurisdiction has adopted and published a numerical caseload or workload maximum that is consistent with the caseload and workload limits set in Standard 3.J. Such a caseload or workload maximum must:

- a) Recognize the greater or lesser workload required for cases compared to an average based on a method that adequately assesses and documents the workload involved;
- b) Be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;
- c) Not institutionalize systems or practices that fail to allow adequate attorney time for competent and diligent representation;
- d) Be periodically reviewed and updated to reflect current workloads; and be filed with the State of Washington Office of Public Defense.

3.O. Implementation of Standards

Standard 3 shall be implemented in phases and shall go into effect on July 2, 2025. The 2024 revisions to these Indigent Defense Standards shall be implemented on the following schedule:

Until July 2, 2025, the caseload standards as adopted in pre-existing *WSBA Standards of Indigent Defense Services* and *Court Rule Standards of Indigent Defense* shall apply: The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following:

150 Felonies per attorney per year;

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

250 Juvenile Offender cases per attorney per year.

Phase 1:

Beginning July 2, 2025, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 110 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 280 misdemeanor case credits.

Phase 2:

Beginning July 2, 2026, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 90 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 225 misdemeanor case credits.

Phase 3:

Beginning July 2, 2027, and for any twelve-month period following, each full-time felony attorney shall be assigned cases constituting no more than 47 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 120 misdemeanor case credits.

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]~~

STANDARD FOUR: Responsibility for Expert Witnesses

Standard:

4.A. Expert Witnesses

~~Jurisdictions that administer public defense services shall provide r~~Reasonable compensation for expert witnesses necessary ~~for~~to preparation and presentation of the ~~defense case shall be provided~~. Expert witness ~~fees-costs~~ should be maintained and allocated from funds separate from those provided for ~~defender services~~attorney legal representation. ~~Requests for expert witness fees should be made through an ex parte motion. The defense should be free to retain the expert of its choosing and in no cases should be forced to select experts from a list pre-approved by either the court or the prosecution.~~

~~Jurisdictions shall adopt and publish procedures to confidentially receive, review and grant requests for expert witness services. In jurisdictions where attorneys are required to request approval for expert witnesses or other necessary services from the court, such motions shall be *ex parte* and include a motion to seal. The public defense attorney should be free to retain the expert of their choosing and shall not be required to select experts from a list pre-approved by either the jurisdiction, the court, or the prosecution.~~

4.B. Mitigation Specialists, Social Workers

~~Mitigation specialists and social workers shall be made readily available to public defense attorneys to provide support, such as release plans, treatment services, housing, health care, and to develop dispositional and sentencing alternatives.~~

~~In public defense agencies, by July 3, 2028, a minimum of one full-time mitigation specialist or social~~

worker shall be provided for every three full-time attorneys. Public defense agencies shall make meaningful progress towards this ratio prior to July 3, 2028.¹⁵ Attorneys representing clients in post-adjudication phases may require different resources. Public defense agencies that do not employ a sufficient number of mitigation specialists or social workers to meet this ratio shall enter into contracts with additional mitigation specialists or social workers to provide the same resource level.

Temporary reductions in agency staff because of illness, disability, or reasonable delay in filling vacancies do not constitute failure to comply with this standard. Attorneys representing clients in post-adjudication phases may require different resources.

Public defense attorneys under contract or in assigned counsel systems should have access to mitigation specialists and social workers, consistent with 4.A.

4.C. Mental Health Professionals for Evaluations

Each public defense agency or attorney shall have access to mental health professionals to perform mental health evaluations.

4.D. Interpreters and Translators

All individuals providing public defense services (attorneys, investigators, experts, support staff, etc.) shall have access to qualified interpreters to facilitate communication with Deaf and hearing-impaired individuals, and persons with limited English proficiency. Similarly, all public defense providers shall have access to translators to translate vital documents and resources from English to the client's primary language.¹⁶

4.E. Cost of Expert Services

Consistent with the Washington Rules of Professional Conduct (RPC) 1.8(m)(1)(ii), attorneys shall not be required to bear the costs of expert services.

Related Standards:

~~American Bar Association, Standards for Criminal Justice, 5-1.4.~~

~~National Legal Aid and Defender Association, Standards for Defender Services, Standard IV-2d, 3. National Legal Aid and Defender Association, Guidelines for Negotiating and Awarding Indigent Defense Contracts, 1983, Standard III-8d.~~

~~National Advisory Commission, Task Force on Courts, 1973, Standard 13.14.~~

STANDARD FIVE: Administrative Costs

Standard:

¹⁵ Support staff necessary for effective representation “includes one supervisor for every ten attorneys; one investigator for every three attorneys; one social service caseworker for every three attorneys; one paralegal for every four felony attorneys; and one secretary for every four felony attorneys.” Bureau of Justice Assistance, United States Department of Justice’s *Keeping Defender Workloads Manageable* (2001), p.10, found at: <https://www.ncjrs.gov/pdffiles1/bja/185632.pdf>. See also, National Association for Public Defense Policy Statement on Public Defense Staffing (May 2020), at <https://publicdefenders.us/resources/policy-statement-on-public-defense-staffing/>

¹⁶ See, RPC 1.4 “Communication.”

5.A Administrative Services Necessary for Law Offices

~~1. Contracts for public defense services~~Jurisdictions shall provide funding for ~~or include~~ administrative costs associated with ~~providing~~ legal representation. These costs ~~should~~ include, but are not limited to, travel, telephones, law library, including electronic legal research, electronic document filing, financial accounting, case management systems, legal system databases and programs, computers and software, equipment, office space and supplies, internet services, training, and other costs necessarily incurred for public defense representation and necessary to comply with the meeting the reporting requirements imposed by these standards, ~~and other costs necessarily incurred in the day to day management of the contract.~~

Providing for these costs is necessary for all public defense structures, including agency, contract, and assigned counsel systems.

Administrative costs for contract and assigned counsel services shall be included in compensation rates and agreements.

5.B. Law Offices Must Accommodate Confidential, Prompt and Consistent Client Communication

~~2. All P~~ublic defense attorneys shall have access to an office that accommodates confidential meetings with clients and receipt of mail, and adequate telephone and electronic services to ensure prompt response to client contact. Public defense attorneys and clients must have prompt and consistent access to interpreter services.

Related Standards:

~~American Bar Association, Standards for Criminal Justice, Providing Defense Services.~~

~~National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States, (1976), Guideline 3.4.~~

~~National Legal Aid and Defender Association, Standards for Defender Services, 1976 I-3, IV 2a-e, IV 5.~~

STANDARD SIX: Investigators

Standard:

~~1. Public defense attorneys shall use investigation services as appropriate.~~

~~2. Public defender offices, assigned counsel, and private law firms holding public defense contracts should employ investigators with investigation training and experience. A minimum of one investigator should be employed for every four attorneys.~~

6.A. Access to Investigation Services

Public defense representation must include access to investigation services. Public defense-led investigation is necessary for representing clients for purposes of verifying facts, identifying and questioning witnesses, and testing the evidence presented by the opposing party.

6.B. Investigation for Public Defense Agencies

In public defense agencies, by July 3, 2028, a minimum of one full-time investigator shall be employed for every three full-time trial court level (adult and/or juvenile) attorneys.¹⁷ Public defense agencies shall make meaningful progress towards this ratio prior to July 3, 2028. Public defense agencies that do not employ a sufficient number of investigators to meet this ratio shall enter into contracts with additional investigators to provide the stated resource level. Temporary reductions in agency staff because of illness, disability, or reasonable delay in filling vacancies do not constitute failure to comply with this standard. Attorneys representing clients in post-adjudication phases may require different investigation resources.

6.C. Investigation for Contract and Assigned Counsel

When public defense attorneys work under contracts or assigned counsel systems, jurisdictions must ensure that they have the same level of access to investigators as described in 6.B. Local jurisdictions shall adopt and publish confidential procedures to receive, review and grant requests for investigation services. In jurisdictions where attorneys are required to request court approval for investigative services, such motions shall be *ex parte*, consistent with the requirements of the Washington Rules of Professional Conduct 1.8(m)(1)(ii) and court rules.

6.D. Investigation for *Pro Se* Litigants

All jurisdictions should make conflict free investigation services available to indigent defendants or respondents who are representing themselves in all cases in which the court has approved waiver of their right to court-appointed counsel.

6.E. Cost of Investigation Services

Consistent with the Washington Rules of Professional Conduct 1.8(m)(1)(ii), attorneys shall not be required to bear the costs of investigation services.

Related Standards:

~~American Bar Association, *Standards for Criminal Justice*, 4-4.1 and 5-1.14.~~

~~National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.14.~~

~~National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-3.~~

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-9.~~

~~Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 8.~~

STANDARD SEVEN: Support Services

Standard:

7.A. Support Services Necessary for Legal Defense

¹⁷ National Association of Public Defense Policy Statement on Public Defense Staffing (May 2020): “Until empirical studies are further able to determine the number of staff necessary to support the lawyer, public defense systems, at a minimum, should provide, one investigator for every three lawyers, one mental health professional, often a social worker, for every three lawyers, and one supervisor for every 10 litigators. Additionally, there should be one paralegal and one administrative assistant for every 4 lawyers.”

In addition to the necessary resources described in Standards Four, Five, and Six, ~~public defense attorneys shall have adequate~~ legal and administrative support. ~~Legal and administrative support services include, but are not limited to, administrative assistants, legal assistants, numbers of investigators, secretaries, word processing staff, paralegals, human resources, finance, reception services, and IT and data management administrators. social work staff, mental health professionals and other support services, including computer system staff and network administrators.~~ These professionals are essential for effective legal defense and an operational law office. ~~to ensure the effective performance of defense counsel during trial preparation, in the preparation of dispositional plans, and at sentencing.~~ Jurisdictions shall ensure all public defense attorneys have access to needed support services as provided in this Standard and as required by the Washington Rules of Professional Conduct 1.4 to ensure attorney/client communication.

7.B. Providing for Support Services in Contract and Assigned Counsel Compensation

The support services described in 7.A are required for all public defense attorneys, regardless of their employment, contract or assigned counsel status. Contract and assigned counsel attorneys shall receive compensation at levels that ensure these non-attorney support services are provided.

7.C. Necessary Legal Assistants/Paralegals Ratio

In public defense agencies, by July 3, 2028, a minimum of ~~1. Legal Assistants—At least one full-time legal assistant or paralegal should~~ shall be employed for every four full-time attorneys. Public defense agencies shall make meaningful progress towards this ratio prior to July 3, 2028. Fewer legal assistants may be necessary, however, if the agency or attorney has access to word processing staff, or other additional staff performing clerical work. Defenders should have a combination of technology and personnel that will meet their needs.

~~2. Social Work Staff—Social work staff should be available to assist in developing release, treatment, and dispositional alternatives.~~

~~3. Mental Health Professionals—Each agency or attorney should have access to mental health professionals to perform mental health evaluations.~~

~~4. Investigation staff should be available as provided in Standard Six at a ratio of one investigator for every four attorneys.~~

~~5. Each agency or attorney providing public defense services should have access to adequate and competent interpreters to facilitate communication with non-English speaking and hearing-impaired clients for attorneys, investigators, social workers, and administrative staff.~~

Public defense agencies that do not employ a sufficient number of legal assistants or paralegals to meet this ratio should enter into contracts with qualified professionals to provide the same resource level or request authorization of such services *ex parte* or administratively.

Temporary reductions in agency staff because of illness, disability, or reasonable delay in filling vacancies do not constitute failure to comply with this standard. Attorneys representing clients in post-adjudication phases may require different resources.

