

# WASHINGTON STATE BAR ASSOCIATION

Washington State Bar Association  
**REQUEST FOR PROPOSAL (RFP) FOR WASHINGTON APPELLATE PUBLIC DEFENSE WORKLOAD STUDY**

## GENERAL INFORMATION

Date Advertised and Publicly Available: September 20, 2024

Proposal Due Date: November 1, 2024

### **Email Proposals to:**

Washington State Bar Association

Attention: Catherine Schur

Email: [catherines@wsba.org](mailto:catherines@wsba.org)

Please direct questions regarding this RFP to Catherine Schur, [catherines@wsba.org](mailto:catherines@wsba.org).

## About the Washington State Bar Association

The Washington State Bar Association (WSBA) operates under the delegated authority of the Washington Supreme Court and exercises a governmental function authorized by the Washington Supreme Court to license and regulate the state's nearly 40,000 legal professionals, including lawyers, limited practice officers, and limited license legal technicians. The WSBA both regulates legal professionals under the authority of the Court and serves its members as a professional association — all without public funding. In its regulatory capacity, the WSBA administers the [bar admission process](#), including the bar exam; provides record-keeping and [licensing functions](#); and administers the [lawyer discipline system](#). In its professional service capacity, the WSBA provides [continuing legal education](#) for legal professionals, in addition to numerous other educational and member-service activities.

The WSBA has established the [Council on Public Defense](#), which is charged with improving the delivery of public defense services in Washington and developing guidelines for attorneys providing public defense services, among other responsibilities. The Council on Public Defense recommends revisions to the WSBA [Standards for Indigent Defense Services](#) as appropriate. Most recently, the Council on Public Defense has created an Appellate Standards Subcommittee to review caseload standards for appellate attorneys providing public defense representation.

## Our Mission

The WSBA's mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice. The Council on Public Defense unites representatives of the bar, private and public criminal defense attorneys, current and former prosecutors, the bench, elected officials, and the public to address new and recurring challenges that impact the public defense system.

The WSBA is committed to diversity and inclusion in our organization and throughout the legal profession.

## Project Description

The WSBA is requesting proposals from qualified vendors to assist WSBA in determining appropriate workload standards for Washington public defense providers of indigent legal representation in criminal and certain civil appeals for which a statutory right to counsel applies.

WSBA seeks to procure the services of a vendor to conduct a study which can be used as a basis for updating numerical caseload/workload standards for attorneys providing public defense representation in criminal and civil appeals in Washington courts. Funding for the study will be provided by the Washington State Office of Public Defense (OPD). WSBA will oversee the study and the selected vendor will work in consultation with WSBA at all stages of the study, including the conduct of the study itself. The study must result in the production of recommended caseload standards for indigent defense providers.

Qualified vendors may include, but are not limited to, private sector firms, not-for-profit organizations, and public or private institutions such as universities or colleges with expertise in conducting research similar to the research described in Sections 4 and 5 of this RFP.

This RFP outlines the terms and conditions, and all applicable information required for submission of a proposal. Proposers should pay strict attention to the proposal submission deadline to prevent disqualification. To ensure compliance with these requirements and to prevent possible disqualification, Proposers should follow the format and instructions contained in this document.

## Key Dates

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

**Table 1. Timeline for This Request for Proposals\***

|                                       |  |
|---------------------------------------|--|
| <b>RFP Release Date:</b>              | September 20, 2024   |
| <b>Questions Due By:</b>              | October 4, 2024  |
| <b>Questions Answered By:</b>         | October 11, 2024   |
| <b>Proposal Due Date:</b>             | November 1, 2024   |
| <b>Award Announcement:</b>            | November 22, 2024  |
| <b>Tentative Contract Start Date:</b> | TBD by the WSBA and Bidder, but no later than February 1, 2025 |

\*WSBA reserves the right to change any of the dates stated in this RFP. If such change occurs, WSBA will notify all bidders who received the RFP.

