

2024 Indigent Defense Standards & Impact to Snohomish County

Jason Schwarz – Office of Public Defense

THE SUPREME COURT
STATE OF WASHINGTON



October 11, 2023

TEMPLE OF JUSTICE
P.O. BOX 40029
OLYMPIA, WA 98541-0929

PUBLIC DEFENSE STANDARDS

Jason Schwarz
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Maialisa Vanyo
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Re: NCSC and ABA's National Public Defense Workload Study

Dear Chair Schwarz and Vice-Chair Vanyo,

On September 12, 2023, the National Center for State Courts (NCSC) and the American Bar Association (ABA) released the [National Public Defense Workload Study](#). The study publishes new national public defense workload standards intended to assist in evaluating criminal defense attorneys' caseloads and ensuring adequate representation.

The Supreme Court discussed the study during its Administrative En Banc Conference last week. The Court formally requests that the WSBA Council on Public Defense (CPD) review the study and advise the Court on any recommendations that the Court should adopt. The Court would like to discuss any recommendations or CPD's response during its December Administrative En Banc Conference. Please provide your response to the Court byway of the Supreme Court Administrator, Ashley Lipford, at Ashley.Lipford@courts.wa.gov by Wednesday, November 29, 2023.

Sincerely,

Ashley Lipford
Court Administrator
Washington State Supreme Court

cc: (via email)

Chief Justice Steven C. González, Washington State Supreme Court
Justice Sheryl Gordon McCloud, CPD Member
Bonnie Sterken, WSBA CPD Staff

- October 2023 letter to WSBA, Council on Public Defense

- Constitutional Crisis of Un-representation or Under-representation
- National Public Defense Workload Study

Washington's public defense system is in crisis

Tri-City Herald

Defense attorney crisis 'band-aid' is failing. Tri-Cities plead for WA state to help

BY CAMERON PROBERT

MAY 15, 2023 5:00 AM

CASCADIA **DAILY**
NEWS

9 sit in Whatcom County Jail without lawyers

'A violation of their rights,' public defender says

May 12, 2023 at 2:48 p.m. | Updated May 12, 2023 at 3:13 p.m.

The Seattle Times

WA's public defender system is breaking down, communities reeling

Feb. 25, 2024 at 6:00 am

Recruitment

Retention

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Pipeline for New Defenders:

- Law School Grads

Pipeline for Becoming Felony Qualified:

- Training/Mentoring
- Trial Experience
- Staying in Public Defense

Retain Current Experience Defenders:

- Address Job Satisfaction and Burnout

National Study Findings

- In order to provide effective assistance to the accused public defenders need more time per case
- A standardized methodology for accounting for case complexity and available staff, time, and expert service resources

National Study Findings

Workloads \neq Caseloads

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Comparison

2010 Standards

- 11 hours/case
- No distinction between case type
 - murder = stolen car

2024 Standards

- Cases divided into categories
- Expected times applied
 - Murder = 7x Stolen Car
 - Murder = 248 hours
 - Stolen Car = 35 hour



August 9, 2022

Honorable Members of the Snohomish County Council:

The Office of the County Performance Auditor has completed a performance audit of the operations and staffing of the Snohomish County Office of Public Defense (OPD). The enclosed report, entitled “Performance Audit of the Office of Public Defense,” presents our observations, conclusions, and recommendations, as well as the written response of the Director of OPD.

OPD’s contract with SCPDA establishes a “case credit” system that, while not meeting the criteria for a case weighting system, was intended to fulfill this requirement by recognizing that some cases require extraordinary levels of effort and providing additional case credits on a case-by-case basis. However, this system as put into practice reveals fundamental problems. The system does not weight cases based on the class or severity of a violation, except for three-strikes cases, nor does it provide credits based on the amount of work required of an attorney to represent a defendant in such cases.