Related Standards:

~~American Bar Association, *Standards for Criminal Justice*, 4-8.1 and 5-1.4.~~

~~National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Courts, Standard 13.14.~~

~~National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-3.9~~

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-8.~~

~~Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 7.~~

STANDARD EIGHT: Reports of Attorney Activity

Standard:

~~The legal representation plan Jurisdictions shall require that the all public defense attorneys or office maintain use a case-reporting and management information system which that includes the number and types of assigned cases, attorney hours and case dispositions. This information shall be provided regularly to the Contracting Authority and shall also be made available to the Office of the Administrator of the Courts. Any such system shall be maintained independently from client files so as to disclose no privileged information. Data from these systems should be routinely reported to public defense administrators in a manner in which confidential, secret and otherwise non-public information and secrets are not disclosed. Consistent with Standard Eleven, public defense administrators should review these reports on a regular basis to monitor compliance with these Standards.~~

~~A standardized voucher form shall be used by assigned counsel attorneys seeking payment upon completion of a case. For attorneys under contract, payment should be made monthly, or at times agreed to by the parties, without regard to the number of cases closed in the period.~~

Related Standards:

~~American Bar Association, *Standards for Criminal Justice*, 5-3.3 (b) xii, The Report to the Criminal Justice Section Council from the Criminal Justice Standards Committee, 1989.~~

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984 Standard III-22.~~

~~National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, *Guideline 3.4, 4.1, and 5.2.*~~

STANDARD NINE: Training

Standard:

9.A. Annual Training

~~The legal representation plan shall require that attorneys providing All public defense services attorneys shall participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice. Training should include relevant topics including training specific to certain case types as required in Standard Fourteen, the types of cases assigned (for example, criminal, dependency, appellate), racial and ethnic disparities, elimination of bias, mental illnesses, improved and effective communication with clients, forensic sciences,~~

and other topics that impact legal representation. Every public defense attorney should attend training that fosters trial or appellate advocacy skills and review professional publications and other media.

9.B. Onboarding and Training of New and Current Attorneys

Public defense agencies and contracted private law firms should develop their own practices and procedures to onboard and train new attorneys. Offices should develop written materials (e.g. manuals, checklists, hyperlinked resources) to inform new attorneys of local rules and procedures of the courts in their jurisdiction.

In offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held to inform them of office procedures and policies. All attorneys should be required to attend regular in-house training programs on developments in their legal representation areas. criminal law, criminal procedure and the forensic sciences.

~~Attorneys in civil commitment and dependency practices should attend training programs in these areas. Offices should also develop manuals to inform new attorneys of the rules and procedures of the courts within their jurisdiction.~~

~~Every attorney providing counsel to indigent accused should have the opportunity to attend courses that foster trial advocacy skills and to review professional publications and other media.~~

9.C Continuing Education for Public Defense Non-Attorneys

Funding for training for all public defense non-attorneys must be provided. A fully supported public defense attorney is one whose staff and expert service providers receive educational opportunities and up-to-date trainings to ensure they can meet their profession's best practices. This may include attendance at national conferences and regular access to online trainings, such as those offered by the Washington State Office of Public Defense, Washington Defender Association, the National Association for Public Defense, the National Legal Aid and Defender Association, the National Alliance of Sentencing Advocates and Mitigation Specialists, the National Defense Investigator Association, the National Federation of Paralegal Associations, and the National Association for Legal Support Professionals.

Related Standards:

~~American Bar Association, Standards for Criminal Justice, 5-1.4.~~

~~National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, 1973, Standard 13.16.~~

~~National Legal Aid and Defender Association, Standards for Defender Services, Standard V.~~

~~National Legal Aid and Defender Association, Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts, 1984, Standard III-17.~~

~~Seattle-King County Bar Association Indigent Defense Services Task Force, Guidelines for Accreditation of Defender Agencies, 1982, Guideline Number 3.~~

~~National Legal Aid and Defender Association, Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 1988, Standard 9.1.~~

STANDARD TEN: Supervision

Standard:

~~In public defense agencies and contracted private law firms, a minimum of one full-time supervisor should be employed. Each agency or firm providing public defense services should provide one full-time supervisor for every ten full-time public defense attorneys/staff lawyers or one half-time supervisor for every five lawyers/public defense attorneys. Supervisors should be chosen from among those lawyers in the office qualified under these guidelines to try Class A felonies. Supervisors should serve on a rotating basis, and except when supervising fewer than ten lawyers, should not carry caseloads. Full-time supervisors should not carry caseloads, but supervisors may act as co-counsel in a limited number of cases to provide mentoring and training experience for their supervisees. Part-time supervisors should limit their caseloads on a pro-rata basis. Supervisors should have training in personnel management and supervision. Supervisors should be qualified under Standard 14 for the practice area(s) they are supervising.~~

Related Standards:

~~National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.9.~~

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contract*, 1984, Standard III-16.~~

~~Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 4.~~

STANDARD ELEVEN: Monitoring and Evaluation of Attorneys

Standard:

~~All jurisdictions shall provide a mechanism for systematic monitoring of public defense attorneys and their caseloads and ensure timely review and evaluation of public defense services. Monitoring and evaluation The legal representation plan for provision of public defense services should establish a procedure for systematic monitoring and evaluation of attorney performance based upon publicized criteria. Supervision and evaluation efforts should include, but not be limited to, review of reports submitted per Standard Eight, review of time and caseload records/assignments, review and inspection of transcripts, in-court observations, and periodic conferences, verification of attorney compliance with Standard Nine training requirements, verification of compliance with Certifications of Compliance with the Supreme Court's *Court Rule Standards*, and management of client complaints, consistent with Standard Fifteen.~~

~~Performance evaluations made by a supervising attorney should be supplemented by comments from judges, prosecutors, other defense lawyers and clients. Attorneys should be evaluated on their skill and effectiveness as criminal lawyers or as dependency or civil commitment advocates, including their communication with clients.~~

Related Standards:

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-16.~~

~~National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United*~~

~~States, 1976, Recommendations 5.4 and 5.5.~~

~~National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, 1973, Standard 13.9.~~

STANDARD TWELVE: Substitution of Counsel

Standard:

12.A. Availability at No Cost to Attorney. Consistent with Standard 1.E., alternate or conflict public defense attorneys shall be available for substitution in conflict situations at no cost to the attorney declaring the conflict.

12.B. Subcontracting. Public defense contracts and assigned counsel policies should prohibit counsel from ~~The attorney engaged by local government to provide public defense services should not~~ subcontracting with another firm or attorney to provide representation ~~and should remain directly involved in the provision of representation, absent approval of the public defense administrator.~~

12.C. Attorney Names. In contract and assigned counsel systems, the public defense administrator should receive ~~if the contract is with a firm or office, the contracting authority should request~~ the names and experience levels of those attorneys who will ~~actually be~~ and actually are providing the ~~services~~legal representation, to ensure ~~they the attorneys~~ meet the minimum qualifications required by Standard 14.

12.D. Continuing Representation and Client Files. Public defense contracts and assigned counsel policies ~~The employment agreement~~ shall address the procedures for continuing representation of clients upon the conclusion of the ~~agreement~~contract or case assignment. ~~Alternate or conflict counsel should be available for substitution in conflict situations at no cost to the counsel declaring the conflict.~~ Public defense contracts and assigned counsel policies shall include which attorney or firm or public defense office is responsible for maintaining client files confidentially when a contract terminates or case assignment ends.¹⁸

Related Standards:

~~American Bar Association, Standards for Criminal Justice, Standard 5-5.2.~~

~~National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, 1973, Standard 13.1.~~

~~National Legal Aid and Defender Association, Guidelines for Negotiating and Awarding Indigent Defense Contracts, 1984, Guideline III-23.~~

STANDARD THIRTEEN: Limitations on Private Practice

Standard:

¹⁸ See, WSBA Guide to Best Practices for Client File Retention and Management at: [https://www.wsba.org/docs/default-source/resources-services/practice-management-\(lomap\)/guide-to-best-practices-for-client-file-retention-and-management.pdf?sfvrsn=306a3df1_10](https://www.wsba.org/docs/default-source/resources-services/practice-management-(lomap)/guide-to-best-practices-for-client-file-retention-and-management.pdf?sfvrsn=306a3df1_10).

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Related Standards:

~~American Bar Association, *Standards for Criminal Justice*, 4-1.2(d), 5-3.2.~~

~~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]~~

~~National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.7.~~

~~National Legal Aid and Defender Association, *Standards for Defender Services*, Standard III-3 and IV-1.~~

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Guideline III-6.~~

STANDARD FOURTEEN: Qualifications of Attorneys

Standard:

14.A. Minimum Qualifications for All Public Defense Attorneys

~~1. In order to~~**To ensure**~~that persons entitled to legal representation by public defense attorneys indigent accused receive the effective assistance of counsel, public defense attorneys to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:~~

~~1A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court~~Be admitted to practice law in Washington; ~~and~~

~~2B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area;~~ ~~and~~

~~3C. Be familiar with the Washington Rules of Professional Conduct;~~ ~~and~~

~~4D. Be familiar with the *Performance Guidelines for Criminal Defense Representation* approved by the Washington State Bar Association;~~ ~~and~~, when representing youth, be familiar with the *Performance Guidelines for Juvenile Defense Representation* approved by the Washington State Bar Association; ~~and~~ when representing respondents in civil commitment proceedings, be familiar with the *Performance Guidelines for Attorneys Representing Respondents in Civil Commitment Proceedings* approved by the Washington State Bar Association; when representing respondents in dependency proceedings, be familiar with Dependency (parent/child) performance guidelines referenced in 14.C.2, below; ~~and~~

~~5E. Be familiar with the processes to seek interlocutory relief;~~

~~6. Be familiar with the *Washington State Guidelines for Appointed Counsel in Indigent Appeals*;~~ ~~and~~,

~~7F. Attorneys representing adults in criminal cases or children and youth in Juvenile Court cases must be familiar with the consequences of a conviction or adjudication, including~~ but not limited to, the requirement to register as a sex offender, possible immigration consequences and the possibility of civil

commitment proceedings based on a criminal conviction and possible impacts in future criminal proceedings;~~and~~

~~8G.~~ Be familiar with the impact of systemic bias and racism and racial disproportionality in the legal system;

~~9.~~ Be familiar with mental health and substance use issues and be able to identify the need to obtain expert services related to the case and for the client;~~and~~

~~10.~~ Attorneys representing children and youth in Juvenile Court cases must have knowledge, training, experience, and the ability to communicate effectively with children and youth, and be familiar with the Juvenile Justice Act;

~~11.~~ Attorneys representing children and youth in dependency cases must have knowledge, training, experience and the ability to communicate effectively with children and youth; and

~~12H.~~ Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

14.B. Additional Information Regarding Qualifications Overall

1. An attorney previously qualified for a category of case under earlier versions of these WSB Standards, Court Rule Standards, or Washington Supreme Court Emergency Orders remains qualified.
2. Attorneys working toward qualification for a particular category of cases may associate as co-counsel with a lead counsel who is qualified under these standards for that category of case.¹⁹ Co-counseling is encouraged.
3. These qualifications standards require trial experience for most categories of cases – either as lead counsel, or co-counsel, and for handling a significant portion of a trial. A “significant portion of a trial” means planning or participating in essential aspects of a trial which includes, but is not limited to, motions *in limine*, jury selection, opening statements, direct and cross examination, motions and objections, preparation of and advocacy for jury instructions, and closing arguments.
4. Each attorney should be accompanied at their first trial by a supervisor or a more experienced attorney, if available. If a supervisor or more experienced attorney is not available to accompany the attorney at their first trial, the attorney, before their first trial, must consult about the case with a more experienced attorney in their office or an outside more experienced attorney such as Washington Defender Association resource attorneys.
5. Each attorney must have sufficient resources, including support staff and access to professional assistance, to ensure effective legal representation and regular availability to clients and others involved with the attorney’s public defense work.
6. These qualifications standards apply to the highest case category or charge at any time in the life of the case; for example, in criminal cases, any time from first appearance or arraignment through sentencing and post-trial motions.
7. Attorneys accepting appointment in the various categories of cases designated in Standard Three shall have the qualifications listed below, in addition to those in 14.A.1-14.A.12.
8. Experience as an Admissions and Practice Rule (APR) 6 or 9 legal intern cannot be used to meet the experience requirements for these qualifications.

¹⁹ Attorneys should keep records of cases in which the attorney served as co-counsel, trials and attendance at trial academies.