## 1. Background

The WSBA has created [Standards for Indigent Defense Services](#), which detail the minimum requirements for legal representation for clients represented by a public defense attorney. These standards include caseload requirements for public defense attorneys, including caseload limits for attorneys representing indigent clients in appeals. The Washington Supreme Court has adopted portions of the WSBA Standards, including attorney caseload requirements, in court rules.<sup>1</sup> The WSBA recently revisited caseloads for public defenders representing individuals in trial courts, approving new standards in March 2024. Those revisions were based primarily on recent national studies addressing trial caseloads for public defenders. However, because there is no recent caseload study either specific to Washington state or nationally addressing appellate public defense caseloads, the WSBA reserved revising the existing appellate public defense caseload standards for a later date.

In 1991, the WSBA adopted an appellate caseload standard of 25 appeals per attorney per year, based on standards developed in 1973. In 2007, the WSBA increased the maximum caseload by 44%, to 36 appeals per year, assuming an average 350 transcript pages per case. If an attorney's cases exceed the average 350 transcript page average, caseloads are adjusted accordingly, as described in more detail below. The increase to 36 appeals was not based upon any study or data suggesting it was manageable or that it would allow quality representation. On September 7, 2024, the WSBA reimplemented the 25 case maximum as an interim standard pending the outcome of the workload study contemplated in this RFP.

Funding for appellate public defense in Washington is provided by the Office of Public Defense (OPD). OPD does not provide any direct representation, but rather contracts with two mid-size public defense firms, one non-profit and one for-profit, and a number of small and solo firms to provide client representation. The two mid-size offices handle approximately 70% of Washington's public defense appeals. Appellate public defenders handle appeals of felony convictions, parental rights cases, civil

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<sup>1</sup> [CrR 3.1](#), [CrRLJ 3.1](#), [JuCR 9.2](#), and [CCR 2.1](#).

commitment, and certain other case types in which there is either a constitutional or statutory right to appeal. While the two mid-size firms handle all case types, not all of the smaller contractors do.

For the fiscal years of 2020 through 2024, excluding the outlier year of 2021, there were an average of 986 appeals each year.

The current public defender appellate workloads depend on obsolete case weights. An updated and accurate workload study is necessary to best measure capacity and effectively represent clients. OPD contract attorneys are motivated to participate in an accurate workload study. OPD keeps careful assignment data and has the capacity to collect necessary data.

The WSBA and OPD believe that a workload study setting forth appellate indigent defense caseload standards is a critical step to best provide quality legal representation. The results of the study will be used to inform a caseload standard for appellate-level indigent defense attorneys in Washington, to measure the proper workloads for public defenders, and to inform OPD budget and legislative strategy.

## **2. OPD Workloads**

Until September 7, 2024, the WSBA appellate caseload standard was 36 appeals a year based on an average transcript length of 350 pages. As noted above, that standard has been revised to 25 appeals as an interim standard until a final caseload can be determined based on the results of a workload study. The standard suggests the caseload be adjusted for less-experienced attorneys or if the average transcript size exceeds 350 pages. OPD has adopted a case-weighting system for its contractors that seeks to account for transcript size. OPD awards an additional case credit for each assignment and additional case credit for every 800 pages of transcripts. OPD arrived at that threshold based on average transcript length of appointed appeals and a regression analysis. That case-weighting system does not account for attorney experience, record size other than transcripts, case complexity, or case tasks. From fiscal year 2020 through 2024, again excluding 2021, an average 290 case credit adjustments were made based on transcript length.

These case weights have supplied a useful benchmark and OPD contractors are not required to handle more appeals per attorneys than these case weights. However, as appellate practice has grown more complex and the shortcomings in the system have become more pronounced, this case weighting system has proved increasingly obsolete.

