The Defender Initiative

SEATTLE UNIVERSITY SCHOOL OF LAW

GUIDANCE FOR PUBLIC DEFENSE ATTORNEYS: DECLARING UNAVAILABILITY FOR NEW CASE ASSIGNMENTS OR SEEKING RELIEF FROM CURRENT CASELOAD

Overview

Public Defense counsel are reviewing their caseloads in light of the new Washington State Bar Association (WSBA) Standards[1] and the new Washington Supreme Court order on caseloads.[2] This document provides guidance and references to resources to support public defense attorneys, their supervisors, and administrators in their assessment of and necessary action related to public defense attorney and office workloads that may require declarations of unavailability for new case assignments or relief from current workloads. It also includes Recommendations and Options to Reduce Public Defense Workloads, as appendix 1. [3]

The Defender Initiative and the Washington Defender Association each are available to consult with public defense counsel considering motion practice and administrative advocacy to address the need to reduce workload. The Defender Initiative has sent letters to the Spokane County Commissioners criticizing their draft case weighting policy and sent declarations of support for the San Francisco Public Defender's partial declaration of unavailability.

It is likely that in many jurisdictions more funding, either local or state, will be needed to provide more public defense resources. But developing alternatives to traditional prosecution also will be needed to address the realization that the legal system cannot simply continue to put unbearable burdens on defenders and the people they represent.[4]

The revised maximum caseload standards that took effect in 2025 establish professional and ethical norms. Public defense counsel seeking to implement the new limits may determine that they need to limit the number of new cases they accept. They may encounter resistance from judges and local funding authorities. It is not necessary to re-invent the wheel. There are multiple, well-established resources to guide defenders and judges and funders.

The Bar Standard is for 47 felony case credits or 120 misdemeanor case credits per attorney per year, with a three-year implementation plan. Under phase one, beginning July 2, 2025, for the following twelve months, the limit is 110 felony case credits or 280 misdemeanor case credits. Beginning July 2, 2026, the numbers are 90 felony case credits or 225 misdemeanor case credits. The full

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[1] *Washington State Bar Association Standards for Indigent Defense Services* [Revised March 8, 2024]. Standards 3.J. "Maximum Case Credit Limit…" and 3.O. "Implementation of Standards." Available at: https://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

[2] JUNE 9, 2025, Court order available at https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%2025700-A-1644.pdf. Clarifying order at https://www.courts.wa.gov/court_rule_related_orders/orders/25700-A-1671.pdf.

[3] The Defender Initiative expresses appreciation to Ann Christian and Sarah Hudson for their assistance in preparing this guidance.

[4] See footnote 38 below.

implementation is to take effect July 2, 2027. The Bar adopted a "case credit" (case weighting) system by category of cases.

Attorneys and other interested persons also should review *WSBA Defense Standards: Implementation Guidance and FAQs*, updated July 7, 2025.[5] It provides public defense standards history, present day standards discussion, ethical guidance, additional resources, and FAQs. It also encourages anyone with specific questions to reach out to the WSBA's Ethics Line or Committee on Professional Ethics (CPE) with questions. As noted below, the CPE is expected to issue an Advisory Opinion on the revised caseload standards in the future.

Effective January 2, 2026, the Washington Supreme Court decreased its Court Rule annual maximum caseload as well to 47 felony and 120 misdemeanor case credits, to be implemented "as soon as reasonably possible" but allowing a maximum implementation period of 10 years. While not immediately adopting a case weighting system, the Court wrote: "However, we endorse the importance of case weighting to measure case credits and actual case counts, including inherited cases, to make the mandatory caseload limits meaningful. Thus, case weighting to measure case credits is permissible and encouraged." [6]

The revised caseload standards are necessary because criminal law, criminal defense practice, and the criminal and juvenile legal systems have significantly changed since 1973 when the first national maximum caseload standards were adopted.[7] The 1973 standards were largely adopted by the Washington Supreme Court and WSBA in their previous caseload standards.