14.C. Attorneys' Qualifications by Category/Type of Case and Representation Type (Trial or Appellate)

1. Overview of Adult Criminal and Juvenile Court Cases - Trial Level

a. These qualifications are based on the following categories of cases:

- Misdemeanor – Low and Misdemeanor Probation Revocation Hearings
- Misdemeanor – High
- Felony – Mid and Low
- Felony Sex Cases
- Felony High - Other
- Felony High – Life Without Parole (LWOP) Sentence and Murder
- Felony Re-Sentencing, Probation Violation or Revocation, and Reference Hearings

b. To determine the qualifications standard that applies to a specific offense, the assigning authority should refer to Appendix B to these standards that maps the RCW statutes to the above categories.

i. If the legislature designates a felony offense as Class A that is, as of January 1, 2024, in a lower case category, the case category should be presumed to be a Felony – High Other until this standard in Appendix B lists it otherwise.

ii. If the legislature, after January 1, 2024, changes an offense from a misdemeanor or gross misdemeanor to a felony, that case category should be presumed to be a Felony – Mid and Low until this standard in Appendix B lists it otherwise.

iii. If the legislature, after January 1, 2024, creates a new misdemeanor or gross misdemeanor, that case should be presumed to be a Misdemeanor – High until this standard in Appendix B lists it otherwise.

c. Until such time as the above case categories are adopted as part of CrR 3.1, CrRLJ 3.1, and JuCr 9.1, the attorney qualifications set out below are largely comparable to case seriousness levels found in the Revised Code of Washington. Attorneys representing clients charged with Life Without Parole (LWOP) cases or in murder or manslaughter cases shall meet the qualifications listed below in Standard 14.C.2. Similarly, Felony – High categories apply to attorneys representing clients in Class A Adult Felony Cases and Adult Sex Offense Cases. The qualifications set out below for the Felony - Mid category apply to attorneys representing clients in Class B Adult Felony Cases and Class B Adult Violent Cases and the qualifications set out below for the Felony - Low category apply to attorneys representing clients in Adult Felony Class C Cases. The qualifications listed below for Felony Re-Sentencing and Revocation and Reference Hearings apply to attorneys representing clients in Felony Probation Revocation cases. The qualifications listed below for DUI - Low category apply to attorneys representing clients in misdemeanor DUI cases. The qualifications listed below for Adult Misdemeanor - Low cases apply to attorneys representing clients in all other adult misdemeanor cases.

2. Trial attorneys' qualifications according to severity or type of case:²⁰

~~Death Penalty Representation. Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and in which the decision to seek the death penalty has not yet been made shall meet the following requirements:~~

~~i. The minimum requirements set forth in Section 1; and ii. At least five years criminal trial experience; and~~

²⁰ ~~Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.~~

- iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
- iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
- v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
- vi. Have completed at least one death penalty defense seminar within the previous two years; and
- vii. Meet the requirements of SPRC 2.²⁴

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

A. Adult Felony Cases—Class A. Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. Minimum requirements set forth in Section 1; and ii. Either:
 - a. has served two years as a prosecutor; or
 - b. has served two years as a public defender; or two years in a private criminal practice, and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

B. Adult Felony Cases—Class B Violent Offense. Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements:

²⁴ SPRC 2 APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel. [Link]

i. The minimum requirements set forth in Section 1; and

ii. Either:

a. has served one year as prosecutor; or

b. has served one year as public defender; or one year in a private criminal practice; and

iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

C. Adult Sex Offense Cases. Each attorney representing a client in an adult sex offense case shall meet the following requirements:

i. The minimum requirements set forth in Section 1 and Section 2(C);

and

ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

D. Adult Felony Cases—All other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

i. The minimum requirements set forth in Section 1, and ii. Either:

a. has served one year as a prosecutor; or

b. has served one year as a public defender; or one year in a private criminal practice; and

iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and

iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

E. Persistent Offender (Life Without Possibility of Release) Representation.

Each attorney acting as lead counsel in a “two strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

i. The minimum requirements set forth in Section 1²²; and ii. Have at least:

a. four years criminal trial experience; and

b. one year experience as a felony defense attorney; and

²² RCW 10.101.060 (1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

~~e. experience as lead counsel in at least one Class A felony trial; and~~

~~d. experience as counsel in cases involving each of the following:~~

~~(1) Mental health issues; and~~

~~(2) Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and~~

~~(3) Expert witnesses; and~~

~~(4) One year of appellate experience or demonstrated legal writing ability.~~

~~F. Juvenile Cases – Class A. Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:~~

~~i. The minimum requirements set forth in Section 1, and ii. Either:~~

~~a. has served one year as a prosecutor; or~~

~~b. has served one year as a public defender; one year in a private criminal practice; and~~

~~iii. Has been trial counsel alone of record in five Class B and C felony trials; and~~

~~iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.~~

~~G. Juvenile Cases – Classes B and C. Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:~~

~~i. Minimum requirements set forth in Section 1; and ii. Either:~~

~~a. has served one year as a prosecutor; or~~

~~b. has served one year as a public defender; or one year in a private criminal practice, and~~

~~iii. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and~~

~~iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.~~

~~H. Juvenile Sex Offense cases. Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:~~

~~i. The minimum requirements set forth in Section 1 and Section 2(H);~~

~~and~~

~~ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.~~

~~I. Juvenile Status Offenses Cases. Each attorney representing a client in a~~

~~“Becca” matter shall meet the following requirements:~~

~~i. The minimum requirements as outlined in Section 1; and ii. Either:~~

~~a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or~~

~~b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.~~

~~J. Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.~~

~~K. Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:~~

~~i. The minimum requirements as outlined in Section 1; and~~

~~ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.~~

~~iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.~~

~~iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.~~

~~L. Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements:~~

~~i. Minimum requirements set forth in Section 1; and~~

~~ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and~~

~~iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:~~

~~a. served one year as a prosecutor, or~~

~~b. served one year as a public defender, or one year in a private civil commitment practice, and~~

~~c. been trial counsel in five civil commitment initial hearings; and~~

~~iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.~~

~~M. Sex Offender “Predator” Commitment Cases. Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:~~

~~i. The minimum requirements set forth in Section 1; and ii. Have at least:~~

~~a. Three years criminal trial experience; and~~

~~b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and~~

~~c. Experience as lead counsel in at least one felony trial; and~~

~~d. Experience as counsel in cases involving each of the following:~~

~~(1) Mental health issues; and~~

~~(2) Sexual offenses; and~~

~~(3) Expert witnesses; and~~

~~e. Familiarity with the Civil Rules; and~~

~~f. One year of appellate experience or demonstrated legal writing ability.~~

~~Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.~~

~~N. Contempt of Court Cases. Each attorney representing a respondent shall meet the following requirements:~~

~~i. Minimum requirements set forth in Section 1; and~~

~~ii. Each staff attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.~~

~~O. Specialty Courts. Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:~~

~~i. The minimum requirements set forth in Section 1; and~~

~~ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and~~

~~iii. Be familiar with mental health and substance abuse issues and treatment alternatives.~~

~~**3. Appellate Representation.**~~

~~Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:~~

~~A. The minimum requirements as outlined in Section 1; and~~

~~B. Either:~~

~~i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or~~

~~ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.~~

~~C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.~~

~~**RALJ Misdemeanor Appeals to Superior Court:** Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.~~

~~4. Legal Interns.~~

~~A. Legal interns must meet the requirements set out in APR 9.~~

~~B. Legal interns shall receive training pursuant to APR 9 to inform them of office procedure and policy Standard Nine, Training.~~

2. Adult Criminal Trial Court Cases

a. Misdemeanor Low and Misdemeanor Probation Hearings – Each attorney representing a person accused of Misdemeanor Low cases or Misdemeanor Probation Hearings shall meet the requirements as outlined in Section 14.A.

b. Misdemeanor High Cases – Each lead counsel representing a person accused of:

i. A misdemeanor **domestic violence**²³ offense shall meet the requirements in Section 14.A and have attended a defense training or CLE on domestic violence representation.

ii. A gross misdemeanor **drug offense** shall meet the requirements in Section 14.A and have attended a defense training or CLE on drug offenses.

iii. A misdemeanor **sex offense**²⁴ shall meet the requirements in Section 14.A; and

1. Has served one year as a criminal defense attorney or prosecutor;

2. Has been trial counsel alone or with other trial counsel and conducted a significant portion of either:

a. Two criminal cases in which the prosecution has rested, at least one of which was presented to a jury, or

b. One criminal trial in which the prosecution has rested and has completed a trial training academy;

3. Has attended a CLE on sex offenses including training about collateral consequences of sex offense convictions and child hearsay.

iv. Each lead counsel representing a person accused of a **misdemeanor DUI** offense shall meet the requirements in Section 14.A and has completed a CLE within the past two years on the topic of DUI defense representation.

²³ Listed in RCW 9A.04.020(2)(a)(i)(B-D) or RCW 10.99.020(4).

²⁴ Includes a violation of RCW 9A.68A.090 (Communicating with a Child for Immoral Purposes), 9A.44.063 (Sexual Misconduct with a Minor in the Second Degree), or an attempt, solicitation, or conspiracy to commit a Class C felony that requires sex offender registration upon conviction pursuant to RCW 9A.44.140.

- c. **Felony Mid and Felony Low Cases** – Each lead counsel shall meet the following requirements:
- i. The minimum requirements set forth in Section 14.A;
 - ii. Has served one year as a criminal defense attorney or one year as a prosecutor;
and
 - iii. Has been trial counsel alone or with other trial counsel and conducted a significant portion of either:
 - 1. Two criminal trials in which the prosecution rested, or
 - 2. One criminal trial in which the prosecution has rested and has completed a trial training academy.
 - iv. Each attorney shall be accompanied at their first felony trial by an attorney who is qualified for this or higher case categories.
- d. **Felony Sex Cases** – Each lead counsel shall meet the following requirements:
- i. The minimum requirements set forth in Section 14.A;
 - ii. Has served two years as either a criminal defense attorney or prosecutor;
 - iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases in which the state has rested, at least one of which was submitted to a jury; and
 - iv. Has attended a CLE on sex offenses, including training about collateral consequences of sex offense convictions and child hearsay.
- Failure to Register as a Sex Offender cases are in the Felony Mid and Low Category.
- e. **Felony High – Other Cases** – Each lead counsel shall meet the following requirements:
- i. The minimum requirements set forth in Section 14.A;
 - ii. Has served two years as either a criminal defense attorney or prosecutor; and
 - iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases in which the state has rested, at least one of which was submitted to a jury.
- f. **Felony High – Life Without Parole and Murder Cases** – Each lead counsel shall meet the following requirements:
- i. The minimum requirements set forth in Section 14.A;
 - ii. At least three years’ experience in adult felony cases, including at least two years as a defense attorney representing people in adult felony cases;
 - iii. Has been lead counsel or co-counsel in four adult felony trials in which the state has rested, at least one of which was submitted to a jury and at least one of which was a Felony High case; and
 - iv. Has completed a defense training or CLE on mitigation and challenging prior convictions.
- g. **Felony Resentencing, Revocation, or Reference Hearing** – Each lead counsel shall meet the following requirements:
- i. The minimum requirements set forth in Section 14.A; and
 - ii. Be qualified to represent the client in a Felony Mid and Low case.
- h. **Felony Material Witness Representation** – Each attorney representing a material witness shall be qualified to represent a client in Felony Mid and Felony Low cases, unless there is reason to believe the witness has legal exposure for a more serious felony offense to be

charged, in which case lead counsel shall be qualified to represent a person accused of that more serious offense.

i. **Specialty Courts** – Each attorney representing a client in a specialty court (e.g., mental health court, drug court, veterans court, homelessness court, juvenile therapeutic court, community court, and family therapeutic court) shall meet the following requirements:

i. The minimum requirements set forth in Section 14.A;

ii. Be familiar with mental health and substance use issues, housing, treatment alternatives, and when representing veterans, resources available for veterans.

