

**IMPORTANT:**  
Please refer to the  
**BOG Action Item Guide**  
when completing this template.

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Travis Stearns, Chair, Council on Public Defense  
**DATE:** July 1, 2022  
**RE:** Council on Public Defense Statement Regarding Public Defense Workloads

**ACTION:** Approve the attached *Revised Public Defense Workloads Statement* for broad distribution to public defenders and administrators statewide

The Council on Public Defense (CPD) drafted the attached *Revise Public Defense Workloads Statement* as a tool to assist public defenders and administrators in bringing concerns to their funders about workloads exceeding capacity due to the pandemic.

The CPD has been discussing the impact of the COVID-19 pandemic on the public defense system statewide. The CPD’s Standards Committee met with public defense directors from across the state to learn how the pandemic has been impacting their offices and the delivery of services. A key takeaway from the discussion revealed that the pandemic has contributed to increased caseloads. The Board of Governors has previously approved a request from the CPD to distribute the attached advisory notice *Response to the Emergency Caused by Pandemic Driven: Increased Public Defender Caseloads* and the *Public Defense Workloads Statement* to bring attention to these issues with policy makers and funders.

The Office of Public Defense has also conducted surveys with public defenders statewide to learn about the impact of the pandemic on the delivery of services. The Office of Public Defense report [Defending Clients in the COVID-19 Environment: Survey Results from Private and Public Defense Counsel](#) provides survey results and analysis that further highlights how the pandemic is having an adverse effect on providing effective counsel as workloads grow beyond capacity.

It has become clear that public defense offices are struggling to keep up with the workloads, and that is having a detrimental effect on providing effective public defense counsel. The purpose of the Statement is to give public defenders a tool to talk with their funders and other leaders about the caseload issue and how it can be addressed. The CPD appreciates the Board’s consideration of this request.

**WSBA RISK ANALYSIS:** *This section is to be completed by the Office of General Counsel, with input from the proposing entity or individual.*

1. This statement falls within the GR 12 stated purposes of the WSBA. The statement does not relate to a political or social issue.
2. As written, this statement could be used to support an argument that individual public defenders are not complying with the ethical obligations because the public defender has an unmanageable workload. The

statement's focus on individual public defenders and RPC obligations – as opposed to the obligation of public defender agencies—could have unintended consequences.

#### GR 12

This statement relates to the following purposes and authorized activities of the WSBA:

- Promote an effective legal system, accessible to all (GR 12.2(a)(2));
- Foster and maintain high standards of competence, professionalism, and ethics among its members (GR 12.2(a)(4));
- Serve as a statewide voice to the public and to the branches of government on matters relating to these purposes and the activities of the association and the legal profession (GR 12.2(a)(11))
- Support the judiciary in maintaining and integrity and fiscal stability of an independent and effective judicial system (GR 12.2(b)(2));

This statement is not prohibited by GR 12.2(c). The statement does not take a position on political or social issues which do not relate to or affect the practice of law or the administration of justice.

**WSBA FISCAL ANALYSIS:** *This request does not have a financial component and does not require a fiscal analysis.*

#### Attachments

- *Revised Public Defense Workloads Statement* (for action)
- *Public Defense Workloads Statement* (approved January 2022)
- *Response to the Emergency Caused by Pandemic Driven: Increased Public Defender Caseloads* (approved March 2021)

## **Statement: Public Defense Lawyers Should Seek Relief from Excessive Workloads**

*Unmanageable public defense attorney workloads threaten their clients' right to representation.* Public defense lawyers in Washington face a workload crisis, threatening their clients' right to effective representation and the well-being of the lawyers and their staffs. In March 2022 the Washington Defender Association asked public defenders across the state about their workloads and needed resources. More than 250 public defenders from 35 counties and numerous cities across the state responded. Primary reasons for the workload crisis include:

- Inability to recruit and retain sufficient numbers of public defense lawyers to handle the total workload;<sup>1</sup>
- Inadequate resources, such as support staff, investigators and social workers; and
- Inability to resolve cases, particularly the complex cases, in a timely manner in order to offset new case assignments, in part due to the pandemic.<sup>2</sup>

Other states have similar challenges. A 2022 American Bar Association (ABA) workload study found that Oregon has only 31% of the public defense attorneys needed to handle its adult and juvenile caseloads.<sup>3</sup> A similar study in New Mexico found that the state public defender has only 33% of the attorneys needed to provide reasonably effective assistance of counsel to its clients.<sup>4</sup> A preliminary, similar assessment applied to Washington's current caseload standards supports the conclusion that Washington only has about one-third of the public defense lawyers needed.

*Washington public defense lawyers have few tools to address unmanageable workloads.*

Earlier this year, recognizing that a growing backlog of cases threatened the right to counsel the Washington State Bar Association (WSBA) Board of Governors issued a *Statement on Workloads* noting:

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.<sup>5</sup>

ABA Opinion 06-441 makes clear what a lawyer with too many cases must do:

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.<sup>6</sup>

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<sup>1</sup> ["Lawyers coping with attorney shortage in Yakima County"](#), Yakima Herald Republic, May 6, 2022.

<sup>2</sup> Washington Office of Public Defense, [Defending Clients in the COVID Environment: Survey Results from Private and Public Defense Counsel](#) (2021).

<sup>3</sup> American Bar Association, [The Oregon Project](#) (2022).