To determine whether an attorney's workload is excessive, caseload standards need to be considered, along with such factors as case complexity, availability of support services, attorney experience and ability, and the lawyer's nonrepresentational duties.[8] The American Bar Association's formal ethics opinion 06-441 states in part:

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[5] *WSBA Defense Standards: Implementation Guidance and FAQs*, updated July 7, 2025. Available at: https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/washington-supreme-court-ordered-indigent-defense-standards-and-guidance.pdf?sfvrsn=5e2a1bf1_5

[6] *In the Matter of The Standards for Indigent Defense Implementation of CrR 3.1, CrRLJ 3.1 and JuCR 9.2,* Washington Supreme Court Order No. 25700-A-1644, filed June 9, 2025. Available at: https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%2025700-A-1644.pdf

[7] "In 1973, these estimates [150 felonies, 400 misdemeanors and 200 juvenile cases] were adopted and incorporated into a report by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). …. NAC standards have been criticized for being overly broad. They fail to differentiate among types of felonies, giving equal weight to a burglary, a sexual assault, and a homicide. They have also been criticized for being developed without a defensible methodology. Additionally, there has always been concern that the NAC standards are simply too high. As early as 1978, a study noted that 'one is hard put to imagine carefully investigating every case, as is required by [prevailing standards of criminal defense practice], if the lawyers are handling 150 felony cases per year, or 400 misdemeanors per year. (footnote omitted)' Even assuming that the lawyer is working 40 hours per week, 52 weeks per year on cases (2,080 hours per year), caseloads at the maximum sizes allowed under the NAC standards would permit an average of only 13.9 hours to be spent by that attorney on each felony case or 5.2 hours on each misdemeanor case." National Public Defense Workload Study, Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, July 27, 2023, at p. viii. Available at: https://www.rand.org/pubs/research_reports/RRA2559-1.html

[8] ABA Formal Opinion 06-441 (2006), at p. 4. Available at: https://www.americanbar.org/products/ecd/chapter/220003/ and https://www.in.gov/ccaa/files/ABA_Ethics06-441.pdf.

> If a lawyer believes that her workload is such that she is unable to meet the basic ethical obligations required of her in the representation of a client, she must not continue the representation of that client or, if the representation has not yet begun, she must decline the representation (footnote omitted, referencing Model Rule 1.16(a)).”[9]

Appendix to this Guidance provides local jurisdictions with **recommendations and options to reduce public defense workloads.**

Additional Caseload Standards Relevant to Excessive Workloads

The **Supreme Court Standards** (Court Rule *Standards,* *https://www.courts.wa.gov/court_rules/pdf/CrR/SUP_CrR_03_01_Standards.pdf*), include the following provisions, in addition to the numeric maximum caseloads.

> Stds. 3.1 and. The contract or other employment agreement shall specify the types of cases for which representation shall be provided and the maximum number [and types] of cases which each attorney shall be expected to handle.
>
> Stds. 3.2 The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.

The **WSBA Standards** are similar:

3 .A. The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number and types of cases in which each attorney shall be expected to provide quality representation.

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

[Citing, ABA Eight Guidelines of Public Defense Related to Excessive Workloads, Guidelines 1, 4,

[9] *Id.*

5, 6, 7, 8 (August 2009).]

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

Additional relevant standards include Court Rule Stds. 3.3 and WSBA Standards 2 Duties and Responsibilities of Counsel, 3.C. Open Caseload, 3.D. Fully Supported, Full-Time Public Defense Attorneys, 3.E. Mix of Case Types and Private Practice, 3.F. Attorney Experience, and 3.G. Impact of Public Defense Time Other Than Case Appointments.

Relevant Rules of Professional Conduct (RPCs)[10]

RPC 1.1 COMPETENCE

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RPC 1.3 DILIGENCE

> A lawyer shall act with reasonable diligence and promptness in representing a client.

RPC 1.4 COMMUNICATION[11]

RPC 1.16 DECLINING OR TERMINATING REPRESENTATION

> (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall, notwithstanding RCW 2.44.040, withdraw from the representation of a client if:
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> (1) the representation will result in violation of the Rules of Professional Conduct or other law; ….

