



## WSBA COUNCIL ON PUBLIC DEFENSE MEETING AGENDA

September 20, 2024, 9:30am – 12:00pm

### REMOTE ONLY

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>	Jason Schwarz	Discussion	
3 min	<b>June Meeting Minutes</b>	Jason Schwarz	Action	pp 2-3
20 min	<b>WA Supreme Court Sept 25th hearing on proposed amendments to Standards for Indigent Defense</b>	Jason Schwarz	Discussion	pp 4-6
5 min	<b>CPD Charter Revisions Adopted</b>	Jason Schwarz	Report	pp 7-10
15 min	<b>OPD Budget Request and Updates</b>	Larry Jefferson, Sophia Byrd McSherry	Report	
5 min	<b>Family Defense Standards Update</b>	Jason Schwarz	Report	
5 min	<b>Appellate Standards</b>	Jason Schwarz	Report	
10 min	<b>Standard 14 Implementation</b>	Paul Holland	Report	
5 min	<b>Recruitment Updates</b>	Jason Schwarz	Discussion	pp 11
10 min	<b>October 2024 Meeting at Seattle University and Student Panel</b>	Jason Schwarz	Discussion	
5 min	<b>Announcements</b>	Everyone	Announcement	

**The next regular CPD meeting will be October 18, 2024 at Seattle University School of Law**

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).



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Washington State Bar Association

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COUNCIL ON PUBLIC DEFENSE  
JULY 26, 2024 - 9:30AM – 12:00PM  
MINUTES

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**CPD voting members:** Jason Schwarz (Chair), Maia Vanyo (Vice-Chair), Christie Hedman, Rachel Cortez, Kathleen Kyle, Paul Holland, Kevin Flannery, Jonathan Nomamiukor, Louis Frantz, Anita Khandelwal, Larry Jefferson, Justice Sheryl Gordon McCloud, Molly Gilbert

**CPD Emeritus members (non-voting members):** Ann Christian, Travis Stearns, Bob Boruchowitz, Eileen Farley

**WSBA Staff:** Diana Singleton, Catherine Schur

**Guests:** Tara Urs, Jonathan Quittner, Brett Ballew, Jeff Adams, Laura Hughes, Colleen Shea-Brown, Greg Link, Kate Benward

**Absent:** Sophia Byrd-McSherry, Erica Rutter, Arian Noma, Abe Ritter, Leandra Craft, Judge Marla Polin, Anthony Powers, Abigail Pence Judge Dee Sonntag, Christopher Swaby, Maya Titova

**June Meeting Minutes:** Ann Christian asked to make an edit to the fourth sentence in the second section “Court Order Regarding the Standard.” The sentence should replace “that” with “and” which is shown here with the highlight: “In addition, some individuals asked the Court to suspend their qualification standards ~~that~~ and allow the WSBA qualifications standards to be the enforced standard until the entire Standards review is complete. Maia Vanyo made a motion to pass the minutes with Ann’s suggested edit. Christie Hedman seconded. All were in favor. Motion passed.

**Court Order Regarding the Standards and CrR/CrRLJ 3.1:** Jason Schwarz reported that the Standards have been published for comment for consideration as a Court rule. There will be two public comment periods. Bonnie sent this information to CPD earlier.

**CPD Charter Proposed Revisions:** Jason Schwarz summarized that the Charter amendments, explaining that they are trying to accomplish a few things, such as streamlining the work, being more inclusive, and streamlining the leadership process. For example, the revisions propose modifying the length of the Chair commitment from 4 years to 3 years to be more sustainable for individuals. They have also opted to change the representation to simplify the membership, create liaison roles, expand representation in the discussions, and streamline voting. The proposed revisions included input from CPD from the last meeting. Christie made a motion to approve the proposed charter revisions. Kevin seconded. All were in favor. Motion passed.