3. **Juvenile Trial Court Cases** –The qualification requirements below apply to representation of respondents in Juvenile Court.

a. **Misdemeanor Low and Misdemeanor Probation Hearings** – Each attorney representing the accused in Misdemeanor Low case or Misdemeanor Probation Hearings shall meet the requirements as outlined in Section 14.A.

b. **Misdemeanor High Cases** – Each lead counsel representing a person accused of:

i. A misdemeanor **domestic violence**²⁵ offense shall meet the requirements in Section 14.A and have attended a defense training or CLE on domestic violence representation.

ii. A gross misdemeanor **drug offense** shall meet the requirements in Section 14.A and have attended a defense training or CLE on drug offenses.

iii. A misdemeanor **sex offense**²⁶ shall meet the requirements in Section 14.A; and

1. Has served one year as a criminal defense attorney or prosecutor;

2. Has been trial counsel alone or with other trial counsel and conducted a significant portion of either:

a. Two criminal cases in which the prosecution has rested, at least one of which was presented to a judge for verdict, or

b. The significant portion of one criminal trial in which the prosecution has rested and has completed a trial training academy;

3. Has attended a CLE on sex offenses including training about collateral consequences of sex offense adjudications and child hearsay.

c. **Felony Mid and Felony Low Cases** – Each lead counsel shall meet the following requirements:

i. Meet the requirements set forth in Section 14.A;

ii. Has served one year as a criminal defense attorney or one year as a prosecutor; and

iii. Has been trial counsel alone or with other trial counsel and conducted a significant portion of either:

1. Two criminal trials in which the prosecution rested; or

²⁵ Listed in RCW 9.41.040(2)(a)(i)(B-D) or RCW 10.99.020(4)

²⁶ Includes a violation of RCW 9.68A.090 (Communicating with a Child for Immoral Purposes), 9A.44.063 (Sexual Misconduct with a Minor in the Second Degree), or an attempt, solicitation, or conspiracy to commit a Class C felony that requires sex offender registration upon conviction pursuant to RCW 9A.44.140.

2. Completed at least three hours of CLE training specific to Juvenile Status Offense Cases.

4. Civil Cases – Trial Court Cases

- a. **Representing Children and Youth in Dependency Cases** – Attorneys representing children and youth in dependency matters should be familiar with expert services and treatment resources available in dependency cases. Each lead counsel representing children and youth in a dependency matter shall meet the following requirements:
 - i. Meet the minimum requirements set forth in Section 14.A and the requirements for training and experience in the *Representation of Children and Youth in Dependency Cases Practice, Caseload and Training Standards*, Washington Supreme Court Commission on Children in Foster Care, at the Request of the Legislature (Rev. Sept. 2022)²⁷;
 - ii. Have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Civil Legal Aid resource attorney or other attorney qualified under this section; and
 - iii. Attorneys representing children and youth in termination of parental rights cases shall have six months’ dependency experience or have significant experience in conducting complex litigation.
- b. **Representing Parents in Dependency Cases** – Attorneys representing parents in dependency matters should be familiar with expert services and treatment resources available in dependency cases. Each lead counsel representing children and youth in a dependency matter shall meet the following requirements:
 - i. Meet the minimum requirements as outlined in Section 14.A;
 - ii. Be familiar with the *American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases and the Family Justice Initiative Attributes*; and
 - iii. Attorneys representing parents in termination of parental rights cases shall have either six months’ dependency experience or significant experience in handling complex litigation.
- c. **Civil Commitment Cases (RCW 71.05)** – Each lead counsel representing a respondent shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Each lead counsel in a 90- or 180-day commitment hearing shall have prepared and conducted at least five 14-day hearings;
 - iii. Each lead counsel shall be accompanied at counsel’s first 90- or 180-day commitment hearing by a supervisor or consult with a qualified attorney before the hearing;
 - iv. Each lead counsel in a civil commitment trial shall have conducted at least two contested 14-day hearings as lead counsel or been co-counsel with a more experienced attorney in two 90- or 180-day contested commitment hearings.

²⁷ Available at:

<https://www.courts.wa.gov/subsite/CommFC/docs/revised%20practice%20standards%20for%20representation%20of%20children%20and%20youth%20in%20dependency%20cases.pdf>.

- v. Have a basic knowledge of the classification of mental disorders, as described in the most recent Diagnostic and Statistical Manual of Mental Disorders (“DSM”)²⁸ and other resources, and the ability to read and understand medical terminology related to mental disorders and treatment of persons with a mental illness, substance use disorder, co-occurring disorders, and chemical dependency. Counsel shall have ready access to the most recent DSM, as well as research resources for related medical conditions. Counsel should also have basic knowledge and understanding of common personality disorders and medical conditions that may produce similar symptoms. Counsel shall be familiar with the classes of medication prescribed to treat mental disorders and chemical dependency and the possible effect of those medications on the client’s ability to interact with counsel and to participate in court proceedings. Counsel should be familiar with treatment facilities, both in-patient and out-patient, that provide services to persons with mental illness, including the scope of those services. Counsel should be familiar with local facilities and state hospitals that may be remote from where the client lives. Counsel should be familiar with the limitations on available treatment and transportation obstacles associated with such facilities.
- d. **Representing Clients Acquitted by Reason of Insanity (RCW 10.77)** – Each attorney representing persons who are acquitted by reason of insanity in post-commitment proceedings shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. Have at least three years’ experience of either criminal trial experience, dependency experience, or civil commitment proceedings under RCW 71.05; and
 - iii. Has a basic knowledge of the classification of mental disorders, as described in the most recent Diagnostic and Statistical Manual of Mental Disorders (“DSM”) and other resources, related to the treatment of persons with a mental illness and substance use;²⁹ and
 - iv. Each counsel representing persons in this category shall meet qualification requirements established by the Washington State Office of Public Defense for this type of representation.
- e. **Sex Offender Commitment Cases (RCW 71.09)** – There should be two attorneys on each sex offender commitment case. The lead counsel shall meet the following requirements:
 - i. The minimum requirements set forth in Section 14.A;
 - ii. At least three years’ criminal trial experience;
 - iii. One year experience as a felony trial defense or criminal appeals attorney;
 - iv. One year of appellate experience or demonstrated legal writing ability;
 - v. Has been lead defense counsel in at least one felony trial; and
 - vi. Has experience as defense counsel in cases involving each of the following:
 - 1. Mental health issues;
 - 2. Sexual offenses;
 - 3. Expert witnesses; and
 - 4. Familiarity with the Civil Rules.

²⁸ Counsel shall be familiar with the diagnostic manual in use by mental health professionals at the time of sentencing and the time of any hearing.

²⁹ Counsel shall be familiar with the diagnostic manual in use by mental health professionals.

vii. Other counsel working on a sex offender commitment case should meet the minimum requirements in Section 14.A and have either one year's experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

f. Contempt of Court Cases (Child Support Enforcement) – Each lead counsel representing a respondent in a contempt of court case shall meet the following requirements:

i. The minimum requirements set forth in Section 14.A;

ii. Each lead counsel shall be accompanied by a supervisor or more experienced attorney at his or her first contempt of court hearing and at his or her first two contested contempt of court hearings and participate in at least one consultation per case for their first five non-contested hearings with a WDA resource attorney or another attorney qualified in this area of practice; and

iii. Be familiar with the Rules of Civil Procedure.

5. Appellate Cases

a. Adult Criminal and Juvenile Court Representation in Appellate Courts Other Than Superior Court RALJ Appeals – Each lead counsel in an appellate matter before the Court of Appeals or Supreme Court shall meet the following requirements:

i. The minimum requirements set forth in Section 14.A;

ii. Has filed six appellate briefs as counsel for a party in the Washington Supreme Court or Court of Appeals, or appellate courts of other jurisdictions, including at least five criminal, dependency (RCW 13.34), civil commitment (RCW 71.05) or sex offender commitment (RCW 71.09) cases; or participated in consultation with a qualified attorney in each case until this requirement is satisfied; and

iii. Each lead counsel representing a client on appeal in a Felony High Murder, Felony High LWOP, Felony High, or Sex Offender Commitment case shall:

1. Meet the requirements of Standard 14.C.5.a.ii; and

2. Has filed 15 appellate briefs in criminal cases as counsel for a party in the Washington Supreme Court or Court of Appeals, or appellate courts of other jurisdictions, or shall participate in consultation with a qualified attorney in each case until this requirement is satisfied.

b. Dependency Representation in Appellate Courts - Each lead counsel shall meet the following requirements:

i. The minimum requirements set forth in Section 14.A;

ii. The requirements in Standard 14.C.5.a.ii; and

iii. Be familiar with the *American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases and the Family Justice Initiative Attributes.*

c. RALJ Misdemeanor Appeals and Writs to Superior Court - Each lead counsel representing a client in an appellate matter to Superior Court from a court of limited jurisdiction shall meet the following requirements:

i. The minimum requirements set forth in Section 14.A; and

ii. Either:

1. Has clerked for an appellate court judge; or

2. Has represented clients in at least three substantive testimonial motion hearings or trials; or

3. Has the assistance of a more experienced attorney in preparing and arguing the RALJ appeal.

6. Legal Interns - Legal interns who appear in court shall:

- a. Meet the requirements set out in Section 14.A;
- b. Meet the requirements set out in APR 9;
- c. Receive training and supervision pursuant to APR 9; and
- d. Complete an orientation and training program for legal interns.

Related Standards:

~~National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.15.~~

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Public Defense Contracts*, 1984, Standard III-7.~~

~~National Legal Aid and Defender Association, *Standards for the Appointment and Performance of Counsel in Death Penalty Cases*, 1987, Standard 5.1.~~

STANDARD FIFTEEN: Disposition of Client Complaints

Standard:

~~15.A. Jurisdictions that administer public defense services shall provide a process for receiving, investigating, and promptly responding. Each agency or firm or individual contract attorney providing public defense services shall have a method to respond promptly to client complaints. Complaints should first be directed to the assigned attorney, firm, or agency which that is providing or provided representation. If the client feels that he or she has not received an adequate response, the contracting authority or public defense administrator should designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones.~~

~~15.B. Public defense agencies and contractors with multi-attorney private firms shall include investigation and disposition of client complaints in their supervisory services.~~

~~15.C. The complaining client should be informed as to the disposition of his or her their complaint within one week in a timely manner.~~

Related Standards:

~~American Bar Association, *Standards for Criminal Justice*, 4-5.1 and 4-5.2.~~

STANDARD SIXTEEN:

Cause for Termination of Defender Services and Removal of Attorney

Standard:

Contracts for ~~indigent~~ public defense services shall include the grounds for termination of the contract by the parties. Termination of a ~~provider's~~ public defense attorney's or private firm's contract unilaterally by the jurisdiction should only be for good cause. Termination for good cause shall include, but not be limited to, the failure of ~~the a contract~~ attorney or firm to ~~render~~ provide adequate effective or quality

representation to clients; the willful disregard of the rights and best interests of the client; and the willful disregard of ~~these WSBA Standards or the Court Rule Standards, the standards herein addressed.~~

Removal by the court of ~~counsel~~ an appointed attorney from representation normally should not occur over the objection of the attorney and the client.

Related Standards:

~~American Bar Association, Standards for Criminal Justice, Standard 5-1.3, 5-5.3.~~

~~National Legal Aid and Defender Association, Guidelines for Negotiating and Awarding Indigent Defense Contracts, 1984, Guideline III-5.21~~

~~National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States, 1976, Recommendations 2.12 and 2.14.~~

~~National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, 1973, Standard 13.8.~~

STANDARD SEVENTEEN: Non-Discrimination

Standard:

Public defense contracts and assigned counsel policies shall include language prohibiting discrimination by the jurisdiction, contractor, contractor's attorneys, or assigned counsel ~~Neither the Contracting Authority, in its selection of an attorney, firm or agency to provide public defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate~~ on the grounds of race, ~~color,~~ ethnicity, religion, national origin, language, age, marital status, gender identity, sexual orientation, or disability. ~~Both the contracting authority and the contractor~~ The public defense administrator and all public defense attorneys and support staff shall comply with all federal, state, and local non-discrimination requirements.