RPC 5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

> (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to

[10] Washington State Court Rules: Rules of Professional Conduct. Available at: https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=RPC

[11] Available at:: https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_04_00.pdf

ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RPC 6.2 ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;…

Comment:
…

(2) For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest,…

WSBA, ABA and Oregon State Bar Advisory Opinions Re: Excessive Caseloads

WSBA Advisory Opinion 1336 (1990) states:

… the Committee was of the opinion that RPCs 1.1, 1.3 and 6.2 **require** that a lawyer not accept case assignments that exceed the lawyer's ability to provide effective representation. The Committee was further of the opinion that the supervisor of a public defender office is **obligated** by those rules, as well as RPC 5.1(a) and (c)(1), to refuse to accept cases that would exceed the office's ability to provide effective representation (emphasis added).[12]

Similarly, WSBA Advisory Opinion 1713 (1997) (addressing appointed appellate counsel's ethical duties) provides:

[12] WSBA Advisory Opinion 1336 (1990). Available at: https://ao.wsba.org/print.aspx?ID=445

> If the problem with complying the (sic) RPC 1.2, 1.3, and 1.4 is the volume of cases the attorney accepts, then such cases should be declined. … If the attorney cannot comply with RPC 1.2, then the attorney should not take the case. See ABA Committee on Ethics and Professional Responsibility and Formal Opinion 347 (1981) [addressing civil Legal Aid Services attorneys.][13]

By letter dated June 23, 2025, the WSBA Executive Director has requested the Committee on Professional Ethics (CPE) review the 1990 advisory opinion and issue additional guidance, as appropriate, in light of the WSBA Standards for Indigent Defense Services and the June 9, 2025, Washington Supreme Court order.[14]

ABA Formal Opinion 06-441 (2006)

ABA Formal Opinion 06-441states, in part, with respect to **individual public defense attorneys**:

> 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.[15]
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> Model Rules of Professional Conduct 1.1, 1.2(a), 1.3, and 1.4 require lawyers to provide competent representation, abide by certain client decisions, exercise diligence, and communicate with the client concerning the subject of representation (footnote omitted). These obligations include, but are not limited to, the responsibilities to keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; communicate effectively on behalf of and with clients; control workload so each matter can be handled competently; and, if a lawyer is not experienced with or knowledgeable about a specific area of law, either associate with counsel who is knowledgeable in the area or educate herself about the area. The Rules provide no exception for lawyers who represent indigent persons charged with crimes (footnote omitted).[16]

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[13] WSBA Advisory Opinion 1713 (1997). Available at: https://ao.wsba.org/print.aspx?ID=787

[14] Specifically, the CPE is asked to address the following questions:

1. Which Washington RPC are implicated by excessive caseloads and how are them implicated?
2. What ethical obligations do public defense attorneys and administrators have with respect to the caseload standards in WSBA's Standards for Indigent Defense Services?
3. What ethical obligations do public defense attorneys and administrator have with respect to the caseload standards as adopted by the Washington Supreme Court in its June 9, 2025 order?
4. What responsibilities does a lawyer have if the lawyer believes their caseload is excessive?
5. When assigning cases to public defense attorneys, what are the ethical responsibilities of supervisors and administrators? If an attorney communicates to their supervisor that they cannot fulfill their ethical responsibilities under their caseload, what steps must a supervisor take? What ethical considerations are implicated if an employer seeks to discipline an attorney for refusing to accept additional clients?

[15] ABA Formal Opinion 06-441, supra, at p. 1.

[16] *Id.*, at p. 3.

The opinion concludes, in part, as to individual attorneys:

> The obligations of competence, diligence, and communication under the Rules apply equally to every lawyer. All lawyers, including public defenders, have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently. If a lawyer's workload is such that the lawyer is unable to provide competent and diligent representation to existing or potential clients, the lawyer should not accept new clients. If the problem of an excessive workload cannot be resolved through the non-acceptance of new clients or by other available measures, the lawyer should move to withdraw as counsel in existing cases to the extent necessary to bring the workload down to a manageable level, while at all times attempting to limit the prejudice to any client from whose case the lawyer has withdrawn.[17]

The opinion also recognizes the responsibility of **lawyer supervisors, including heads of public defender offices and those within such offices having intermediate managerial responsibilities**, by stating that they all, consistent with RPC 5.1:

> … must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by the individual lawyers.[18]

