FEATURE

IMPLEMENTATION OF PUBLIC DEFENDER STANDARDS REQUIRES FULL PROFESSIONAL STAFF SUPPORT FOR ATTORNEYS

BY ROBERT C. BORUCHOWITZ AND MOLLY GILBERT

This article is part two in a series. Read part one in the September issue of Bar News *at https://wabarnews.org/2026/09/10/public-defense-crisis-is-an-opportunity-for-change/.*

The Washington Supreme Court's rule drastically reducing the caseload limit for public defense attorneys[1] has generated hope among defenders, their clients, and others. It also has led to serious concern among local governments that without major increases in state funding, they will not be able to employ enough lawyers to meet the new standards.

Increased funding is necessary not only to hire more attorneys and pay them reasonable salaries, but also to hire sufficient support staff, including paralegals, investigators, social workers, interpreters, and other positions.

The court's rule states: "Caseload limits reflect the maximum caseloads for *fully supported* full-time appointed attorneys for cases of average complexity and effort in each case type specified."[2] [Emphasis added.]

While the court rule does not define "fully supported," the WSBA Standards for Indigent Defense Services do.[3] "Fully Supported Defense Attorneys" are defined as "Public defense attorneys who meet or exceed Standards Four, Five, Six, Seven, Nine, Ten, Thirteen and Fourteen of these Standards." Those standards include having expert witnesses, mitigation specialists and social workers, interpreters, administrative staff, case management systems, electronic legal research, investigators, paralegals, IT and human resource professionals, and offices that permit confidential meetings with clients. They also include training and supervision, limits on private practice, and minimum qualifications per type of case.

Having professional support staff in defender offices is not a new concept. In 1978, Charles Silberman in his book *Criminal Violence, Criminal Justice*,[4] wrote about three model offices, including Seattle's, noting that they had investigators and social workers.

The American Bar Association, in Principle Nine of its Ten Principles of a Public Defense Delivery System, states: "Public Defense Providers should have the assistance of investigators, social workers, mitigation specialists, experts, and other specialized professionals necessary to meet public defense needs."



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The WSBA Standards for Indigent Defense Services[5] further provide:

> **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.

The National Association for Public Defense has a similar policy statement:

> 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 lawyers.[6]

The WSBA Standards state: "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."[7]



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SUPPORT STAFF STANDARDS IN PRACTICE

Despite the stated importance of support staff, many public defender offices in Washington continue to fall short due to lack of adequate funding. Yakima, for example, has one investigator on staff for its 21 attorney positions.[8] Spokane's two defender offices have a total of nine investigators for their 67.5 staff attorney positions. Neither one has a social worker.[9]

Only six of Washington's 39 counties have social service providers on staff. Twenty-three counties report no use of social workers or mitigation specialists. Thirteen percent of the counties report no use of expert witnesses in superior court adult cases, 28 percent no experts in juvenile court, and 23 percent use none in district court.[10]

These statistics demonstrate the massive gap between what counties have and what they need.

HOW SOCIAL WORKERS SUPPORT EFFECTIVE REPRESENTATION

There are strong examples of "fully supported" defender offices in Washington, particularly in King County's Department of Public Defense[11] and Snohomish County's Public Defender Association.[12]

The King County Department of Public Defense (DPD) employs about 33 mitigation specialists, some of whom have master of social work degrees.[13] These positions "research the circumstances surrounding a client's alleged crime, the client's mental and developmental health, and other social-psychological information, all with an eye towards providing mitigating evidence that can be helpful in a client's defense."[14]

When asked about the impact of defender social workers, King County Superior Court Judge Mark Larrañaga explained that social workers and mitigation specialists possess the specific professional skills to do this type of work, work that is critical to a client's defense. And not only do they help ease the workload for lawyers in their cases, they also help judges. "Utilizing social workers to develop this comprehensive background

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information allows judges to better assess requests for pre-booking diversion, therapeutic intervention, and/or sentencing alternatives," Judge Larrañaga said.[15]

King County District Court Judge Kristin Shotwell, who was both a social work supervisor and an attorney supervisor at The Defender Association, described in detail the work that defender social workers do, including crafting release plans before trial to address housing and treatment needs, writing pre-sentencing reports that cover contributing factors to a person's criminal behavior and what type of sentence might help reduce recidivism, and conducting social worker psychosocial assessments to help attorneys and judges understand clients' physical and mental health challenges.[16]

Judge Shotwell added, "As a judge, knowing that unmet treatment needs will be addressed pre-trial means the case will likely proceed more efficiently, and that the potential for criminal behavior will be reduced. Judges do not sentence case numbers. They sentence people. And judges need to know about the people they are sentencing in order to appropriately exercise their discretion."

