



## WSBA COUNCIL ON PUBLIC DEFENSE MEETING AGENDA

November 1, 2024  
9:30am – 12:00pm

Join by Video Conference:

For video and audio: <https://wsba.zoom.us/j/86831734727?pwd=JdPRPtrj3zUwG7Vm54liXXDo85uKa5.1>

For audio only: LOCAL OPTION: (253) 215-8782 || TOLL-FREE OPTION: (888) 788-0099  
Meeting ID: 868 3173 4727 || Passcode: 892144

The purpose of the meeting is for the Council to discuss, deliberate, and take potential final action regarding the following agenda items:

5 min	<b>Welcome and Introductions</b>	Maialisa Vanyo	Discussion	
3 min	<b>October Meeting Minutes</b>	Maialisa Vanyo	Action	pp 2-4
20 min	<b>Input Needed: Draft WSBA Equity and Justice Plan</b>	Diana Singleton, DEI Council Rep TBD	Discussion	<a href="#">Draft Plan</a>
20 min	<b>OPD Budget Request and Updates</b>	Larry Jefferson, Sophia Byrd McSherry	Report and Action	pp 5-7

Regarding the letter for action, the only change is as follows and is based on updated information from OPD:

“First, the Council recommends that OPD be granted the ~~\$21.8~~17.6 million they estimate will be required to implement the family defense caseload standards: ~~\$5.5~~4.5 million in year one and ~~\$16.3~~13.1 million in year two.”

10 min	<b>Proposal to remove mandated reporting obligation for law school clinics</b>	Paul Holland	Discussion and Action	pp 8-9
30 min	<b>Standards Implementation</b>	Jason Schwarz	Action	
5 min	<b>Announcements</b>	Everyone	Announcement	

**The next regular CPD meeting will be December 6, 2024, via Zoom**

Find Council on Public Defense guiding documents and initiatives online at <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/council-public-defense>.

Reasonable accommodations for people with disabilities will be provided upon request. Please email [bonnies@wsba.org](mailto:bonnies@wsba.org).



---

Washington State Bar Association

---

COUNCIL ON PUBLIC DEFENSE  
OCTOBER 18, 2024 - 9:30AM – 12:00PM  
MINUTES

---

**CPD Voting Members:** Maia Vanyo (Chair), Chris Swaby (Vice-Chair), Victoria Blumhorst, Paul Holland, Maya Vanyo, Molly Gilbert, Karen Denise Wilson, Jonathan Quittner, David Montes, Jason Schwarz, Sheryl Gordon-McCloud, Maya Titova, Louis Frantz

**CPD Emeritus members (non-voting members):** Bob Boruchowitz, Ann Christian

**WSBA Staff:** Cate Shur, Bonnie Sterken

**Guests:** Travis Stearns, Lindsey Townsend, Laurel Brinson-Townsend, Grace O'Connor, Curtis Steinhauer, Molly Fraser, Sarah Hudson, Heather Carol, Gideon Newmark, Geoff Hulsey, Heather Carol, Matt Harget, Matt Jacob, Sophia Byrd McSherry, Matt Sanders, Michael Shumer, Sarah Hudson, Gasnick, Gregory Link, Katrin Johnson, Brett Ballew, Prachi Dave

**Absent:** Arian Noma, Leandra Craft, Judge Marla Polin, Abigail Pence, Larry Jefferson, Abraham Ritter, Anita Khandelwal, Judge Dee Sontag, Jonathan Nomamiukor

**Introductions:** Maia Vanyo introduced the newest members and announced we are still recruiting for a current or former public defender.

**CPD History and Current Initiatives:** Maia Vanyo provided a brief history of the CPD. She encouraged all members to read the CPD's charter and refamiliarize themselves with the tasks they are charged to perform. She summarized the current initiatives, including the ongoing standards work. She noted they will be building some committees soon, including one to look at making voting and membership more equitable and transparent in the charter and one to continue the work of the race equity committee to address diversity in the profession. Regarding the race equity committee's report, the CPD needs to conduct a deep dive discussion and to formulate next steps. The current plan is to work with the DEI Council of WSBA and/or bring in a facilitator to support those efforts.