The opinion concludes that "[i]f a supervisor knows that a subordinate's workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action, the supervisor is responsible for the subordinate's violation of the Rules of Professional Conduct (footnotes omitted)."[19]

With respect to the courts' responsibilities with respect to public defense attorneys and excessive workloads, ABA President Reginald Turner stated the following, in announcing one of seven joint reviews of state public defense attorney workloads showing systemic deficiencies exist:

> Once again, our study of a state public defender system demonstrates that public defenders are daily put in grave jeopardy of violating their professional responsibility to provide competent counsel, …. When this occurs, ABA policy and well-established legal principles support public defenders in assertively seeking relief from excessive workloads. Courts, in turn, should provide relief when excessive caseloads threaten to lead to representation lacking in quality or to the breach of professional obligations. *To do otherwise, not only harms individual defendants but our entire justice system* (emphasis added).[20]

Oregon State Bar Formal Opinion No. 2007-178 (2007) (2016 Revision)

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[17] *Id*., at p. 9.
[18] *Id*., at p. 1.
[19] *Id*., at p. 8, 9.
[20] ABA SCLAID finds resource deficiencies in its workload study of New Mexico public defense system, January 14, 2022. Available at: https://www.americanbar.org/news/abanews/aba-news-archives/2022/01/aba-sclaid-finds-deficiencies-in-its-workload-study-of-new-mexic/

Oregon State Bar Formal Opinion No. 2007-178 is similar to ABA Formal Opinion 06-441. Of note, however, it adds the following with respect to the **responsibilities of lawyers who are involved in the process of contracting** for the provision of public defense services.

> As noted, the ABA opinion does not address the ethical responsibilities of lawyers involved in the process of contracting for the provision of public defense services. For the reasons discussed above, Lawyer *C*, who heads a public defender office, and Lawyer *E*, who negotiates the contract for a consortium, may be responsible for the misconduct of other lawyers if they contract for caseloads knowing that they do not have adequate lawyer and other support staff to provide competent representation to each client. Likewise, managers who knowingly 'induce' other lawyers to violate the RPCs by knowingly contracting for excessive caseloads may violate Oregon RPC 8.4(a)(1), which makes it 'professional misconduct for a lawyer to … violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.'[21]

Relevant Oregon and Washington RPC RULE 8.4 MISCONDUCT provisions compare as follows:

Oregon RPC 8.4 MISCONDUCT[22]
(a) It is professional misconduct for a lawyer to:
(1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; …

Washington RPC 8.4 MISCONDUCT[23]
It is professional misconduct for a lawyer to:
(a) violate **or attempt to** violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; …

WSBA Statements on Public Defense Attorney Workloads

On January 13, 2022, the WSBA Board of Governors adopted the *Council on Public Defense Statement on Workloads.*[24] Citing CrR 3.1 Stds., the BOG stated:

> When defenders' workloads exceed their ability to provide effective representation, the attorneys should not be given, and should not accept, new clients until their workload has been reduced to a level that permits providing quality representation.

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[21] Oregon State Bar Formal Opinion No 2007-178 (2007) (2016 Revision), at p. 7. Available at: https://www.osbar.org/_docs/ethics/2007-178.pdf
[22] Oregon Rules of Professional Conduct (May 1, 2025), at p. 29. Available at: https://www.osbar.org/_docs/rulesregs/orpc.pdf
[23] Washington State Court Rules: Rules of Professional Conduct. Available at: https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=RPC
[24] Available at: https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/council-on-public-defense-statement-on-workloads.pdf?sfvrsn=7c0616f1_0

The *Statement on Workloads* concludes:

> When workload exceeds an attorney's capacity, then public defense attorneys and offices can request funding to hire additional attorneys, decline appointment to new cases, and work with others in the legal system to divert and/or reduce the number of cases in the system.

On July 21, 2022, the WSBA Board of Governors issued *Statement: Public Defense Lawyers Should Seek Relief from Excessive Workloads*[25], concluding:

> Washington defenders and assigned counsel can and should seek relief from excessive workloads, declining to accept new appointments, working with others to develop and increase diversion programs, and seeking new or improved resources.