Related Standards:

~~American Bar Association, Standards for Criminal Justice, Providing Defense Services, Standard 5-3.1.~~

~~National Legal Aid and Defender Association, Standards for Defender Services, 1976, Standard III-8.~~

STANDARD EIGHTEEN:

Guidelines for Awarding Defense Contracts

Standard:

Recruitment for public defense contracts and assigned counsel lists should include efforts to achieve a diverse public defense workforce.

Attorneys or firms applying for contracts or placement on assigned counsel lists must demonstrate their ability to meet these Standards and the Supreme Court Standards for Indigent Defense. Their contracts must comply with Rules of Professional Conduct 1.8(m).

The county or city should award contracts for public defense services and select attorneys for assigned counsel lists only after determining that the applicant has demonstrated professional qualifications

consistent with both these Standards and the Supreme Court Standards for Indigent Defense. Under no circumstances should a contract be awarded on the basis of cost alone.

Judges, judicial staff, city attorneys, county prosecutors, and law enforcement officers shall not select the attorneys who will be included in a contract or an assigned counsel list.

Related Standards:

~~National Legal Aid and Defender Association, Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts, 1984, Standard IV-3.~~

~~King County Bar Association Indigent Defense Services Task Force, Guidelines for Accreditation of Defender Agencies, 1982, Statement of Purpose.~~

(The WSBA Board of Governors adopted revisions to Standard 18 in May 2021)

STANDARD NINETEEN: Independence and Oversight of Public Defense Services³⁰

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

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.

³⁰ See Principle 1 of the ABA Ten Principles of a Public Defense Delivery System and Commentary [\(August 2023\)](#), including the recommendation a nonpartisan commission or advisory board oversee the public defense function, thus safeguarding against undue political pressure while also promoting efficiency and accountability for a publicly funded service.

Related Standards:

~~American Bar Association, *Ten Principles of a Public Defense Delivery System*, 2002, Principle 1.~~

~~National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts, The Defense*, 1973, Chapter 1.3.~~

~~American Bar Association *Standards for Criminal Justice, Providing Defense Services*, 1992, Standards 5-1.3, 5-1.6, 5-4.1.~~

~~National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems*, 1989, Standards 2, 3.2.1.~~

~~National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, 1984, Guidelines II-1, II-2, II-3, IV-2.~~

~~National Conference of Commissioners on State Law, *Model Public Defender Act*, 1970, Section 10(d).~~

~~Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties*, 1979, Standards 2.1(D), 3.2.~~

~~National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* 1976, Guidelines 2.8, 2.10-2.13, 2.18, 5.13.~~

~~Michigan Indigent Defense Commission, 2020, *Minimum Standard* 5.~~

Additional References:

~~American Legislative Exchange Council (ALEC), *Resolution in Support of Public Defense*, 2019, Independence and Equality.~~

~~<https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/the-constitutional-imperative-for-defender-independence-aba-principle-1/>~~

~~<https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/the-preeminent-need-for-independence-of-the-defense-function-aba-principle-1/>~~

~~<https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/understanding-judicial-interference-with-the-defense-function-aba-principle-1/>~~

~~<https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/understanding-political-interference-with-the-defense-function-aba-principle-1/24>~~

~~<https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/systemic-accountability-through-an-independent-commission-aba-principle-1/>~~

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

Appendix A

*WSBA Standards for Indigent Defense Services and CrR 3.1, CrRLJ 3.1, JuCr 9.2, and CCR 2.1, Supreme Court Standards for Indigent Defense Comparison of Topics, as of February 2024**

<u>Standard #</u>	<u>WSBA Standards for Indigent Defense Services</u>	<u>Supreme Court Adopted Standards for Indigent Defense</u>
<u>1</u>	<u>Compensation</u>	<u>Reserved</u>
<u>2</u>	<u>Duties and Responsibilities of Counsel</u>	<u>Reserved</u>
<u>3</u>	<u>Caseload Limits and Types of Cases</u>	<u>Caseload Limits and Types of Cases</u>
<u>4</u>	<u>Responsibility for Expert Witnesses</u>	<u>Reserved, but see RPC 1.8</u>
<u>5</u>	<u>Administrative Costs</u>	<u>Administrative Costs, partially adopted</u>
<u>6</u>	<u>Investigators</u>	<u>Investigators, partially adopted</u>
<u>7</u>	<u>Support Services</u>	<u>Reserved</u>
<u>8</u>	<u>Reports of Attorney Activity</u>	<u>Reserved</u>
<u>9</u>	<u>Training</u>	<u>Reserved</u>
<u>10</u>	<u>Supervision</u>	<u>Reserved</u>
<u>11</u>	<u>Monitoring and Evaluation of Attorneys</u>	<u>Reserved</u>
<u>12</u>	<u>Substitution of Counsel</u>	<u>Reserved</u>
<u>13</u>	<u>Limitations on Private Practice</u>	<u>Limitations on Private Practice</u>
<u>14</u>	<u>Qualifications of Attorneys with revised list of qualifications</u>	<u>Qualifications of Attorneys</u>
<u>15</u>	<u>Disposition of Client Complaints</u>	<u>Reserved</u>
<u>16</u>	<u>Cause for Termination of Defender Services and Removal of Attorney</u>	<u>Reserved</u>
<u>17</u>	<u>Non-Discrimination</u>	<u>Reserved</u>
<u>18</u>	<u>Guidelines for Awarding Defense Contracts</u>	<u>Reserved</u>
<u>19</u>	<u>Independence and Oversight of Public Defense Services</u>	<u>Not included, but addressed in GR 42</u>

* Readers should check for any subsequent amendments

APPENDIX B

Crimes Categorized by Public Defense Case Category

All unlisted misdemeanors are Misdemeanor Low

<u>PD Misdemeanor Case Category</u>	<u>Seriousness Level</u>	<u>Case Value</u>	<u>CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Aiming or discharging a firearm (RCW 9.41.230)</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Animal cruelty in the second degree committed under RCW 16.52.207(1)</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Assault 4 (RCW 9A.36.041(3))</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Attempt, Solicitation, or Conspiracy of a Class C Felony ((RCW 9A.28.020-040))</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Communication with a Minor for Immoral Purposes (RCW 9.68A.090)</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Driving While Under the Influence (RCW 46.61.502(6))</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>H&R Attended (RCW 46.52.020)</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Harassment (RCW 9A.46.020(1-2))</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Indecent Exposure to Person Under Age 14 (first offense) (RCW 9A.88.010)</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Possession of a Controlled Substance (RCW 69.50.4013)</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Reckless Driving RCW 46.61.150</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Sexual Misconduct with a Minor² (RCW 9A.44.096)</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Stalking (RCW 9A.46.110(1-5))</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(1))</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Unlawful carrying or handling of a firearm (RCW 9.41.270)</u>
<u>Misdemeanor- High</u>	<u>GM</u>	<u>1.5</u>	<u>Vehicle Prowling 2 (first or second offense) (RCW 9A.52.100(1-2))</u>

Misdemeanor- High	GM	1.5	<u>Violation of Anti-Harassment Protection Order (RCW 7.105.450)</u>
Misdemeanor- High	GM/M	1.5	<u>Domestic Violence Offense listed in RCW 10.99.020(4) or RCW 9.41.040(2)(a)(i)(B-D)</u>
-	GM/M	1.5	<u>Municipal Crimes shall be the same case category as the equivalent State crime. When there is no State crime, a Municipal Gross Misdemeanor is Misdemeanor- High and a Simple Misdemeanor is a Misdemeanor- Felony- Low</u>
Misdemeanor- Low	M	1	<u>Attempt, Solicitation, or Conspiracy to Commit a Gross Misdemeanor (RCW 9A.28.020-040)</u>
Misdemeanor- High	M	1	<u>Minor Driving After Alcohol (RCW 46.61.503)</u>
Misdemeanor- High	M	1	<u>Negligent Driving 1 RCW 46.61.5249</u>

All unlisted felonies are Felony Low

<u>PD Felony Case Category</u>	<u>Seriousness Level</u>	<u>Case Value</u>	<u>CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL</u>
<u>Felony- Low</u>	1	1	<u>Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)</u>
<u>Felony- Low</u>	1	1	<u>False Verification for Welfare (RCW 74.08.055)</u>
<u>Felony- Low</u>	1	1	<u>Forgery (RCW 9A.60.020)</u>
<u>Felony- Low</u>	1	1	<u>Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)</u>
<u>Felony- Low</u>	1	1	<u>Malicious Mischief 2 (RCW 9A.48.080)</u>
<u>Felony- Low</u>	1	1	<u>Mineral Trespass (RCW 78.44.330)</u>
<u>Felony- Low</u>	1	1	<u>Possession of Stolen Property 2 (RCW 9A.56.160)</u>
<u>Felony- Low</u>	1	1	<u>Reckless Burning 1 (RCW 9A.48.040)</u>
<u>Felony- Low</u>	1	1	<u>Spotlighting Big Game 1 (RCW 77.15.450(3)(b))</u>
<u>Felony- Low</u>	1	1	<u>Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))</u>
<u>Felony- Low</u>	1	1	<u>Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)</u>
<u>Felony- Low</u>	1	1	<u>Theft 2 (RCW 9A.56.040)</u>

Felony- Low	<u>1</u>	<u>1</u>	Theft from a Vulnerable Adult 2 (RCW 9A.56.400(2))
Felony- Low	<u>1</u>	<u>1</u>	Theft of Rental, Leased, Lease-purchased, or Loaned Property (valued at \$750 or more but less than \$5,000) (RCW 9A.56.096(5)(b))
Felony- Low	<u>1</u>	<u>1</u>	Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Possession of Payment Instruments (RCW 9A.56.320)
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Production of Payment Instruments (RCW 9A.56.320)
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Releasing, Planting, Possessing, or Placing Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Trafficking in Food Stamps (RCW 9.91.142)
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Use of Food Stamps (RCW 9.91.144)
Felony- Low	<u>1</u>	<u>1</u>	Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))
Felony- Low	<u>1</u>	<u>1</u>	Vehicle Prowl 1 (RCW 9A.52.095)
Felony- Low	<u>1</u>	<u>1</u>	Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b))
Felony- Low	<u>2</u>	<u>1</u>	Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
Felony- Low	<u>2</u>	<u>1</u>	Computer Trespass 1 (RCW 9A.90.040)
Felony- Low	<u>2</u>	<u>1</u>	Counterfeiting (RCW 9.16.035(3))
Felony- Low	<u>2</u>	<u>1</u>	Electronic Data Service Interference (RCW 9A.90.060)
Felony- Low	<u>2</u>	<u>1</u>	Electronic Data Tampering 1 (RCW 9A.90.080)
Felony- Low	<u>2</u>	<u>1</u>	Electronic Data Theft (RCW 9A.90.100)

<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Escape from Community Custody (RCW 72.09.310)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Failure to Register as a Sex Offender (first, second, or subsequent offense) (RCW 9A.44.130 prior to June 10, 2010, and RCW 9A.44.132)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130 prior to June 10, 2010, and RCW 9A.44.132)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Health Care False Claims (RCW 48.80.030)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Identity Theft 2 (RCW 9.35.020(3))</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Improperly Obtaining Financial Information (RCW 9.35.010)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Malicious Mischief 1 (RCW 9A.48.070)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Organized Retail Theft 2 (RCW 9A.56.350(3))</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Possession of a Stolen Vehicle (RCW 9A.56.068)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Possession of Stolen Property 1 (RCW 9A.56.150)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Retail Theft with Special Circumstances 2 (RCW 9A.56.360(3))</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Scrap Processing, Recycling, or Supplying Without a License (second or subsequent offense) (RCW 19.290.100)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Theft 1 (RCW 9A.56.030)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Theft of a Motor Vehicle (RCW 9A.56.065)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Theft of Rental, Leased, Lease-purchased, or Loaned Property (valued at \$5,000 or more) (RCW 9A.56.096(5)(a))</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Theft with the Intent to Resell 2 (RCW 9A.56.340(3))</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Trafficking in Insurance Claims (RCW 48.30A.015)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Unlawful Practice of Law (RCW 2.48.180)</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))</u>