The detailed background for each case that social workers provide also helps attorneys decide what type of expert to employ, how to best communicate with the client and their family, and whether therapeutic sentencing alternatives might be a good option, Judge Shotwell explained.

Social workers help clients as well. "In many cases, defender social workers were able to work with clients to intervene in the recidivist cycle by connecting them with housing, education, and treatment," Judge Shotwell said. This work contributes to reduced jail bookings and emergency room visits and to more engaged clients who miss fewer court appearances and are more informed about the process.

The Washington Office of Public Defense (OPD) supervised a three-year federal grant program to provide social workers in juvenile public defense in Benton and Franklin counties from 2020 to 2024. The evaluation of the program concluded:

> Social workers alleviated the burden of time of attorneys. Thus, putting less burden on the juvenile court system.
>
> Youth who had social workers on their defense team had better outcomes in their court cases, as they interacted less with the court system and were able to get the help they needed to stay out of the courts.[17]

That program ended, but OPD has provided funding to some cities for social services workers. In interviews with defender lawyers, OPD reported "all agree that integrating social services into public defense teams has improved outcomes for clients."[18]

WHY INVESTIGATORS ARE CRITICAL TO EFFECTIVE DEFENSE

While social workers address the human context of a case, which can lead to favorable pre-trial solutions that reduce recidivism, factual defense-focused investigation is also integral to the constitutional right to counsel.

THE WORK OF PUBLIC DEFENSE INVESTIGATORS ROUTINELY LEADS TO CASE DISMISSALS BEFORE A TRIAL EVER OCCURS.

The Washington Supreme Court's Standards for Indigent Defense state that "Public defense attorneys shall use investigation services as appropriate."[19] In addition, the Washington Supreme Court has written:

> The degree and extent of investigation required will vary depending upon the issues and facts of each case, but we hold that at the very least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty.

State v. A.N.J., 168 Wn.2d 91, 111–12, 225 P.3d 956, 966 (2010). As the court established in *A.N.J.,* public defenders have an affirmative duty to conduct reasonable, independent factual evaluations. Advising a client to plead guilty or proceed to trial based solely on unexamined police discovery fails to meet constitutional thresholds. Clients must have access to both a competent attorney and a competent defense investigator.

King County DPD describes the important duties of its investigators: "They comb through countless hours of body-worn and in-car video, interview witnesses, spot inaccuracies in police reports, and uncover exculpatory evidence."[20] DPD explains that in modern-day public defense, where cases can involve hundreds of gigabytes of discovery, high-quality representation of clients depends on dedicated investigators.

Emily Gause, president of the Washington Association of Criminal Defense Lawyers, has written, "A great investigator can assist with case theories, possible defenses, or offer different ideas for moving forward with the investigation."[21]

Expecting a lawyer to do their own investigation runs afoul of RPC 3.7, which states that "A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness." If an attorney personally conducts witness interviews without an investigator, that attorney becomes a potential witness in the case. Should a key witness alter their story or contradict a prior statement at trial, the lawyer cannot impeach that witness without testifying themselves, which is prohibited. A public defense attorney cannot simultaneously act as trial counsel and primary field investigator.

The work of public defense investigators routinely leads to case dismissals before a trial ever occurs. Consider a felony assault case in which initial police reports cite eyewitness statements pointing to the accused. The state has a prima facie case. However, a defense investigator canvasses the scene, collects surveillance footage that law enforcement overlooked, and interviews those same witnesses outside the presence of armed officers. The footage shows the defendant acted in lawful self-defense. The outcome is a pre-trial dismissal—saving local and state governments the staggering expense of needless incarceration, trial proceedings, and post-conviction litigation. In addition, an innocent citizen remains in their community. That same local government doesn't bear the societal costs of a destabilized family or a civil settlement for a wrongful conviction.