**Hunter Parnell Presentation:** Maya Vanyo introduced Hunter Parnell, host of the Public Defenseless Podcast. Hunter discussed the need for better coverage of the criminal legal system from a systemic lens. He is trying to bring more attention to systemic issues through his

podcast to help the public hear from system actors. He's focusing on getting younger people, under 35, interested in the law and to help the practitioners stay informed about what's happening in the profession, and advocate for policy work. Hunter addressed questions.

**Minutes:** The September minutes were approved without edits.

**Office of Public Defense Budget Request and Updates:** Maia Vanyo noted that there was a letter in the materials supporting OPD's budget request with additional comments to propose requesting a higher level of funding. Sophia Byrd McSherry reported that the budget requests will be posted to the Court's website today to be submitted to the legislature. Sophia provided more context on how the budgeting process works. The Judicial branch submits its budget directly to the legislature and does not need approval from the Governor. There is about \$140mil in new requests, almost double the existing biennial budget. This request includes new items as they don't have to request funding they already have. This includes the \$40mil pass through to cities and counties. Sophia noted there are individual offices saying they need more in addition to the CPD's potential position. Sophia addressed questions. She shared about a bill they are supporting regarding loan repayment in exchange for working as a public defender in an underrepresented area.

Maia facilitated a conversation about the draft CPD letter in the materials in response to the OPD request. There was a robust conversation about the numbers and how they are calculated and what the ask strategy should be. They took each number one at a time and discussed what made sense. Katrin Johnson also provided additional details about the numbers and how the funding will be administered. There will be some small tweaks to the letter based on the clarifications in this meeting. Some numbers will be double checked before the next meeting. The updated letter will be on the November 1 CPD meeting agenda for action.

**Mandated Reporting Obligation:** Paul Holland summarized the issue that the mandatory reporting obligation that is required at universities conflicts with an RPC requirement for attorney/client confidentiality. This conflict was not intended when the mandatory rule was made for all higher education. Paul is asking the CPD to submit a letter to the legislature in support of revising the obligation to exclude legal representation matters. This item will be moved to the November 1 CPD meeting for action.

**Standards Implementation:** Jason Schwarz summarized the need for the CPD to have conversations with other stakeholders about alternate implementation timelines. There was a draft alternate timeline proposal in the materials to spark conversation, but more discussion is needed. He summarized the various implication ideas that have been discussed. Cate Shur reported that the Court has asked groups that provided testimony in September to propose alternative plans. There was a robust conversation about how the CPD should approach the

conversation. There was a strong consensus that there is urgency now with others noting that some collaboration and discussion with other stakeholders is still needed. The Court has specifically requested written submission of implementation plans and rebuttals to the comments originally made in September. The CPD will continue to discussing any new developments at the November 1 meeting, including any written submittals to the Court made by October 21.

The meeting adjourned at 12:00pm

## DRAFT

### WSBA LETTERHEAD

January X, 2025

#### Need to double-check chairs after December Committee re-org

Senator June Robinson, Chair  
Senate Ways and Means Committee  
303 J.A. Cherberg Bldg.  
P.O. Box 40423  
Olympia, WA 98504

Representative Timm Ormsby, Chair  
House Appropriations Committee  
315 John L. O'Brien Bldg.  
P.O. Box 40600  
Olympia, WA 98504

Dear Chair Robinson and Chair Ormsby:

The Washington State Bar Association's Council on Public Defense writes in support of the Office of Public Defense's (OPD) 2025-2027 biennial budget request. In addition, the Council requests further appropriation to OPD to implement caseload standards and remedy the ongoing shortage of public defense attorneys.