<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))</u>
<u>Felony- Low</u>	<u>2</u>	<u>1</u>	<u>Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Assault of a Child 3 (RCW 9A.36.140)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Bail Jumping with class B or C (RCW 9A.76.170(3)(c))</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Burglary 2 (RCW 9A.52.030)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Communication with a Minor for Immoral Purposes (RCW 9.68A.090)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Criminal Gang Intimidation (RCW 9A.46.120)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Custodial Assault (RCW 9A.36.100)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Cyber Harassment (RCW 9A.90.120(2)(b))</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Escape 2 (RCW 9A.76.120)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Extortion 2 (RCW 9A.56.130)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>False Reporting 2 (RCW 9A.84.040(2)(b))</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Harassment (RCW 9A.46.020)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Hazing (RCW 28B.10.901(2)(b))</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Intimidating a Public Servant (RCW 9A.76.180)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Introducing Contraband 2 (RCW 9A.76.150)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Malicious Injury to Railroad Property (RCW 81.60.070)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Manufacture of Untraceable Firearm with Intent to Sell (RCW 9.41.190)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Manufacture or Assembly of an Undetectable Firearm or Untraceable Firearm (RCW 9.41.325)</u>
<u>Felony- Low</u>	<u>3</u>	<u>1</u>	<u>Mortgage Fraud (RCW 19.144.080)</u>

Felony- Low	<u>3</u>	<u>1</u>	Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
Felony- Low	<u>3</u>	<u>1</u>	Organized Retail Theft 1 (RCW 9A.56.350(2))
Felony- Low	<u>3</u>	<u>1</u>	Perjury 2 (RCW 9A.72.030)
Felony- Low	<u>3</u>	<u>1</u>	Possession of Incendiary Device (RCW 9.40.120)
Felony- Low	<u>3</u>	<u>1</u>	Possession of Machine Gun, Bump-Fire Stock, Undetectable Firearm, or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
Felony- Low	<u>3</u>	<u>1</u>	Retail Theft with Special Circumstances 1 (RCW 9A.56.360(2))
Felony- Low	<u>3</u>	<u>1</u>	Securities Act violation (RCW 21.20.400)
Felony- Low	<u>3</u>	<u>1</u>	Tampering with a Witness (RCW 9A.72.120)
Felony- Low	<u>3</u>	<u>1</u>	Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
Felony- Low	<u>3</u>	<u>1</u>	Theft of Livestock 2 (RCW 9A.56.083)
Felony- Low	<u>3</u>	<u>1</u>	Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
Felony- Low	<u>3</u>	<u>1</u>	Trafficking in Stolen Property 2 (RCW 9A.82.055)
Felony- Low	<u>3</u>	<u>1</u>	Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))
Felony- Low	<u>3</u>	<u>1</u>	Unlawful Imprisonment (RCW 9A.40.040)
Felony- Low	<u>3</u>	<u>1</u>	Unlawful Misbranding of Fish or Shellfish 1 (RCW 77.140.060(3))
Felony- Low	<u>3</u>	<u>1</u>	Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
Felony- Low	<u>3</u>	<u>1</u>	Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
Felony- Low	<u>3</u>	<u>1</u>	Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))
Felony- Low	<u>3</u>	<u>1</u>	Unlawful Use of a Nondesigned Vessel (RCW 77.15.530(4))
Felony- Low	<u>3</u>	<u>1</u>	Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
Felony- Low	<u>4</u>	<u>1</u>	Driving While Under the Influence (3 or more offenses) (RCW 46.61.502(6))
Felony- Low	<u>4</u>	<u>1</u>	Influencing Outcome of Sporting Event (RCW 9A.82.070)

Felony- Low	4	1	Physical Control of a Vehicle While Under the Influence (three or more offenses) (RCW 46.61.504(6))
Felony- Low	4	1	Theft of Livestock 1 (RCW 9A.56.080)
Felony- Low	4	1	Threats to Bomb (RCW 9.61.160)
Felony- Low	4	1	Trafficking in Stolen Property 1 (RCW 9A.82.050)
Felony- Low	4	1	Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
Felony- Low	4	1	Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
Felony- Low	4	1	Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
Felony- Low	4	1	Unlawful transaction of insurance business (RCW 48.15.023(3))
Felony- Low	4	1	Unlicensed practice as an insurance professional (RCW 48.17.063(2))
Felony- Low	4	1	Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
Felony- Low	4	1	Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3))
Felony- Low	5	1	Abandonment of Dependent Person 2 (RCW 9A.42.070)
Felony- Low	5	1	Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
Felony- Low	5	1	Air bag diagnostic systems (RCW 46.37.660(2)(c))
Felony- Low	5	1	Air bag replacement requirements (RCW 46.37.660(1)(c))
Felony- Low	5	1	Bail Jumping with class A (RCW 9A.76.170(3)(b))
Felony- Low	5	1	Extortionate Extension of Credit (RCW 9A.82.020)
Felony- Low	5	1	Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
Felony- Low	5	1	Manufacture or import counterfeit, nonfunctional, damaged, or previously deployed air bag (RCW 46.37.650(1)(c))
Felony- Low	5	1	Perjury 1 (RCW 9A.72.020)
Felony- Low	5	1	Possession of a Stolen Firearm (RCW 9A.56.310)

Felony- Low	<u>5</u>	<u>1</u>	Rendering Criminal Assistance 1 (RCW 9A.76.070)
Felony- Low	<u>5</u>	<u>1</u>	Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(c))
Felony- Low	<u>6</u>	<u>1</u>	Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
Felony- Low	<u>6</u>	<u>1</u>	Bribery (RCW 9A.68.010)
Felony- Low	<u>6</u>	<u>1</u>	Intimidating a Judge (RCW 9A.72.160)
Felony- Low	<u>6</u>	<u>1</u>	Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
Felony- Low	<u>6</u>	<u>1</u>	Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
Felony- Low	<u>6</u>	<u>1</u>	Theft from a Vulnerable Adult 1 (RCW 9A.56.400(1))
Felony- Low	<u>6</u>	<u>1</u>	Theft of a Firearm (RCW 9A.56.300)
Felony- Low	<u>6</u>	<u>1</u>	Unlawful Storage of Ammonia (RCW 69.55.020)
Felony- Low	<u>7</u>	<u>1</u>	Air bag diagnostic systems (causing bodily injury or death) (RCW 46.37.660(2)(b))
Felony- Low	<u>7</u>	<u>1</u>	Air bag replacement requirements (causing bodily injury or death) (RCW 46.37.660(1)(b))
Felony- Low	<u>7</u>	<u>1</u>	Civil Disorder Training (RCW 9A.48.120)
Felony- Low	<u>7</u>	<u>1</u>	False Reporting 1 (RCW 9A.84.040(2)(a))
Felony- Low	<u>7</u>	<u>1</u>	Malicious placement of an explosive 3 (RCW 70.74.270(3))
Felony- Low	<u>7</u>	<u>1</u>	Manufacture or import counterfeit, nonfunctional, damaged, or previously deployed air bag (causing bodily injury or death) (RCW 46.37.650(1)(b))
Felony- Low	<u>7</u>	<u>1</u>	Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(b))
Felony- Low	<u>7</u>	<u>1</u>	Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
Felony- Low	<u>7</u>	<u>1</u>	Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
Felony- Low	<u>7</u>	<u>1</u>	Use of a Machine Gun or Bump-fire Stock in Commission of a (RCW 9.41.225)
Felony- Low	<u>8</u>	<u>1</u>	Theft of Ammonia (RCW 69.55.010)

<u>Felony- Low</u>	-	<u>1</u>	<u>Attempt, Solicitation, or Conspiracy of a Class B Felony (RCW 9A.28.020-040)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Arson 2 (RCW 9A.48.030)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Assault 2 (RCW 9A.36.021)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Assault 4 (third domestic violence offense) (RCW 9A.36.041(3))</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Assault by Watercraft (RCW 79A.60.060)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Cheating 1 (RCW 9.46.1961)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Commercial Bribery (RCW 9A.68.060)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Counterfeiting (RCW 9.16.035(4))</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Endangerment with a Controlled Substance (RCW 9A.42.100)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Escape 1 (RCW 9A.76.110)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Hate Crime (RCW 9A.36.080)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Hit and Run—Injury (RCW 46.52.020(4)(b))</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Identity Theft 1 (RCW 9.35.020(2))</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Residential Burglary (RCW 9A.52.025)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Robbery 2 (RCW 9A.56.210)</u>
<u>Felony- Mid</u>	<u>4</u>	<u>1.5</u>	<u>Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)</u>
<u>Felony- Mid</u>	<u>5</u>	<u>1.5</u>	<u>Domestic Violence Court Order Violation (RCW 7.105.450, 10.99.040, 10.99.050, 26.09.300, 26.26B.050, or 26.52.070)</u>
<u>Felony- Mid</u>	<u>5</u>	<u>1.5</u>	<u>Extortion 1 (RCW 9A.56.120)</u>
<u>Felony- Mid</u>	<u>5</u>	<u>1.5</u>	<u>Kidnapping 2 (RCW 9A.40.030)</u>
<u>Felony- Mid</u>	<u>5</u>	<u>1.5</u>	<u>Persistent prison misbehavior (RCW 9.94.070)</u>

<u>Felony- Mid</u>	<u>5</u>	<u>1.5</u>	<u>Stalking (RCW 9A.46.110)</u>
<u>Felony- Mid</u>	<u>5</u>	<u>1.5</u>	<u>Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)</u>
<u>Felony- Mid</u>	<u>7</u>	<u>1.5</u>	<u>Burglary 1 (RCW 9A.52.020)</u>
<u>Felony- Mid</u>	<u>7</u>	<u>1.5</u>	<u>Drive-by Shooting (RCW 9A.36.045)</u>
<u>Felony- Mid</u>	<u>7</u>	<u>1.5</u>	<u>Introducing Contraband 1 (RCW 9A.76.140)</u>
<u>Felony- Mid</u>	<u>9</u>	<u>1.5</u>	<u>Explosive devices prohibited (RCW 70.74.180)</u>
<u>Felony- Mid</u>	<u>9</u>	<u>1.5</u>	<u>Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))</u>
<u>Felony- Mid</u>	<u>9</u>	<u>1.5</u>	<u>Malicious placement of an explosive 2 (RCW 70.74.270(2))</u>
<u>Felony- Mid</u>	<u>10</u>	<u>1.5</u>	<u>Malicious explosion 3 (RCW 70.74.280(3))</u>
<u>Felony- Mid</u>	<u>10</u>	<u>1.5</u>	<u>Sexually Violent Predator Escape (RCW 9A.76.115)</u>
<u>Felony- Mid</u>	-	<u>1.5</u>	<u>Attempt, Solicitation, or Conspiracy of a Class A Felony (RCW 9A.28.020-040)</u>
<u>Felony- Mid</u>	<u>DG2</u>	<u>1.5</u>	<u>Felony Offense with Firearm Enhancement or Deadly Weapon Enhancement that becomes a Strike (RCW 9.94A.030(32)(s) and 9.94A.825)</u>
<u>Felony- High</u>	<u>8</u>	<u>3</u>	<u>Arson 1 (RCW 9A.48.020)</u>
<u>Felony- High</u>	<u>9</u>	<u>3</u>	<u>Abandonment of Dependent Person 1 (RCW 9A.42.060)</u>
<u>Felony- High</u>	<u>9</u>	<u>3</u>	<u>Assault of a Child 2 (RCW 9A.36.130)</u>
<u>Felony- High</u>	<u>9</u>	<u>3</u>	<u>Robbery 1 (RCW 9A.56.200)</u>
<u>Felony- High</u>	<u>10</u>	<u>3</u>	<u>Criminal Mistreatment 1 (RCW 9A.42.020)</u>
<u>Felony- High</u>	<u>10</u>	<u>3</u>	<u>Kidnapping 1 (RCW 9A.40.020)</u>
<u>Felony- High</u>	<u>10</u>	<u>3</u>	<u>Leading Organized Crime (RCW 9A.82.060(1)(a))</u>
<u>Felony- High</u>	<u>12</u>	<u>3</u>	<u>Assault 1 (RCW 9A.36.011)</u>
<u>Felony- High</u>	<u>12</u>	<u>3</u>	<u>Assault of a Child 1 (RCW 9A.36.120)</u>
<u>Felony- High</u>	<u>12</u>	<u>3</u>	<u>Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))</u>
<u>Felony- High</u>	<u>13</u>	<u>3</u>	<u>Malicious explosion 2 (RCW 70.74.280(2))</u>
<u>Felony- High</u>	<u>13</u>	<u>3</u>	<u>Malicious placement of an explosive 1 (RCW 70.74.270(1))</u>
<u>Felony- High</u>	<u>14</u>	<u>3</u>	<u>Trafficking 1 (RCW 9A.40.100(1))</u>