**Family Defense Standards:** Tara Urs shared the background of the work to improve the quality of family defense. Brett Ballew from OPD’s Parent Rep Program shared his experience in family defense and explained how practitioners are drowning even with a small decrease of high caseloads from COVID. These newly proposed standards will help with retention and recruitment. CPD members asked about the social workers inclusion. They shared they’re following best practices and also recognize the newly proposed standards do not address all the

issues. Jeff Adams from OCLA expressed his support for the new standards. He pointed to the most recent study and how it supports a unified standard and a unified theory. Laura Hughes from Parents Defense Counsel shared they are the largest eastside firm doing parent defense. She shared her perspective and the potential impacts of the newly proposed standards and how it would put families first. Colleen Shea-Brown from LCYC shared that they've represented youth and parents and agree with the standard of 35 max caseload which is based on their own analysis of their data. Molly Gilbert asked about the language about the social workers and offered to share suggested edits. Tara shared that all contracts are with the state and not counties and that OPD put a lot of thought into the language of the proposed standards. Molly offered to share suggested edits later. There was some discussion about whether there were enough members to vote and Cate and Diana confirmed that there were enough members to vote on approving the standards. Christie asked if we could vote on the standards pending potential edits. There was brief discussion about whether this was possible, wait on voting or voting today. Anita Khandelwal made a motion to pass the proposed standards and Maia Vanyo seconded. Larry Jefferson and Justice Gordon McCloud abstained. All were in favor. Motion passed.

**Appellate Standards:** Greg Link from WA Appellate Project shared some background about the committee who worked on the standards and the reasons for their recommendations. The committee included both public and private appellate attorneys, law school faculty and judges. Greg shared background on their recommendations, noting that the proposed 25-case limit was conservative and interim pending a study. Greg shared that OPD has communicated they can fund the study and asked for the WSBA to administer the study. Larry confirmed that OPD does have funding to fund the study. Bob recommends CPD adopt this as we need a study and a lower case number. Kate Benward shared that the 25-case-limit was the most conservative number recognizing it's still high. Kevin Flannery asked about RALJ appeals. Greg said they took their direction from the appeals out of superior court and agree to do a separate analysis or agree that standards also apply to RALJ. He noted that this would increase the number jurisdictions and cases significantly. Another person asked if we should also loop in PRP in the study? We would expect that study to include everything OPD contractors are doing. Larry said OPD is tasked to doing a report to the legislative so PRP should be separate. Travis noted that 25 was too high years ago and appreciate that this number is conservative. Christie made a motion to approve the proposed amendments and study. Rachel seconded. Larry Jefferson and Justice Gordon McCloud abstained. All were in favor. Motion passed.

**October 2024-September 2025 Meeting Schedule:** Jason reminded everyone that Bonnie sent out an email with a proposed schedule and asked everyone to follow up with her if there are any major concerns. Jason also pointed out that the October meeting will take place in-person at Seattle University School of Law so CPD can also meet with law students who are interested in criminal defense.

**Pathways to the Profession Summit:** Jason Schwarz reminded CPD about the upcoming Pathways summit on September 12th and encouraged people to look at the links.

The meeting adjourned at 11:26 am

## [External]Additional Information posted about WA Supreme Court Sept 25th hearing on proposed amendments to Standards for Indigent Defense

Ward, David <David.Ward@courts.wa.gov>

Wed 9/11/2024 2:33 PM

To:'Deanna Dawson' <deannad@awcnet.org>;'Lindsey Hueer' <lindseyh@awcnet.org>;'Alicia Burton' <aburton@piercecountywa.gov>;'Larry Jefferson' <Larry.Jefferson@opd.wa.gov>;'Sophia Byrd McSherry' <Sophia.ByrdMcSherry@opd.wa.gov>;'Katrin Johnson' <katrin.johnson@opd.wa.gov>;'Russell Brown' <rbrown@waprosecutors.org>;'dyoung@wsac.org' <dyoung@wsac.org>;sunitha <sunitha@amlawseattle.com>;Terra Nevitt <terran@wsba.org>;'Jason.Schwarz@co.snohomish.wa.us' <Jason.Schwarz@co.snohomish.wa.us>;Bonnie Sterken <bonnies@wsba.org>;Catherine Schur <catherines@wsba.org>

Good afternoon,

I am writing to let you know that the Court has posted more information on its website about the September 25<sup>th</sup> hearing on proposed amendments to the Standards for Indigent Defense. That posting is available here: <https://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=50492>

This posting includes information about how people may register to testify at the hearing. As organizations who were invited to testify, you will not need to register to testify. However, please let me know ASAP if the representative(s) from your organization will need to testify remotely via Zoom.