A number of examples illustrate the obsolescence of the standard and case-weighting system. First, the existing case weighting system never accounted for file length, other than transcripts, or the size or number of exhibits. Thus, transcript length has not been an accurate predictor of needed time in appeals of certain document heavy case types, such as parental rights and commitment trials, which involve voluminous and substantial trial pleadings and exhibits. That problem is becoming true in other case types with the increased number of video and body-camera exhibits. Second, while the standard suggests adjustments based on attorney experience, they do not require it and do not specify how that should be done. Third, the current standard is based on an average of all OPD assigned cases and does not account for variation in time necessary to handle certain case types. Fourth, the existing standard and case-weighting system are not based on an evaluation of the time required for different case tasks, such as the filing of reply briefs or petitions for review before the supreme court. Finally, the standard and case-weighting system does not account for non-case tasks that appellate attorneys are often called on to perform, such as consulting with and advising trial defenders or providing training.

### **3. Available Caseload Data**

Through case management systems, the following data is currently available for OPD appellate attorneys:

- Number of appeals per attorney per year
- Attorney caseload weighted by transcript length
- Events per appeal: Court of Appeals and Washington Supreme Court briefs, number of deadline extensions, etc.
- Number of transcript pages per case
- Attorney time entries, including activity category (research and writing, client communication, oral argument preparation, etc.)

### **4. Previous Caseload Studies**

Studies in other states including the Michigan appellate level system, New Mexico, Texas, and Indiana, and a 2023 National Public Defense Workload Study have recently addressed the best ways to develop caseload standards. These studies were based on empirical research, took account of their unique state-level legal frameworks, and drew upon the expertise of local defenders and other stakeholders. While the details of any particular study may differ from what is required in this RFP, they may provide bidders with guidance when completing the study defined in this RFP.

These studies often involve two phases. The first phase includes data review, timekeeping, and surveys, where defenders track in detail their work, which allows the researchers to quantify how much time defenders put into specified activities in different classes of case. In other words, this first phase answers the question, “*What is?*” The second phase convenes a meeting of experts and key stakeholders, commonly called a Delphi Panel, which is tasked with developing recommendations for the final caseload standards, and, pursuant to Delphi principles, participates in a series of iterative discussions whereby meeting members are repeatedly polled until they reach consensus on ideal caseload limits. The second phase answers the question, “*What should be?*”

### **5. Expectations of Current Study**

Bidders on this RFP may plan a study drawing on some version of the two phases mentioned above, although WSBA is also interested in new and innovative approaches. Bidders should be aware that while the studies performed by other states or prior to the issuance of this RFP may provide insight into the area being studied or the methodologies used, they should not unduly direct or influence the conduct of the study to be completed as a result of this procurement. The selected bidder is to conduct a new, empirically-based, methodologically sound, and objective study of appellate caseload/workload standards in Washington state.

Bidders will be expected to identify a strategy in their proposal for selecting a representative sample of public defenders from OPD’s contractors to conduct the caseload study. Bidders should account for the fact that public defenders in Washington are located across the state and may not be regularly available for in-person meetings and participation.

Through the study, bidders will be expected to produce the following:

- (a) The appropriate numerical caseload/workload standards for public defenders assigned to appeals.

- (b) Recommendations for the means by which those standards will be implemented, monitored, and enforced on an ongoing basis.
- (c) A template by which appellate public defense administrators can determine the number of additional attorneys as well as the amount of other necessary in-kind resources such as support staff and investigators necessary to comply with the caseload/workload standards.

In doing so, bidders will be expected to develop, in collaboration with WSBA, a complete list of all relevant categories of cases that may be handled by the attorneys in question.

Bidders should be prepared to assess attorney time required in activities including the following:

- (a) Client communication and meetings;
- (b) Initial record review and legal research;
- (c) Factual investigation;
- (d) Expert research and consultation;
- (d) Court of Appeals arguments;
- (e) Supreme Court practice;
- (f) Administrative tasks, especially for contract attorneys in small firms, who generally lack support staff;
- (g) Non-case-specific tasks such as traveling, wait time, training, supervision, or general research.