Felony- High	<u>15</u>	<u>3</u>	<u>Malicious explosion 1 (RCW 70.74.280(1))</u>
Felony- Sex	<u>2</u>	<u>5</u>	<u>Voyeurism 1 (RCW 9A.44.115)</u>
Felony- Sex	<u>3</u>	<u>5</u>	<u>Promoting Prostitution 2 (RCW 9A.88.080)</u>
Felony- Sex	<u>4</u>	<u>5</u>	<u>Indecent Exposure to Person Under Age 14 (subsequent sex offense) (RCW 9A.88.010)</u>
Felony- Sex	<u>4</u>	<u>5</u>	<u>Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))</u>
Felony- Sex	<u>4</u>	<u>5</u>	<u>Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))</u>
Felony- Sex	<u>5</u>	<u>5</u>	<u>Child Molestation 3 (RCW 9A.44.089)</u>
Felony- Sex	<u>5</u>	<u>5</u>	<u>Criminal Mistreatment 2 (RCW 9A.42.030)</u>
Felony- Sex	<u>5</u>	<u>5</u>	<u>Custodial Sexual Misconduct 2 (RCW 9A.44.170)</u>
Felony- Sex	<u>5</u>	<u>5</u>	<u>Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))</u>
Felony- Sex	<u>5</u>	<u>5</u>	<u>Incest 2 (RCW 9A.64.020(2))</u>
Felony- Sex	<u>5</u>	<u>5</u>	<u>Rape 3 (RCW 9A.44.060)</u>
Felony- Sex	<u>5</u>	<u>5</u>	<u>Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))</u>
Felony- Sex	<u>5</u>	<u>5</u>	<u>Sexual Misconduct with a Minor 1 (RCW 9A.44.093)</u>
Felony- Sex	<u>5</u>	<u>5</u>	<u>Sexually Violating Human Remains (RCW 9A.44.105)</u>
Felony- Sex	<u>6</u>	<u>5</u>	<u>Incest 1 (RCW 9A.64.020(1))</u>
Felony- Sex	<u>6</u>	<u>5</u>	<u>Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))</u>
Felony- Sex	<u>6</u>	<u>5</u>	<u>Rape of a Child 3 (RCW 9A.44.079)</u>
Felony- Sex	<u>7</u>	<u>5</u>	<u>Child Molestation 2 (RCW 9A.44.086)</u>
Felony- Sex	<u>7</u>	<u>5</u>	<u>Custodial Sexual Misconduct 1 (RCW 9A.44.160)</u>
Felony- Sex	<u>7</u>	<u>5</u>	<u>Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))</u>
Felony- Sex	<u>7</u>	<u>5</u>	<u>Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))</u>

Felony- Sex	<u>8</u>	<u>5</u>	<u>Commercial Sexual Abuse of a Minor (RCW 9.68A.100)</u>
Felony- Sex	<u>8</u>	<u>5</u>	<u>Promoting Prostitution 1 (RCW 9A.88.070)</u>
Felony- Sex	<u>9</u>	<u>5</u>	<u>Sexual Exploitation (RCW 9.68A.040)</u>
Felony- Sex	<u>10</u>	<u>5</u>	<u>Child Molestation 1 (RCW 9A.44.083)</u>
Felony- Sex	<u>10</u>	<u>5</u>	<u>Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))</u>
Felony- Sex	<u>11</u>	<u>5</u>	<u>Rape 2 (RCW 9A.44.050)</u>
Felony- Sex	<u>11</u>	<u>5</u>	<u>Rape of a Child 2 (RCW 9A.44.076)</u>
Felony- Sex	<u>12</u>	<u>5</u>	<u>Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)</u>
Felony- Sex	<u>12</u>	<u>5</u>	<u>Rape 1 (RCW 9A.44.040)</u>
Felony- Sex	<u>12</u>	<u>5</u>	<u>Rape of a Child 1 (RCW 9A.44.073)</u>
Felony- Sex	<u>12</u>	<u>5</u>	<u>Trafficking 2 (RCW 9A.40.100(3))</u>
Felony- Sex	-	<u>5</u>	<u>Any Felony Offense where a Special Allegation of Sexual Motivation is alleged pursuant (RCW 9.94A835)</u>
Felony- Sex	-	<u>5</u>	<u>Attempt, Solicitation, or Conspiracy to Commit a Sex Offense (RCW 9A.28.020)</u>
Felony- Murder	<u>7</u>	<u>7</u>	<u>Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)</u>
Felony- Murder	<u>7</u>	<u>7</u>	<u>Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)</u>
Felony- Murder	<u>7</u>	<u>7</u>	<u>Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)</u>
Felony- Murder	<u>8</u>	<u>7</u>	<u>Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)</u>
Felony- Murder	<u>8</u>	<u>7</u>	<u>Manslaughter 2 (RCW 9A.32.070)</u>
Felony- Murder	<u>9</u>	<u>7</u>	<u>Hit and Run—Death (RCW 46.52.020(4)(a))</u>
Felony- Murder	<u>9</u>	<u>7</u>	<u>Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)</u>
Felony- Murder	<u>11</u>	<u>7</u>	<u>Manslaughter 1 (RCW 9A.32.060)</u>

Felony- Murder	<u>11</u>	<u>7</u>	<u>Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)</u>
Felony- Murder	<u>11</u>	<u>7</u>	<u>Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)</u>
Felony- Murder	<u>14</u>	<u>7</u>	<u>Murder 2 (RCW 9A.32.050)</u>
Felony- Murder	<u>15</u>	<u>7</u>	<u>Homicide by abuse (RCW 9A.32.055)</u>
Felony- Murder	<u>15</u>	<u>7</u>	<u>Murder 1 (RCW 9A.32.030)</u>
Felony- Murder	<u>16</u>	<u>7</u>	<u>Aggravated Murder 1 (RCW 10.95.020)</u>
Felony- Murder	-	<u>7</u>	<u>Attempt, Solicitation, or Conspiracy to Commit Murder (RCW 9A.28.020-040)</u>
Felony- LWOP	-	<u>8</u>	<u>Any "Third Strike" or final offense where a life sentence could be imposed (RCW 9.94A575)</u>

Appendix C

Adult Criminal Cases

<u>Case Type</u>	<u>Previous Attorney Experience</u>	<u>Previous Trial Experience</u>	<u>Special Training</u>	<u>Oth</u>
<u>A. Misdemeanor Low and Probation Violations</u>	=	=	=	•
<u>B. Misdemeanor High</u> <u>a. Domestic Violence, Violation of No Contact Order, Harassment, or Stalking</u> <u>b. Drug Offenses</u> <u>c. Sex Offenses</u>	<u>a.</u> <u>b.</u> <u>c. Sex Offense - Has served as defense attorney or prosecutor for one year.</u> <u>d.</u>	<u>a.</u> <u>b.</u> <u>c. Sex Offense - Two criminal cases in which the prosecution has rested, or One criminal trial in which the prosecution has rested and completed a trial training academy</u> <u>d.</u>	<u>a. Domestic violence - DV training or CLE.</u> <u>b. Drug offenses - Drug training or CLE.</u> <u>c. Sex Offenses – Has attended a training or CLE on collateral consequences</u>	• •

<u>d. DUI</u>			<u>of sex convictions and on child hearsay.</u> <u>d. DUI – CLE or Training on DUI Defense representation in the last two years.</u>	
<u>C. Felony Mid and Low Cases</u>	<u>One year of prosecution or criminal defense.</u>	<u>As lead or co-counsel handling a significant portion, where the state has rested, either:</u> <ul style="list-style-type: none"> <u>• Two criminal trials; or</u> <u>• One criminal trial and has completed a trial training academy.</u> 		<u>• 1</u> <u>• 9</u> <u>f</u> <u>f</u> <u>a</u>
<u>D. Felony Sex Cases</u>	<u>Two years of prosecution or criminal defense.</u>	<u>As lead or co-counsel handling a significant portion, where the state has rested:</u> <ul style="list-style-type: none"> <u>• Three felony trials, of which at least one was submitted to a jury.</u> 	<u>• Collateral Consequences of Sex offenses</u> <u>• Child hearsay</u>	<u>• 1</u>
<u>E. Felony High Other Cases</u>	<u>Two years of prosecution or criminal defense.</u>	<u>As lead or co-counsel handling a significant portion, where the state has rested:</u> <ul style="list-style-type: none"> <u>• Three felony trials, of which at least one was submitted to a jury.</u> 		<u>• 1</u>
<u>F. Felony High Murder and LWOP</u>	<u>Three years in adult felony cases, of which:</u> <ul style="list-style-type: none"> <u>• Two years as felony defense counsel.</u> 	<u>As lead or co-counsel for the defense, where the state has rested:</u> <ul style="list-style-type: none"> <u>• Four adult felony trials in which the state has rested;</u> <u>• At least one of which was submitted to a jury; and</u> <u>• At least one of which was Felony High Other or from this category.</u> 	<u>• Mitigation</u>	<u>•</u> <u>•</u>
<u>G. Felony Re-Sentencing, Revocation, and Reference Hearings</u>	<u>One year of prosecution or criminal defense.</u>	<u>As lead or co-counsel handling a significant portion, where the state has rested, either:</u> <ul style="list-style-type: none"> <u>• Three criminal trials; or</u> <u>• Two criminal trials and has completed a trial training academy.</u> 		<u>• 1</u>

<u>H. Material Witness Representation</u>				<ul style="list-style-type: none"> • A F H a V G
<u>I. Specialty Courts</u>				<ul style="list-style-type: none"> • •

Juvenile Court Cases

<u>Case Type</u>	<u>Previous Attorney Experience</u>	<u>Previous Trial Experience</u>	<u>Special Training</u>	<u>O</u>
<u>A. Misdemeanor Low and Probation Violations</u>				• •
<u>B. Misdemeanor High</u> <u>a. Domestic Violence, Violation of No Contact Order, Harassment, or Stalking</u> <u>b. Drug Offenses</u> <u>c. Sex Offenses</u> <u>d. DUI</u>	<u>a.</u> <u>b.</u> <u>c. Sex Offense - Has served as defense attorney or prosecutor for one year.</u> <u>d.</u>	<u>a.</u> <u>b.</u> <u>c. Sex Offense - Two criminal cases in which the prosecution has rested, or One criminal trial in which the prosecution has rested and completed a trial training academy</u> <u>d.</u>	<u>e. Domestic violence - DV training or CLE.</u> <u>f. Drug offenses - Drug training or CLE.</u> <u>g. Sex Offenses – Has attended a training or CLE on collateral consequences of sex convictions and on child hearsay.</u> <u>d. DUI – CLE or Training on DUI Defense representation in the last two years.</u>	• •
<u>C. Felony Mid and Felony Low Cases</u>	<u>One year of prosecution or criminal defense.</u>	<u>As lead or co-counsel handling a significant portion, where the state has rested, either:</u> <u>• Two criminal trials; or</u> <u>• One criminal trial and has completed a trial training academy.</u>		• •
<u>J. Felony Sex Cases</u>	<u>Two years of prosecution or criminal defense.</u>	<u>As lead or co-counsel handling a significant portion, where the state has rested:</u> <u>• Three felony trials, of which at least one was submitted to a jury.</u>	<u>• Collateral Consequences of Sex offenses</u> <u>• Child hearsay</u>	• •
<u>K. Felony High Other Cases</u>	<u>Two years of prosecution or criminal defense.</u>	<u>As lead or co-counsel handling a significant portion, where the state has rested:</u>		• •