As I mentioned in my email below, the organizations that were invited to testify will have 10 minutes each for testimony at the beginning of the hearing. After hearing from the invited organizations, the Court will open the hearing to testimony from any interested persons who have registered to testify.

Thanks, and please let me know if you have any questions.

David

### David Ward

Principal Legal Analyst | Office of Legal Services & Appellate Court Support

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**From:** Ward, David

**Sent:** Thursday, September 5, 2024 1:19 PM

**To:** Deanna Dawson <deannad@awcnet.org>; 'Lindsey Hueer' <lindseyh@awcnet.org>; 'Alicia Burton' <aburton@piercecountywa.gov>; 'Larry Jefferson' <Larry.Jefferson@opd.wa.gov>; Sophia Byrd McSherry <Sophia.ByrdMcSherry@opd.wa.gov>; Katrin Johnson <katrin.johnson@opd.wa.gov>; 'Russell Brown' <rbrown@waprosecutors.org>; 'dyoung@wsac.org' <dyoung@wsac.org>; 'Sunitha Anjilvel' <sunitha@amlawseattle.com>; Terra Nevitt <terran@wsba.org>; 'Jason.Schwarz@co.snohomish.wa.us' <Jason.Schwarz@co.snohomish.wa.us>; Bonnie Sterken <bonnies@wsba.org>; 'Catherine Schur' <catherines@wsba.org>

**Subject:** Information about WA Supreme Court Sept 25th hearing on proposed amendments to Standards for Indigent Defense

Good afternoon,

I am writing to you as representatives from the organizations that the Supreme Court invited to provide testimony at the Court's September 25<sup>th</sup> hearing on proposed amendments to the Standards for Indigent Defense under CrR 3.1, CrRLJ 3.1, and JuCR 9.2. My apologies for the group email!

I have additional information below to share about the location and format of the hearing. I hope this will answer most questions you may have, but please feel free to contact me with any questions not addressed below.

**Date/Time of Hearing**

September 25<sup>th</sup> from 9:00 am-noon

**Location of Hearing**

Thurston County Atrium building  
3000 Pacific Avenue SE  
Olympia

(hearing will be held in Room 110 on the first floor of the building)

A limited amount of visitor parking is available in front of the building; more parking is available in a free lot a short walk from the building. I will plan to send parking maps closer to the hearing date.

**Organizations Invited to Testify (in alphabetical order – please do not expect you will be called in this order to testify)**

Association of Washington Cities  
Washington State Association of Counties  
Washington Association of Prosecuting Attorneys  
WSBA Board of Governors  
WSBA Council on Public Defense  
Washington State Board for Judicial Administration  
Washington State Office of Public Defense

**Format**

The seven invited organizations will be asked to testify at the beginning of the hearing. Each organization will have 10 minutes to testify. Testimony may be provided in-person or remotely via Zoom, but please let me know in advance if you plan to testify remotely so that we can provide you with a Zoom link.

If possible, please seek to avoid unnecessary duplication of testimony. If you know that other persons will be offering similar testimony to yours, please try to coordinate your testimony and avoid duplication.

After hearing from the invited organizations, the Court will open the hearing to testimony from any interested persons. Again, testimony at this stage of the hearing may be provided in-person or remotely via Zoom. There will be time limits to allow as many people as possible to testify.

The Court should soon be posting a “landing page” on its website to provide more information to the public about the hearing, as well as a registration link for people who wish to testify at the hearing. I will send you all a link to that page when it is posted online.

**TVW**

TVW is planning to broadcast the hearing live on its website. This should be the link to view the hearing on TVW's website: <https://tvw.org/video/washington-state-supreme-court-2024091059/?eventID=2024091059>

Thanks, and again please feel free to contact me with any questions.