The right to counsel encompasses various attorney legal duties beyond mere presence in court. It is a continuous right to competent and zealous advocacy outside of the courtroom. It includes:

- counsel's duty "immediately upon appointment" to work to "establish a relationship of trust and confidence with each client";
- counsel must meet with "every client within 24 hours" of case assignment;
- early in the case, interview the client regarding the events underlying the charges, including the client's information and facts, other potential sources of information, available evidentiary materials, etc. "Interview the client as many times as necessary for effective representation, which in all but the most simple and routine cases will mean more than once";
- counsel's duty to investigate allegations, regardless of client's desire to plead guilty;
- counsel's investigation of lines of defense;
- counsel's "available advice about an issue like deportation";
- counsel's ensuring that the defendant is competent to stand trial;
- confidentiality in communication with counsel;
- counsel's communication of formal plea offers;
- counsel's warning of possible risks in sentencing;
- counsel's assistance with a defendant's attempt to cooperate;
- guidance through the plea-bargaining process, including counsel's competent advice on how to plead and the right to appeal;
- other rights, including counsel "keep[ing] abreast of Supreme Court decisions affecting their clients' interests";
- awareness, and advise clients of, the almost 2000 potential collateral consequences of criminal convictions, including federal immigration consequences, and assist client in mitigating consequences or seeking expert counsel;
- routinely check for or create systems to identify case conflicts, inclusive of all witnesses from prior representation;
- be aware of the duty to clients with diminished capacities;
- awareness of client mental health symptoms that could impact client competency, and work with the Department of Social and Health Services to have client's competency assessed, restoration of competency ordered or contested where appropriate, and litigate all appurtenant legal rights on the client's behalf;
- obligations under GR 37 to know racialized/gendered answers/questions in jury selection and know opposing counsel's history of GR 37 objections sustained against;
- maintain consistent, vertical representation of client by the same attorney, where possible, through the end of the case;
- tracking time in file for client review, review on appeal, professional improvement, and proof of practice for compensation;
- file quarterly caseload certifications with the court attesting to caseload compliance;
- mandated minimum trainings to become qualified to represent persons charged with offenses of specific case types;
- providing all materials to and communicating with your client and/or necessary witnesses in their primary or preferred language;
- when needed, work with a social worker or mitigation expert to assist in release planning, client health needs, sentencing mitigation;

National PD Workload Study hours/case

- NPDWS makes assumptions about average time per case type based on 17 state-based time studies

<u>CASE TYPE</u>	<u>HOURS/CASE</u>
Felony High – LWOP	286
Felony High – Murder	248
Felony High – Sex	167
Felony High – Other	99
Felony – Mid	57
Felony – Low	35
High Level DUI	33
Low Level DUI	19
High Level Misdemeanor	22.3
Low Level Misdemeanor	13.8
Probation Violation	12

WSBA Standards

- FELONY: 47 Max Cases
- MISDO: 120 Max Cases

CASE TYPE	CASE WEIGHT
Felony High – LWOP	8
Felony High – Murder	7
Felony High – Sex	5
Felony High – Other	3
Felony – Mid	1.5
Felony – Low	1
High Level Misdemeanor	.65
Low Level Misdemeanor	.35

WSBA Standards v. WA Court Rules

Appendix A

WSBA Standards for Indigent Defense Services
and CrR 3.1, CrRLJ 3.1, JuCr 9.2, and CCR 2.1, *Supreme Court Standards for Indigent Defense*
Comparison of Topics, as of February 2024*

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

Snohomish County Public Defender Association Cases in WSAC Calculator

2023 Cases and 2025 Projections				
	# of 2023 cases	Type Weight	Proj Hours/ Case	Total Hours needed
Felony LWOP	8	8	286	2,288
Felony Murder	20	7	248	4,960
Felony Sex	57	5	167	9,519
Felony High	77	3	99	7,623
Felony Mid	574	1.5	57	32,718
Felony Low	1400	1	35	49,000
Felony Probation	45	0.3	11.6	522
Misd High	961	0.66	22.3	21,430
Misd Low	475	0.5	13.8	6,555
Misd Probation	1611	0.17	4	6,444
Total:	5,228.0			141,059

2024 Lawyer Staffing (minus ARPA)	
Total Current Lawyers	33
Current Felony Qualified Lawyers	22
Current Misdemeanor Lawyers	11

Year of Phase In	2025	2026	2027	2028
Attorney Hours/Year:	3850	3150	1650	
Total Lawyers Needed:	36.6	44.8	85.5	
Felony Qualified Lawyers Needed:	27.7	33.9	64.6	
Misdemeanor Qualified Lawyers Needed:	8.9	10.9	20.9	
Additional Lawyer Needs	3.6	11.8	52.5	
Addition Staff Needs:				
Legal Assistance				6.5
Investigators				18.5
Social Workers				25.5