Similar results can happen when a defense investigator establishes that the client was in a different place when the incident occurred or that the lighting conditions on the scene made an eyewitness identification unreliable.

Defense investigators are also vital for securing evidence from witnesses and communities who avoid law enforcement. A well-trained defense investigator can, for example, in one day, successfully traverse a homeless encampment to find a missing witness, speak with a sex worker to preserve text messages from their phone, and then return to the office to empathetically interview the family member of a homicide victim. Within the world of public defense, investigators are the in-house translators between economic classes, diverse communities, and the might of the criminal legal system—helping to ensure that the defendant is effectively represented and constitutionally protected.

When public defense agencies lack dedicated and well-trained investigators, attorneys face an impossible dilemma: absorb the role of an investigator at the expense of their legal workload or forgo crucial factual development entirely. Neither option satisfies the Sixth Amendment. Just as a civil litigation firm would never send an associate into trial without independent fact-gathering, public defense systems cannot fulfill the "fully supported" mandate without guaranteed access to professional defense investigators.

The state Legislature and local governments determine public defense budgets, and those budgets must provide for adequate support staff, including in particular, social workers or mitigation specialists and investigators. BN

NOTES

1. See Clarifying Order Nov. 5, 2025, at www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/25700-A-1671.pdf.
2. CrR 3.1 Standards, Standard 3.3.
3. Washington State Bar Association for Indigent Defense Services, March 8, 2024, www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/wsba-indigent-defense-standards-as-approved-by-bog-2024.03.08.pdf?sfvrsn=3c831ff1_5.
4. Charles E. Silberman, *Criminal Violence, Criminal Justice* (Random House, 1978).
5. *Supra* note 2.
6. NAPD Policy Statement on Public Defense Staffing (May 2020), *available at* https://napd.connectedcommunity.org/communities/community-home/librarydocuments?LibraryKey=2a24dcde-351e-4312-af10-019e2c81aa5f&folder=11d39888-f09a-4636-8373-019e2c943667&fa07f2be-c763-4fc2-aa1a-2fa64504fa5c=eyJwYWdlaW5kZXgiOjAsImxpYnJhcnlIbnRyeSI6ImRlMDAzNTIyLTQ3M-mYtNDE4Ni1hMmM5LTAxOWUyYzg1ZjgyYSJ9.
7. WSBA Standards for Indigent Defense, Standard Six.
8. Email from Yakima defender Paul Kelley, Sept. 13, 2026, on file with author.
9. Emails and text message from Colin Charbonneau and Victoria Blumhorst, on file with author.
10. These figures were provided by Washington Office of Public Defense staff in The Defender Initiative's June 25, 2026, conference at Seattle University School of Law.
11. https://kcemployees.com/2019/06/08/felony-mitigation-specialists-at-dpd/.
12. www.snocopda.org/that-conviction-followed-me-everywhere-how-blake-decision-law-changed-one-mans-life-2/.
13. *Supra* note 8; email with Matt Sanders on Sept 11, 2026, on file with author.
14. *Id.*
15. Email message on file with author.
16. Email message on file with author.
17. Chassidy Wen Marquardt, Defense Regional Juvenile Defense Initiative Cumulative Evaluation, 2020-2024.
18. Washington State Office of Public Defense, Integrating Social Services into Municipal Public Defense, at https://opd.wa.gov/sites/default/files/2023-08/01118-2022_SocWrk.pdf.
19. CrR 3.1 Standards, Standard 6.
20. https://kingcounty.gov/en/dept/dpd/about-public-defense/plans-reports/2024-annual#toc-Uncovering-the-Truth-The-Vital-Contribution-of-Investigators.
21. "Top 5 Reasons Why a Criminal Defense Investigator Is Crucial for Your Case," Gause Law Offices website, January 6, 2017, https://emilygauselaw.com/blog/2016/9/29/top-5-reasons-why-a-criminal-defense-investigator-is-crucial-for-your-case.