**David Ward**

Principal Legal Analyst | Office of Legal Services & Appellate Court Support

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## **CHARTER**

### **Council on Public Defense**

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**Adopted: January 22, 2009. Amended June 12, 2015; June 26, 2020; January 13, 2023; September 7, 2024.**

#### **Purpose and Mission**

A WSBA Committee on Public Defense was established in 2004 to implement recommendations of the WSBA's Blue Ribbon Panel on Criminal Defense. Original membership was appointed by the WSBA President and confirmed by the Board of Governors. The Committee on Public Defense's recommendations were acted upon by the Board of Governors during fiscal year 2007. One of these recommendations was that the Committee on Public Defense be extended through December 2008 to study, focus, and follow up on unfinished public criminal defense, dependency, and civil commitment issues.

While the extended Committee on Public Defense made significant progress on the issues identified in its charter, it became apparent that maintaining and improving constitutionally effective public defense services in Washington required an ongoing committee with a mandate broad enough to address both new and recurring public defense issues. Having found that the Committee on Public Defense provided a unique and valuable forum for bringing together representatives of the bar, private and public criminal defense attorneys, current and former prosecutors, attorneys, the bench, elected officials, and the public, in 2009 the WSBA Board of Governors established the Council on Public Defense as an advisory council of the WSBA.

The Council on Public Defense is charged with the following tasks:

1. Recommend amendments to public defense standards and performance guidelines and mechanisms to assure compliance with those standards to the BOG and the Washington Supreme Court.
2. Promulgate "Right to Counsel" educational materials and programs for the public, including for clients and community members, the bench, public defense administrators, elected officials, and the bar concerning the constitutional right to counsel.
3. Develop "Best Practices" guidelines for public defense services contracts.
4. Address current issues relating to the provision of constitutional public defense services in Washington, including supporting efforts to ensure adequate funding is available.
5. Seek, review, and recommend possible improvements to the criminal justice system which might impact public defense or the ability to provide public defense services.
6. Improve delivery of defense services in Washington by examining and reporting on public defense systems and projects.
7. Develop recommendations concerning the most effective and appropriate statewide structure for the delivery and accountability for defense services.
8. Evaluate and make recommendations for all practice areas for which counsel may be appointed.

9. Develop performance guidelines for attorneys providing public defense services in criminal, juvenile offender, dependency, civil commitment, Becca petitions, and other cases to which counsel may be appointed.

## **Membership**

The Council on Public Defense consists of 23 voting members and up to seven emeritus members. Nominations are made by the entities listed below, with all appointments confirmed by the WSBA Board of Governors. These members do not serve as official representatives of these entities, but rather are appointed based on their knowledge, expertise, and commitment to providing constitutional public defense services in Washington.

The voting membership is as follows:

### *Core Members*

- The Director of the State Office of Public Defense
- The Director of the Washington Defender Association
- One Washington Supreme Court Justice

### *Nominated by Outside Parties*

- One Superior Court judge, recommended by the Superior Court Judges Association
- One District or Municipal Court judge, recommended by the District and Municipal Court Judges Association
- Three public defenders, recommended by the Washington Defender Association
- One representative from each of the three Washington law schools, recommended by the Dean of the school
- One representative from civil legal services, recommended by the Access to Justice Board

### *Considered Through WSBA Application Process*

- Three current or former prosecutors/city attorneys, recommended by the Council Chair, Chair-Elect, and Board of Governors Liaisons
- Six at-large members, recommended by the Council Chair, Chair-Elect, and Board of Governors Liaisons. At least four of the at-large members must have a contract for or provide public defense services and may include non-lawyers involved in the provision of public defense services. In addition, at least one at-large member must be a non-lawyer impacted by or working in the public defense profession.
- Two representatives from local government or public defense administrators, recommended by the Council Chair, Chair-Elect, and Board of Governors Liaisons



Core members as defined above serve without term limits. All other members of the Council are appointed for two-year terms and are eligible for reappointment for two additional two-year terms, totaling six years of service. The Chair may nominate up to seven former Council members whose eligibility for voting membership has expired, to serve as non-voting emeritus members for two-year terms.<sup>1</sup>

The Council must be a diverse, inclusive, and equitable body. This is especially so given that the people served by public defenders are disproportionately members of marginalized communities. When nominating individuals to serve on the Council, the Council should ensure voices from marginalized communities (e.g., people of color, people from the LGBTQ2S+ community, people with disabilities) are represented on the Council. The Council should also ensure that members represent regions throughout Washington to ensure geographically diverse perspectives are considered in Council decisions. With respect to public defender members, the Council should include public defense lawyers from both urban and rural settings, from the regions both to the east and west of the Cascade Mountain range, and from different public defense practice areas.

