

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of electronic and technical discovery generated in each case demonstrates that the current caseload standards are outdated.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

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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.

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

Attachments

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