The Council encourages the Legislature to fund OPD's requests for the following:

- **Provide a vendor rate adjustment for OPD contractors**, who represent indigent clients in dependencies, appeals, and forensic civil commitment matters. Washington state currently provides substantially lower compensation for OPD-contracted defenders than for state-employed assistant attorneys general. A vendor rate adjustment will bring defense closer to parity with prosecution resources in these cases, and is critically important to recruit and retain OPD contractors.
- **Cover defense experts, investigators, and litigation costs**, which are increasing due to inflation and case complexity. OPD must pay these costs as part of its obligation to provide statewide public defense in dependencies, appeals, and forensic civil commitment cases.
- **Respond to appellate workload issues**, by hiring contractors immediately to resolve a backlog of case assignments and adding resources in the biennial budget to further address attorney caseloads.
- **Continue the response to *State v. Blake*** to remedy unconstitutional drug convictions. Thousands of persons remain eligible to vacate convictions and many incarcerated people still must be resentenced. Funding OPD's request ensures that individuals' due process rights are upheld and that counties are sufficiently resourced to respond to *Blake*.
- **Sustain the Simple Possession Advocacy & Representation (SPAR) program**, which the Legislature created in SB 5536 to provide public defense services in newly authorized misdemeanor drug possession cases. The statute allows OPD to assist local jurisdictions by providing funding or by contracting directly with attorneys.

- **Build a pipeline to public defense practice** by expanding OPD’s criminal defense training for existing lawyers and by funding an OPD partnership with Washington law schools to attract new family defense practitioners.
- **Conduct a statewide public defense needs study** to analyze our current county-by-county model for criminal defense, identify quality gaps, and recommend reforms. The Council is familiar with similar state studies by the nonpartisan Sixth Amendment Center. Funding an independent study will help identify structural efficiencies and best practices.
- **Support nonprofit partners with pass-through funding** for the Washington Defender Association’s programs and for Akin, which administers Parent for Parent peer support services to families involved in dependency cases.
- **Increase state funding for counties and cities through RCW 10.101 grants**, which have remained substantially the same for nearly two decades. State funding covers less than 5 percent of public defense costs for criminal cases in county and city trial courts, putting Washington among states that provide the least support for trial-level criminal public defense.

While the Council supports OPD’s proposals, we find the agency’s \$40 million annual request for RCW 10.101 grant funding to be inadequate as Washington nears a constitutional emergency. Public defense is in crisis, and the crisis grows each time an attorney is so overwhelmed by workload they leave the practice and each time a person facing criminal charges can’t effectuate their most basic right to have a lawyer appointed. These events occur daily all across the state. To keep defenders in the practice and ensure timely appointment of counsel, Washington State should provide funding sufficient to implement caseload standards adopted by the WSBA and pending now before the Supreme Court.

The Washington State Association of Counties estimates that the current caseload standards for trial-level criminal defense will require \$78 million in year two of implementation. To that end, the Council urges the Legislature to appropriate \$118 for the biennium for OPD: \$40 million in OPD’s current 2025 decision package, and \$78 million for year two for RCW 10.101 grants for local public defense.

Further, the Council recommends the Legislature grant two additional increases to OPD budget line items affecting family and appellate defense. First, the Council recommends that OPD be granted the \$17.6 million they estimate will be required to implement the family defense caseload standards: \$4.5 million in year one and \$13.1 million in year two. Second, the Council recommends that \$4.5 million be appropriated to OPD for the supplemental budget and \$9 million for the biennium to meet their estimates for implementing the appellate standards: \$4.5 million for each year.

The WSBA Council on Public Defense unites members of the bar, the bench, and the public to address new and recurring issues that impact public defense services throughout Washington State. The Council believes quality public defense is essential to a fair legal system and is critical in the fight to reduce racial disparity. This Council’s statement has been approved through the WSBA’s legislative and court rule comment policy and the position I solely that of the Council on Public Defense.

Please fund the Office of Public Defense’s budget request in the upcoming 2025 legislative session, and please provide the additional funding necessary for RCW 10.101 grants to counties and cities and the implementation of the family and appellate defense standards.