		<ul style="list-style-type: none"> • <u>Three felony trials, of which at least one was submitted to a jury.</u> 		
<u>L. Felony High Murder and LWOP</u>	<p>Three years in adult felony cases, of which:</p> <ul style="list-style-type: none"> • <u>Two years as felony defense counsel.</u> 	<p>As lead or co-counsel for the defense, where the state has rested:</p> <ul style="list-style-type: none"> • <u>Four adult felony trials in which the state has rested;</u> • <u>At least one of which was submitted to a jury; and</u> • <u>At least one of which was Felony High Other or from this category.</u> 	<ul style="list-style-type: none"> • <u>Mitigation</u> 	<ul style="list-style-type: none"> • •
<u>D. Felony Re-Sentencing, Revocation, and Reference Hearings</u>	<p><u>One year of prosecution or criminal defense.</u></p>	<p>As lead or co-counsel handling a significant portion, where the state has rested, either:</p> <ul style="list-style-type: none"> • <u>Three criminal trials; or</u> • <u>Two criminal trials; and has completed a trial training academy.</u> 	<ul style="list-style-type: none"> • <u>Sex offenses</u> • <u>Child hearsay</u> • <u>Consequences of adjudications</u> 	<ul style="list-style-type: none"> • •
<u>E. Specialty Courts</u>				<ul style="list-style-type: none"> • •
<u>F. Material Witness Representation</u>	=		=	<ul style="list-style-type: none"> •
<u>G. Juvenile Court Status Offense Cases</u>	<ul style="list-style-type: none"> • <u>Have represented youth in two similar cases while under supervision; or</u> • <u>Have attended three hours of Status Offense training; or</u> • <u>Participates in at least one consultation per case with a qualified attorney.</u> 			<ul style="list-style-type: none"> • •

Civil Cases

<u>Case Type</u>	<u>Previous Attorney Experience</u>	<u>Specialized Training and Other Requirements</u>	
<u>A. Youth Representation in Dependency Cases</u>	<p><u>Before handling a termination case:</u></p> <ul style="list-style-type: none"> • <u>Six months' dependency experience or significant experience in complex litigation.</u> 	<p><u>Shall meet requirements in Section 14.A. and the training/experience requirements in "Representation of Children and Youth in Dependency Cases Practice, Caseload, and Training Standards" developed by the WA Supreme Court Commission on Children in Foster Care.</u></p>	• • •
<u>B. Parents Representation in Dependency Cases</u>	<p><u>Before handling a termination case:</u></p> <ul style="list-style-type: none"> • <u>Six months' dependency experience; or significant experience in complex litigation; or certified by a parents representation training program.</u> 	<p><u>Attorneys shall comply with the American Bar Association's "Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases," and the "Family Justice Initiative Attributes."</u></p>	• •
<u>C. RCW 71.05 Civil Commitment Cases</u>	<p><u>Before handling a 90-day or 180-day commitment hearing:</u></p> <ul style="list-style-type: none"> • <u>Lead counsel for give 14-day hearings.</u> <p><u>Before handling a jury trial:</u></p> <ul style="list-style-type: none"> • <u>Two contested 14-day hearings as lead counsel, or</u> • <u>Two 90 or 180-day commitment hearings as co-counsel.</u> 	<ul style="list-style-type: none"> • <u>At first 90 day or 180-day commitment hearing, the attorney must either:</u> <ul style="list-style-type: none"> ○ <u>Be accompanied by a supervisor; or</u> ○ <u>Consult in advance with a qualified attorney.</u> • <u>Must have basic knowledge of:</u> <ul style="list-style-type: none"> ○ <u>The classifications of mental disorders;</u> ○ <u>Mental disorder medical terminology and research resources;</u> ○ <u>Medications; and</u> ○ <u>Treatment facilities.</u> 	• •
<u>D. RCW 71.09 Sex Offender Commitment Cases</u>	<p><u>Lead counsel must have:</u></p> <ul style="list-style-type: none"> • <u>Three years criminal trial experience; and</u> • <u>One year felony defense or criminal appeals experience; and</u> • <u>Experience as lead counsel in one felony trial.</u> 	<ul style="list-style-type: none"> • <u>Experience in cases involving:</u> <ul style="list-style-type: none"> ○ <u>Mental health issues;</u> ○ <u>Sex offenses; and</u> ○ <u>Expert witnesses.</u> • <u>Familiarity with the Rules of Civil Procedure.</u> • <u>One year appellate experience or demonstrated legal writing ability.</u> 	• •
<u>E. Contempt of Court Cases</u>	=	<ul style="list-style-type: none"> • <u>Must be accompanied by supervisor or experienced attorney at first contempt of court hearing.</u> • <u>Consult with experienced counsel prior to each of first two contested contempt of court hearings.</u> • <u>Familiarity with the Rules of Civil Procedure.</u> 	•

<p><u>F. RCW 10.77</u> <u>Post</u> <u>Commitment</u> <u>Not Guilty by</u> <u>Reason of</u> <u>Insanity Cases</u></p>	<p><u>Three years' experience in:</u></p> <ul style="list-style-type: none"> • <u>Criminal trial; and/or</u> • <u>Dependencies; and/or</u> • <u>Civil commitment</u> <u>proceedings under RCW</u> <u>71.05.</u> 	<ul style="list-style-type: none"> • <u>Basic knowledge of classified mental health disorders.</u> • <u>Compliance with qualification requirements</u> <u>established by the WA State Office of Public Defense.</u> 	<ul style="list-style-type: none"> •
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Appellate Cases

Case Type	Specific Training or Experience Requirements	
<p><u>A. Criminal Appeals in WA Supreme Court or WA Court of Appeals</u></p>	<ul style="list-style-type: none"> • <u>Appellate counsel must consult with a qualified attorney on each appellate case until having filed six appellate briefs as counsel for a party, of which:</u> <ul style="list-style-type: none"> ○ <u>At least five of the six appellate briefs must be in any of the following case categories: criminal, family defense, civil commitment (RCW 71.05), or sex offender civil commitment (RCW 71.09).</u> • <u>In addition to the above, if representing a client on appeal in any Felony High category or Sex Offender Civil Comment (RCW 71.09), the appellate counsel must consult with a qualified attorney until the appellate counsel has:</u> <ul style="list-style-type: none"> ○ <u>Filed fifteen briefs in criminal cases as counsel for a party in the WA supreme Court, WA Court of Appeals, or equivalent courts of another jurisdiction.</u> 	<ul style="list-style-type: none"> •
<p><u>B. Family Defense Appeals</u></p>	<p><u>Appellate counsel must:</u></p> <ul style="list-style-type: none"> • <u>Have previously acted as counsel in a trial-level family defense case; or</u> • <u>Consult with counsel already qualified for Family Defense Appeals until they have filed six briefs in this category and have consulted with qualified counsel in each one.</u> 	<ul style="list-style-type: none"> •
<p><u>C. RALJ Misdemeanor Appeals and Writs to Superior Courts</u></p>	<p><u>Appellate counsel must:</u></p> <ul style="list-style-type: none"> • <u>Have clerked for an appellate court judge; or</u> • <u>Have represented clients in three testimonial motion hearings or trials; or</u> • <u>Be assisted by a more experienced attorney.</u> 	<ul style="list-style-type: none"> •

Legal Interns

- Shall meet the requirements of 14.A. (b) – (g);
- Shall meet the requirements set out in Admissions to Practice Rule 9;
- Shall receiving training and supervision pursuant to APR 9; and
- Should complete an orientation and training program for legal interns.

Appendix D

Related Public Defense Standards

The Washington State Bar Association *Standards for Indigent Defense Services* are informed and complemented by other standards and guidelines which bear on public defense attorneys and agencies. Some of those related standards and guidelines are cited in the Standards' text. Others are included here.

Standard 1

- American Bar Association, *Standards for Criminal Justice*, 5-2.4 and 5-3.1.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.7 and 13.11.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-4.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard III-10 and III-11.
- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline No. 6.

Standard 2

- American Bar Association, *Standards for Criminal Justice*, 4-1.1, 5-5.1 and 5-1.1.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.1.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard II-2.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-18.

Standard 3

- *National Public Defense Workload Study Report*, Published by the RAND Corp. and American Bar Association, Sept. 12, 2023
- American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.
- 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.
- The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007).
- American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*.
- 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* (August 2023).
- American Bar Association *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-1. National Legal Aid and Defender Association, Model Contract for Public Defense Services (2002).
- NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001).
- City of Seattle Ordinance Number: 121501 (2004).
- 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).
- *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001).

Standard 4

- American Bar Association, *Standards for Criminal Justice*, 5-1.4.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV 2d, 3.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1983, Standard III-8d.
- National Advisory Commission, Task Force on Courts, 1973, Standard 13.14.

Standard 5

- American Bar Association, *Standards for Criminal Justice*, Providing Defense Services.
- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, (1976), Guideline 3.4.
- National Legal Aid and Defender Association, *Standards for Defender Services*, 1976 I-3, IV 2a-e, IV 5.

Standard 6

- American Bar Association, *Standards for Criminal Justice*, 4-4.1 and 5-1.14.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.14.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-3.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-9.
- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 8.

Standard 7

- American Bar Association, *Standards for Criminal Justice*, 4-8.1 and 5-1.4.
- National Advisory Committee on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.14.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-3. 9
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-8.

- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 7.

Standard 8

- American Bar Association, *Standards for Criminal Justice*, 5-3.3 (b) xii, *The Report to the Criminal Justice Section Council from the Criminal Justice Standards Committee*, 1989.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984 Standard III-22.
- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, Guideline 3.4, 4.1, and 5.2.

Standard 9

- American Bar Association, *Standards for Criminal Justice*, 5-1.4.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.16.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard V.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard III-17.
- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 3.

Standard 10

- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.9.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contract*, 1984, Standard III-16.
- Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 4.

Standard 11

- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-16.
- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, Recommendations 5.4 and 5.5.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.9.

Standard 12

- American Bar Association, *Standards for Criminal Justice*, Standard 5-5.2.

- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.1.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-23.

Standard 13

- American Bar Association, *Standards for Criminal Justice*, 4-1.2(d), 5-3.2.
- 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.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.7.
- National Legal Aid and Defender Association, *Standards for Defender Services*, Standard III-3 and IV-1.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Guideline III-6.

Standard 14

- *National Public Defense Workload Study Report*, Published by the RAND Corp. and American Bar Association, Sept. 12, 2023
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.15.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Public Defense Contracts*, 1984, Standard III-7.

Standard 15

- American Bar Association, *Standards for Criminal Justice*, 4-5.1 and 4-5.2.

Standard 16

- American Bar Association, *Standards for Criminal Justice*, Standard 5-1.3, 5-5.3.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-5.
- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, Recommendations 2.12 and 2.14.
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.8.

Standard 17

- American Bar Association, *Standards for Criminal Justice*, Providing Defense Services, Standard 5-3.1.

- National Legal Aid and Defender Association, *Standards for Defender Services*, 1976, Standard III-8.

Standard 18

- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard IV-3.
- King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Statement of Purpose.

Standard 19

- American Bar Association, *Ten Principles of a Public Defense Delivery System*, Principle 1 (August 2023).
- National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts, The Defense*, 1973, Chapter 1.3.
- American Bar Association *Standards for Criminal Justice, Providing Defense Services*, 1992, Standards 5-1.3, 5-1.6, 5-4.1.
- National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems*, 1989, Standards 2, 3.2.1.
- National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, 1984, Guidelines II-1, II-2, II-3, IV-2.
- National Conference of Commissioners on State Law, *Model Public Defender Act*, 1970, Section 10(d).
- Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties*, 1979, Standards 2.1(D), 3.2.
- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States 1976*, Guidelines 2.8, 2.10-2.13, 2.18, 5.13.
- Michigan Indigent Defense Commission, 2020, *Minimum Standard 5*.