### **Council Officers**

The officers of the Council on Public Defense consist of a Chair, Chair-Elect, and Immediate Past Chair.

The Chair serves as the spokesperson for the Council and has the authority to call for special meetings of the Council. The Chair's duties include presiding over Council meetings, making appointments to Council committees, and working to ensure the Council's initiatives are progressing.

The Chair-Elect succeeds to the position of Chair upon the end of the predecessor Chair's term or a vacancy in that position. The Chair-Elect's duties include supporting the Chair and serving as Chair when the Chair is unable to fulfill their obligations.

The Immediate Past Chair performs such duties as may be assigned by the Chair or the Council. The Immediate Past Chair will perform the duties of the Chair in the absence, inability, recusal, or refusal of the Chair and Chair-Elect. The Immediate Past Chair is not a voting member of the Council except when acting in the Chair's place at a meeting of the Council and then only if the vote will affect the result.

*Term:* Council officers serve a term totaling three years—one year as Chair-Elect, one year as Chair, and one year as Immediate Past Chair. Upon conclusion of the Chair's term, the Chair-Elect assumes the role of Chair and the outgoing Chair assumes the role of Immediate Past Chair. Each position takes office on October 1 of each year.

*Selection:* By no later than May 1 of each year, the voting members of the Council shall nominate a Chair-Elect by secret ballot. The Council shall nominate the candidate for Chair-Elect receiving a majority of member votes for appointment by the WSBA President-Elect as Council Chair-Elect.

In the event the WSBA President-Elect does not appoint the Council nominee and does not appoint an alternate Chair-Elect, the Council will hold a new election to select a nominee for Chair-Elect.

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<sup>1</sup> Non-voting emeritus members are not eligible for WSBA expense reimbursements.

Vacancies in the office of Chair and Chair-Elect will be filled by following the above nomination and election procedure. Vacancies in the office of Immediate Past Chair, including due to the expiration of the Chair's six-year term of service on the Council prior to becoming Immediate Past Chair, will not be filled. However, all prior Council Chairs will be informed of the vacancy and invited to assist and advise the Chair and Chair-Elect in an *ex officio* role.

### **Standing Committees**

A Recruitment and Outreach Committee is established as a Council standing committee. The Recruitment and Outreach Committee will consist of the Chair, Chair-Elect, Immediate Past Chair, and two additional Council members appointed to the committee by the Council Chair. The Recruitment and Outreach Committee's responsibilities include cultivating prospective Council members, Council officers, and Council committee members; providing information about Council service to prospective members; cultivating partnerships with other public defense entities; and creating strategies for building community support and involvement.

The Council may create and dissolve additional committees as appropriate.

### **Voting Procedures**

All Council members, other than emeritus members, are eligible to vote. Judicial members may choose to recuse themselves from voting relating to any matters.

A majority of Council voting members constitutes a quorum. The Council may conduct business in the Council's name and make binding decisions at meetings where a quorum is present.

Action by the Council shall be by a majority of Council members in attendance at the time the vote takes place, unless otherwise specified in the WSBA Bylaws, polices adopted by the WSBA BOG, or other requirements binding on the Council. Voting by proxy or email is not permitted.

If judicial members choose to recuse themselves from votes relating to court rules or legislation, on those occasions, and only on those occasions, the membership of the Council, for purposes of determining whether a supermajority have voted in favor or against a proposition, shall be reduced by the number of judges who have recused themselves. This provision does not apply if a judicial member is merely absent.