The WSBA Council on Public Defense issued an Advisory Notice on Implementation of the Standards During the Coronavirus Emergency and stated in part:

> If an attorney determines that they are not able to provide quality representation within the typical caseload, they should be presumed to be correct, and the caseload should be adjusted.[26]

Additional Resources

ABA Ten Principles of a Public Defense Delivery System

The American Bar Association adopted revised Ten Principles of a Public Defense Delivery System in August 2023. Principle 3: Control of Workloads states:

> The workloads of Public Defense Providers should be regularly monitored and controlled to ensure effective and competent representation. Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations. Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology. Jurisdiction-specific workload standards may be employed when developed appropriately, but national workload standards should never be exceeded. If workloads become excessive, Public Defense Providers are obligated to take steps necessary to address excessive workload, which can include notifying the court or other appointing authority that the Provider is unavailable to

[25] Available at: https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/council-on-public-defense-statement-statement-public-defense-lawyers-should-seek-relief-from-excessive-workloads2d3d6fbd-73c1-46ee-8aec-0c2ff2006de5.pdf?Status=Master&sfvrsn=60f013f1_5

[26] Advisory Notice by WSBA Council on Public Defense Implementation of the Standards for Indigent Defense During the Coronavirus Emergency, available at https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/2021-5-25-responding-to-the-emergency-caused-by-pandemic-driven-increased-public-defense-workloads.pdf?sfvrsn=950e14f1_0.

accept additional appointments, and if necessary, seeking to withdraw from current cases. (footnotes omitted).[27]

ABA Eight Guidelines of Public Defense Related to Excessive Caseloads[28]

The ABA Eight Guidelines of Public Defense Related to Excessive Caseloads begins: "The Public Defense Provider avoids excessive lawyer workloads and the adverse impact that such workloads have on providing quality legal representation to all clients."[29]

The Guidelines set out a series of steps for public defense counsel to determine whether their workload is excessive and if it is, a series of steps to address that administratively before going to court. The steps include: "Urging prosecutors not to initiate criminal prosecutions when civil remedies are adequate to address conduct and public safety does not require prosecution."[30]

NAPD Policy Statement on Workloads

The National Association for Public Defense issued a statement, *NAPD Policy Statement on Workloads*,[31] that concludes:

> Lawyers must have reasonable workloads which enable them to provide conflict-free representation of each of their clients consistent with their duty to furnish competent and effective assistance of counsel pursuant to rules of professional conduct and prevailing professional norms.
>
> To provide such representation requires initial and ongoing training, adequate support services, including access to investigators, social workers, paralegals, and expert witnesses, as well as ongoing supervision of the representation provided.
>
> When lawyers and/or providers determine that workloads are preventing or are about to prevent the delivery of defense services consistent with ethical and constitutional duties to clients, the lawyers and/or provider should be authorized to refer cases to another public defense provider participating in the jurisdiction's plan for representation. Alternatively, lawyers and/or the provider must take appropriate steps pursuant to their state's rules of professional conduct either to refuse additional cases and/or seek to withdraw from existing cases.[32]

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[27] ABA Ten Principles of a Public Defense Delivery System, SCLAID, August 2023. Available at: https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-ten-princ-pd-web.pdf and

[28] ABA Eight Guidelines of Public Defense Related to Excessive Workloads, August 2009, Available at: https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.pdf

[29] *Id.*, at p. 4.

[30] Id., at p. 9.

[31] *NAPD Policy Statement on Workloads,* February 23, 2024. Available at: https://publicdefenders.us/app/uploads/2024/03/NAPD-Policy-Statement-on-Workloads-2024.pdf.

[32] *Id.*, at p. 14.

Washington Caselaw

In Re the Detention of M.E. and R.S., Washington Supreme Court 103252-8 (consolidated with 103312-5), argued November 13, 2025, involving issue of court ordering defender to take more civil commitment cases after public defender declared it had reached capacity.