Sincerely,

Terra Nevitt  
Executive Director

**Need to double-check Committee members and their roles after December Committee re-org.**

Cc: Sunitha Anjilvel, President, Washington State Bar Association  
Senator Joe Nguyen, Vice Chair, Senate Ways and Means Committee  
Senator, Ranking Minority Member, Senate Ways and Means Committee  
Representative Steve Bergquist, Vice Chair, House Appropriations Committee  
Representative Drew Stokesbary, Ranking Member, House Appropriations Committee  
Larry Jefferson, Director, Washington State Office of Public Defense

Re: Support for legislation to remove mandated reporting obligation from attorneys and staff working in law school clinics

Dear Members of the Board of Governors:

The Council on Public Defense urges the Board of Governors to support legislation that would relieve attorneys and other staff working in law school clinics from the statutory obligation currently imposed upon them to serve as mandated reporters of suspected child abuse or neglect.

In the aftermath of the Penn State child abuse scandal, the Washington Legislature included “administrative and academic or athletic department employees, including student employees, of institutions of higher education” within the class of mandated reporters of child abuse and neglect. See, RCW 26.44.030(1)(f). In light of this legislation, law school faculty and staff who work in law school clinics confront a tension between the apparent command of the statute and the long-standing and fundamental professional ethical obligation under Rule 1.6 of the Rules of Professional Conduct, which prohibits an attorney from disclosing information related to the representation of a client. These faculty and staff are not even afforded the exemption from disclosing privileged information extended to supervisors who learn of abuse by those whom they supervise under RCW 26.44.030(1)(b). Based on conversations between clinical law faculty at Washington law schools and legislative leaders at the time of this amendment, there was no specific consideration – or even general awareness—within the Legislature of the fact that the three Washington law schools house legal clinics providing representation to clients as part of students’ educational program and that these programs would be adversely affected by this amendment.

This reporting requirement distorts the relationship between law school clinics and their clients in ways that hamper the schools’ efforts to provide legal services to those unable to afford them and to prepare the next generation of lawyers to serve clients in Washington and beyond. If the Legislature had tried to impose a similar reporting requirement on attorneys generally, we are confident the bar would have quickly and firmly raised objections that would likely have stopped any such effort instantly. Students and faculty in law school clinics are doing the same work that attorneys do in other settings, and they are fully subject to the Rules of Professional Conduct when they do so. It makes no sense to force them to do this work in a way that compromises one of the cornerstones of effective representation, the confidentiality obligation. It does not make any sense, from a policy standpoint, to require faculty working in a law school clinic representing youths charged with crimes, survivors of domestic violence, or any other clients to make such reports when lawyers working for non-profit or government entities performing the same type of representation and privy to the same sort of information are not obligated and, per RPC 1.6, not permitted, to report.



It is our understanding that a bill is being drafted that would contain the following language:

The reporting requirement in (a) of this subsection does not apply to an attorney who is employed by an institution of higher education, as defined in RCW 28B.10.016, or private institution of higher education – or to any employee working under the supervision of such an attorney-- as it relates to information related to the legal representation to a client.

The Council supports this proposed revision of the statute, which is similar to that adopted in Oregon, but even more squarely aligned with Rule 1.6. Oregon’s mandated reporting statute reads:

An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client. [ORS 419B.010](#).

Because it covers only information “communicated to the attorney”, this Oregon statute might not reach information the attorney observes on their own, which is plainly still “related to the representation” for purposes of Rule 1.6.

Action on this matter is more important now than ever. It is widely expected that hours representing clients under supervision as a limited license intern under Rule 9 are going to count toward one of the alternate pathways to a full license to practice. Accordingly, it is essential that students be able to get the same experience in a law school clinic as they would working in a public defense office. If we are hoping to produce the new wave of public defenders we need, we need them properly trained from the beginning, which starts with this fundamental orientation toward serving the client with full loyalty and confidentiality.