As part of the award process, the proposer and WSBA will establish a mutually agreed upon final budget and work plan, which will become the contract deliverables.

### **Proposal Requirements**

All proposals must be single-spaced, with one-inch margins, and use a standard 12-point font. The proposal shall include an abstract that summarizes the project in 500 words or less. The “Proposal Narrative” shall not be more than 20 pages, and must include the capabilities of the responding organization and study plan. All proposals must also include a full budget and a budget narrative that describes every category of expenses listed in the budget. *Please see Appendix A for a detailed suggested proposal format.*

Regardless of whether you use the suggested proposal format, your proposal must include the following information:

1. Describe the team that will be assigned to this project, including what each person’s role would be and a brief summary of each person’s qualifications.
2. Outline your overall process/scope for this project in detail, and outline a time frame for completion.
3. Please provide a detailed budget for this project. If your price excludes certain fees or charges, you must provide a detailed list of excluded fees with a complete explanation of the nature of those fees.
4. Describe in detail the security measures you take to protect your data, any data collected as part of the proposed study, and any data of ours to which you may have access, including cybersecurity measures and anonymization of study participants’ personal information. As a component of the Washington courts, WSBA and OPD are subject to public records requests.

5. If you have previously completed a study similar to one you are proposing in response to this RFP, please provide a brief description of that project and a copy of the final project report or other deliverable.

### Proposal Guidelines and Timeline

- *Deadline*

Proposals are due in the WSBA offices no later than 5 p.m. PT on November 1, 2024. Deliver proposals to [catherines@wsba.org](mailto:catherines@wsba.org). Please indicate in the subject line: **RFP submission for Washington Appellate Workload Study.**

- *Questions*

All questions regarding this request for proposal must be made in writing by October 4, 2024, and sent by email to the attention of Catherine Schur at the following address: [catherines@wsba.org](mailto:catherines@wsba.org). All correspondences should use the subject line: Washington Appellate Workload RFP. Answers to all questions will be publicly posted on the WSBA website at <https://www.wsba.org/study-RFP> by the close of business on October 11, 2024.

- *Selection Criteria and Information*

- Priority will be given to applicants who provide a sound and convincing argument for their choice of methodology. WSBA will give particular weight to bidders with a demonstrated capacity to successfully implement caseload standards and conduct similar studies.
  - You will be notified within ten days if you are selected for an interview at our office with our evaluation team.
  - Selection will occur as soon as practicable.
  - All other candidates will be notified after selection of a contractor and successful contract negotiation.
- The goal for implementation of the caseload standards resulting from the study is July 1, 2025, but final deliverables and launch dates will be negotiated with the chosen vendor.
  - All submissions will become Bar Records, *see* Washington General Rule (GR) 12.4, and therefore available to the public upon request to the WSBA, unless exempted from public disclosure by a specific provision of law. If the WSBA receives a request for records related to your submission and believes they must be disclosed, you will be notified prior to release and given an opportunity to object to disclosure under GR 12.4(h) if you would like to do so.
  - **Submission of a proposal meeting the requirements in this RFP does not create a binding agreement. The WSBA will negotiate a contract with the selected candidate, if any.**
  - The WSBA is not liable for any cost incurred by the prospective contractors prior to selection of the RFP and implementation of a contract.
  - The WSBA reserves the right to reopen the RFP process if it does not identify a suitable candidate or if the WSBA and the selected candidate are unable to agree on contract terms. The WSBA may also decide not to select any candidate as a result of this RFP.

## **Appendix A: Suggested Proposal Format**

### **I. PROJECT SUMMARY**

Please include:

1. Identification of the entity requesting funds.
2. Contact person, telephone, and email for this proposal.
3. Fiscal intermediary name and address (identify the department and/or individual responsible for fiscal reporting for this project).
4. Amount of funding requested.
5. A 500-word abstract of the proposed project.

### **II. PROPOSAL NARRATIVE**

#### **A. Plan of action**

Please answer the following questions about how you would conduct the proposed study. Bidders will be evaluated on the information they provide.