City of Mount Vernon v. Weston, 68 Wn. App. 411, 415, 844 P.2d 438, 440 (1992).
The Washington Court of Appeals found that the trial court abused its discretion in not allowing defenders with excessive caseloads to withdraw and failing to appoint appellate counsel on motions for discretionary review in the appellate court. The Court did not address the constitutional issue but did rely on standards. The evidence was undisputed, however, that the public defenders were operating with caseload levels in excess of those endorsed by the ABA, by the Washington State Bar Association, and by the Skagit County Code.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1131–32, 1133 (W.D. Wash. 2013).
The U.S. District Court for Western Washington found that two cities had systemic flaws in their public defense services, pointing out the excessive caseload of the contracted counsel:

> Although counsel are appointed in a timely manner, the sheer number of cases has compelled the public defenders to adopt case management practices that result in most defendants going to court for the first time—and sometimes accepting a plea bargain—never having had the opportunity to meet with their attorneys in a confidential setting. The attorney represents the client in name only in these circumstances, having no idea what the client's goals are, whether there are any defenses or mitigating circumstances that require investigation, or whether special considerations regarding immigration status, mental or physical conditions, or criminal history exist. Such perfunctory "representation" does not satisfy the Sixth Amendment….
>
> A system that makes it impossible for appointed counsel to provide the sort of assistance required by the Sixth Amendment works irreparable harm: the lack of an actual representational relationship and/or adversarial testing injures both the indigent defendant and the criminal justice system as a whole.

The court required as the first remedy that the cities and its public defenders within seven days read the Washington Defender Association Standards for Public Defense Standards with Commentary. (http://www.defensenet.org/about-wda/standards). 989 F. Supp. 2d 1122, 1134.

State v. Graham, 194 Wn.2d 965, 968, 454 P.3d 114 (2019).

In 2019, the Washington Supreme Court held that a lower court had abused its discretion when it sanctioned a public defender for seeking a time accommodation that the defender determined was

necessary to comply with "his constitutional obligations and the Standards of Indigent Defense."[33]. The Court credited the defense attorney's assessment of his own caseload and recognized that:

> …where counsel needs an extension of time to fulfill his obligations of representation, it is appropriate to grant an extension without the imposition of sanctions. Recent cases have highlighted the constitutional importance of maintaining proper caseloads in indigent defense cases. See, e.g., Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013); State v. A.N.J., 168 Wn.2d 91, 102, 225 P.3d 956 (2010).[34]

The Court emphasized the importance of adhering to the Standards: "The Standards for Indigent Defense provide that the caseload of public defenders must allow each lawyer to give each client the time and effort necessary to ensure effective representation."[35]

Other States' Caselaw

The **Alaska Supreme Court** ruled that lack of capacity in the defender office can amount to a conflict of interest between clients and when the defender agency has a conflict because of its lack of capacity, the secondary office must be assigned to take the case. The Court wrote:

> A situation in which an attorney is overloaded with cases compromises the attorney's ability to comply with relevant rules of professional conduct and may deny a defendant effective assistance of counsel.
> **Office of Pub. Advocacy v. Superior Court, First Judicial Dist.**, 566 P.3d 235, 249 (Alaska 2025).

California recognizes the public defender's ability to declare unavailability to accept more cases.

> When a public defender reels under a staggering workload, he need not animate the competitive instinct of a trial judge by resistance to or defiance of his assignment orders to the public defender.… The public defender should proceed to place the situation before the judge, who upon a satisfactory showing can relieve him, and order the employment of private counsel (Pen. Code, s 987a) at public expense.

Ligda v. Superior Court, 5 Cal. App. 3d 811, 827–28, 85 Cal. Rptr. 744, 754 (Cal. Ct. App. 1970).

Two law professors recently wrote an op-ed article supporting the San Francisco Defender's declaration of partial unavailability. See, "San Francisco public defender made the right call to limit defender caseloads." Daily Journal, June 4, 2025, available at https://dailyjournal.com/article/385960-san-francisco-public-defender-made-the-right-call-to-limit-defender-caseloads.

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[33] Id., at 968.
[34] *Id*., at 970.
[35] *Id*, at 969.

The **Mohave County, Arizona,** public defender successfully moved to stop taking cases because of excessive caseload. Following an evidentiary hearing, the trial court judge ruled in favor of the public defender, permitting the office to withdraw from 39 cases and further declaring that the court would grant future motions to withdraw "until the court is convinced that the reasons for doing so no longer exist."[36]

The **Missouri Supreme Court** recognized that there must be limits to a defender's workload. The Court wrote: "…the Sixth Amendment right to counsel is a right to effective and competent counsel, not just a pro forma appointment whereby the defendant has counsel in name only." **State ex rel. Missouri Pub. Def. Comm'n v. Waters,** 370 S.W.3d 592, 597 (Mo. 2012).

