

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. 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
 - 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)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	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)

<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	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	<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>• 1</u> <u>• 1</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*.