#### **Description of the study**

Describe the process, from start to finish, that you intend to follow in the development of weighted caseload standards, including:

1. An overview of the whole process of the study, including a detailed timeline.
2. Description of strategic approach to selecting participants for the study.
3. How will "quality" representation be conceptualized and operationalized in the study?
4. How would you assess the present caseloads/workloads of providers, including the amounts of time and types of work dedicated to cases? Include a description of any information technology products that will be used, how they will be used, and how you will seek to assure their successful use in this study. Please include a detailed description of how you will seek buy-in from participants.
5. How would you assess the additional time and resources necessary for the providers to provide quality representation? Include a description of any information technology products that will be used, how they will be used, and how you will seek to assure their successful use in this study.
6. How would the study incorporate participation from, and be applicable to both public defenders office settings and individual contract attorneys?

#### **Accounting for non-case and non-attorney time**

7. How would the study account for tasks or activities not directly related to specific cases, such as time spent reviewing legal developments, acting as a training resource, and providing consultation to trial attorneys, and how would such tasks be reflected in the numerical caseload standards and weights?
8. How would the study consider and quantify the time required for supervision of attorney and non-attorney staff, and how would such differences be reflected in the numerical caseload standards and weights?
9. How would the study consider vacations and public holidays?
10. How would the study consider and quantify the time required not only of attorneys, but also of non-attorney support staff such as investigators, paralegals, administrators, and others, in order to meet standards, and how would such differences be reflected in the numerical caseload standards and weights?



### **Accounting for differences in caseload and service providers**

11. How would the standards be applied to contract attorneys who split their time between indigent appellate legal representation and other work?
12. How would the study account differences in criminal and non-criminal appeals?
13. How would the study account for the mix of criminal and non-criminal cases in an attorney's caseload?
14. How would the study address not only new cases, but also any backlog of cases attorneys are carrying, and how would such differences be reflected in the numerical caseload standards and weights?
15. How would the study account for representation in cases which end prior to disposition – for example because a conflict of interest is discovered, or the person elects to retain private counsel?

### **Development and application of standards**

16. How would the study use the data gathered to produce both numerical caseload/workload standards for providers of indigent legal services, and a weighting scheme for different types of cases?
17. How would those standards and weights be used to calculate the amounts of funding, additional staff (both attorney and non-attorney), in-kind resources, and additional attorneys required to meet standards?

### **B. Proposer Capability and Personnel**

Please provide qualifications and experience for the lead person(s) responsible for project implementation. Identify other members of the staff who will work on this project, as well as the role and level of involvement of outside participants in the completion of the project. If you are using sub-contractors for any other portion of the project plan, please specify their roles and responsibilities.

### **C. Budget and Cost**

Proposals will be evaluated on efficient use of funds and overall cost-effectiveness, which includes budget plans that are consistent with the proposed action plan, administrative costs, justification for each requested budget line, and cost benefit. The decision will not be based on pay rate alone; it will be an evaluation of all of the factors included in the proposal. Please be sure to address the following:

1. *Budget*: Provide a detailed budget containing reasonable and necessary costs. The budget for the proposed project must be consistent with the terms of the RFP and provide a justification for all expenses.
2. *Subcontracting*: Describe whether the proposed budget will include subcontracting with another service provider in order to complete the terms described in this RFP and, if so, provide a brief description of the purpose of the subcontract.
3. *Matching Funds*. Matching funds are not an essential component of the proposed application but will be considered if available. If matching funds are available, please provide the source, amount, and any stipulations tied to funds.
4. *Budget Justification*: Include a brief narrative for each budget line justifying the budget request and relating the requested line budget amount to the plan of action and expected results. The narrative should be mathematically sound and correspond with the information and figures provided in the Budget Form.
5. The *Budget Justification* must also describe how the proposer will monitor expenditures during the life of the project to ensure that the project stays within the budget.