The Missouri Court, addressing what should happen when defenders reach capacity, wrote: "…trial judges have inherent authority, and an inherent responsibility, to manage their dockets in a way that respects the rights of the defendant, the public and the State and that respects the obligation of public defenders to comply with the rules governing their representation." *Id.* At 598. The Court urged that the court meet with defenders, prosecutors, and the bar association to develop strategies to avoid the defender having to declare unavailability. *Id.* at 611 *et. seq.*

The Court recognized "counsel's ethical obligation not to accept work that counsel does not believe he or she can perform competently." Waters, 370 S.W.3d 592, 607.

The Court wrote that counsel violates ethical rules if s/he accepts a case that results in a caseload so high that it impairs the ability to provide competent representation, to act with reasonable diligence and to keep the client reasonably informed, citing Rules 4–1.1, 4–1.3 and 4–1.4.

The Court wrote:

> Further, these duties apply not just in relation to new clients, but also to existing clients, so that an attorney's acceptance of a new case violates Rule 4–1.7 if it compromises her ability to continue to provide effective assistance to her other clients. In relevant part, Rule 4–1.7 provides that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest," which exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." Rule 4–1.7(a)(2). *Id.* at 607–08.

The Court added:

> This Court holds and reaffirms that the Sixth Amendment and this Court's ethics rules require that a court consider the issue of counsel's competency, and that counsel consider whether

[36] Securing Reasonable Caseloads, Ethics and Law in Public Defense, Norman Lefstein, Executive Summary and Recommendations (2012), at p. 24. Available at: https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads_supplement.pdf.

accepting an appointment will cause counsel to violate the Sixth Amendment and ethical rules, before determining whether to accept or challenge an appointment. *Id.* at 609.

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Appendix: Recommendations and Options to Reduce Public Defense Workloads

Jurisdictions can best ensure public defense attorneys, their supervisors, directors and administrators comply with their responsibilities under federal and state constitutions, Rules of Professional Conduct, Court Rules (including the Washington Supreme Court Standards for Indigent Defense and related Court Orders), mandatory Court Rule quarterly attorney certifications, and the WSBA Standards for Indigent Defense Services by:

Adopting revised standards for the delivery of public defense services per RCW 10.101.030[37];

Reviewing and adopting systemic options for adult criminal and juvenile court offender, civil commitment, and dependency cases that decrease all systems' demands and positively affect public defense workloads, including:

- Contract with additional attorneys for conflict or overflow case assignments.
- Charge low level, non-violent adult felony offenses as gross misdemeanors.
- Charge low level, non-violent misdemeanor and gross misdemeanor offenses as infractions.
- Increase the use of pre-filing diversion.[38]
- Enhance prosecutorial review of cases filed by law enforcement officers, to minimize the number of cases that might otherwise result in early dismissal.
- Expand diversion and therapeutic court alternatives.
- Reduce status hearings for pre-trial and compliance hearings.
- Allow counsel to waive their client's appearances for non-essential hearings.
- Minimize the number of in-custody defendants, respondents, and probationers.
- Reduce the issuance of warrants for failures to appear and allow defendants and youth to appear for hearings remotely.
- Reserve show cause and probation review filings and hearings for the most serious allegations and minimize the number of cases on such filings.

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[37] RCW 10.101.030 Standards.
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.

[38] See discussion of LEAD diversion program at Purpose, Dignity, Action web page at https://wearepda.org/programs/seattle-king-county-lead/. See also, NAPD Statement, **Alternatives to Traditional Prosecution Can Reduce Defender Workload, Save Money, and Reduce Recidivism,** available at https://publicdefenders.us/resources/statement-on-reducing-demand/

- Encourage courts to accept ex-parte orders with electronic signatures in all non-testimonial matters.
- Request courts to initiate or expand remote hearings.
- Consult with the Washington State Office of Public Defense and experienced practitioners on additional methods used by other jurisdictions.