### **Attendance Requirements**

Council members who have three consecutive unexcused absences in any 12-month period will be considered to have resigned from the Council. The Council may seek a replacement member through the regular WSBA volunteer process, unless the absent member was nominated by an outside party. In that case the outside party will be asked to appoint a replacement.

Council members may be excused for good cause by the Chair. Such an excuse should be sought prior to the meeting.

**Council on Public Defense Roster and Terms October 1, 2024 - September 30, 2025**

	First Name	Last Name	Organization	Representative Type	Current Term Begin Date	Current Term End Date	Current Term
1	Victoria	Blumhorst	Spokane County	WDA Representative	10/1/2024	9/30/2026	1st
2	Leandra	Craft	King County Prosecuting Attorney	Current/Former Prosecutor	10/1/2023	9/30/2025	2nd
3	Louis	Frantz	Retired	At-Large	10/1/2023	9/30/2025	3rd
4	Molly	Gilbert	King County Department of Public Defense	AT-Large Public Member	10/1/2023	9/30/2025	1st
5	Justice Sheryl	Gordon McCloud	Washington Supreme Court	Core - Supreme Court Representative	No term limit		
6	Christie	Hedman	WA Defender Assoc.	Core - WDA Director	No term limit		
7	Paul	Holland	Seattle University School of Law	Seattle U School of Law Representative	10/1/2023	9/30/2025	2nd
8	Larry	Jefferson	Office Of Public Defense	Core - OPD Director	No term limit		
9	Anita	Khandelwal	King County Department of Public Defense	Local Gov/Public Defense Agency	10/1/2023	9/30/2025	2nd
10	David	Montes	ACLU of Washington	At-Large	10/1/2024	9/30/2026	1st
11	Arian	Noma	Gonzaga University School of Law	Gonzaga Univeristy School of Law Representative	10/1/2023	9/30/2025	2nd
12	Jonathan	Nomamiukor	Columbia Legal Services	ATJ Board Representative	10/1/2023	9/30/2025	2nd
13	Abigail	Pence	Pacific Point Defense	At-Large	10/1/2023	9/30/2025	1st
14	Judge Marla	Polin	Spokane County Superior Court	Superior Court Judges Association Representative	10/1/2023	9/30/2025	1st
15	David	Quittner	The Law Office of Jonathan Quittner	At-Large members, Public Defender	10/1/2024	9/30/2026	1st
16	Abraham	Ritter	Gonzaga University School of Law	Current/Former Prosecutor	10/1/2023	9/30/2025	3rd
17	Jason	Schwarz (Immidiate Past Chair)	Snohomish County Public Defender	Local Gov/Public Defense Agency	10/1/2024	9/30/2026	3rd
18	Judge Dee	Sonntag	Tacoma Municipal Court	District and Municipal Court Judges Association Representative	10/1/2023	9/30/2025	1st
19	Christopher	Swaby (Vice-Chair)	Swaby Law Firm	WDA Representative	10/1/2024	9/30/2026	3rd
20	Maya	Titova	University of Washington School of Law	University of WA School of Law Representative	10/1/2023	9/30/2025	1st
21	Maialisa	Vanyo (Chair)	Whatcom County Office of Public Defense	At-Large Public Defender	10/1/2024	9/30/2026	2nd
22	Karen Denise	Wilson	KD Wilson Law PLLC,	WDA Representative	10/1/2024	9/30/2026	1st
23	Vacant	Vacant		Current/Former Prosecutor	10/1/2024	9/30/2026	1st
1	Robert	Boruchowitz	Seattle University School of Law	Emeritus 2024-2026	Emeritus members serve 2 year terms with no limit		
2	Ann	Christian	Retired	Emeritus 2024-2026			
3	Eileen	Farley	Northwest Defenders Association	Emeritus 2024-2026			
4	Kathy	Kyle	Snohomish County Public Defender	Emeritus 2024-2026			

23 Voting board members can serve up to three, 2-year terms (total of 6 years)

Up to 7 non-voting members may serve 2 year terms with no limit. Emeritus members do not vote and are not eligible for travel reimbursements

Core members do not have term expirations