<sup>4</sup> American Bar Association, [The New Mexico Project](#) (2022). The ABA, the National Center for State Courts, and the Rand Corporation are developing both a meta study of all the public defense workload reports in the past eight years and a recommended set of national caseload standards for public defense lawyers. Those standards should be published this summer.

<sup>5</sup> Council on Public Defense [Statement on Workloads](#) (Adopted by the WSBA Board of Governors 1/13/2022).

<sup>6</sup> American Bar Association, Formal Opinion 06-441 [Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation](#), May 13,

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.

Court-ordered relief is a final option. (A successful example of such court-ordered relief can be found at Order on Motion to Withdraw, *Arizona v. Lopez et. al*, Superior Court for the County of Mohave, December 17, 2007).

Public defense lawyers seeking relief will find support in WSBA Board of Governor's statements addressing workload<sup>7</sup>. See Advisory Ethics Opinion 1713 (1997):

If the problem with complying the 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).

See also, the ABA *Eight Guidelines of Public Defense Related to Excessive Workloads*,<sup>8</sup> and Washington Supreme Court rules implementing *Standards for Indigent Defense*. The Court's *Standards* specifically provide: "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."<sup>9</sup> Standard 3.3 provides that when a public defender's workload becomes more difficult or time-consuming, per-attorney caseloads should be reduced.<sup>10</sup>

The American Bar Association president has made it clear that:

... 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.*<sup>11</sup> *Emphasis added.*

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2006. See also, Oregon State Bar Association, Formal Opinion No 2007-178 [Competence and Diligence: Excessive Workloads of Indigent Defense Providers](#) and [American Council of Chief Defenders Statement on Caseloads and Workloads](#) (2007), including, at p. 2: "Excessive public defender caseloads and workloads threaten the ability of even the most dedicated lawyers to provide effective representation to their clients." Introduction.

<sup>7</sup> See, in addition to *Statement on Workloads*, supra fn. 5, Two Council on Public Defense Advisory Notices Approved by the WSBA Board of Governors September 18, 2020 and May 21, 2021, respectively: [Implementation of the Standards for Indigent Defense During the Coronavirus Emergency](#) and [Response to the Emergency Caused by Pandemic Driven Increased Public Defender Caseloads](#). The *Response* document includes an Appendix with options for attorneys with excessive workloads.

<sup>8</sup> [ABA Eight Guidelines of Public Defense Related to Excessive Workloads](#) (2009).

<sup>9</sup> [CrR 3.1 Sids, Standard 3.2](#).

<sup>10</sup> The Washington Supreme Court has emphasized the importance of complying with workload standards. [State v. Graham](#), 194 Wn.2d 965, 968, 970 (2019).

<sup>11</sup> [ABA SCLAIID finds resource deficiencies in its workload study of New Mexico public defense system](#), January 14, 2022.

## **Council on Public Defense Statement on Workloads**

(Adopted by the WSBA Board of Governors 1/13/2022)

As the pandemic continues, public defense counsel across Washington increasingly have **workloads** that threaten their ability to provide effective representation, even if the number of cases they are assigned comports with the annual case assignment limits set by the Washington Supreme Court.

Washington’s applicable court rule makes clear that lawyers should not “accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.” CrR 3.1 Stds.<sup>1</sup> 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.

The pandemic has forced many courts to stop or severely limit trials. Public defense attorneys, now required to work remotely, have struggled to communicate with clients, many of whom do not have technology for secure online communication. Obtaining discovery has become time consuming. Pretrial offers from prosecutors to resolve cases without a trial have been far fewer as a result.

During the pandemic period, prosecutors have tended to prioritize the most serious charges when filing new cases, thereby increasing the complexity of public defense attorney workloads. Some prosecutors are filing lower-level felonies as misdemeanors, increasing the seriousness of attorneys’ misdemeanor cases.

During that same period the rate at which cases get resolved has significantly decreased. Statewide, total criminal-case resolutions decreased by 33% in the Covid-19 period (March-

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<sup>1</sup> This is consistent with the [American Bar Association Standing Committee on Ethics and Professional Responsibility Formal Opinion 06-441, which states](#), “If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients.” The Formal Opinion also addresses the responsibility of those who supervise individual attorneys by stating that “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.” The Opinion concludes, “If 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.**” (Emphasis added.)



December, 2020) compared to same period during the previous year.<sup>2</sup> The adverse impact of delayed resolutions has resulted in increases in the seriousness of attorneys' caseloads. This impact is exacerbated by counties' current difficulty, and in some cases inability, to hire and retain experienced public defense attorneys.

As a result, **open caseloads – in both number and complexity - now make demands that even experienced defenders sometimes cannot meet.** 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.

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<sup>2</sup> COVID-19 and Adult Criminal Justice: A Quantitative Look at Affected Systems, Washington State Institute for Public Policy, July, 2021, pp. 9-10, [https://www.wsipp.wa.gov/ReportFile/1739/Wsipp\\_COVID-19-and-Adult-Criminal-Justice-A-Quantitative-Look-at-Affected-Systems\\_Report.pdf](https://www.wsipp.wa.gov/ReportFile/1739/Wsipp_COVID-19-and-Adult-Criminal-Justice-A-Quantitative-Look-at-Affected-Systems_Report.pdf)

**Advisory Notice by the WSBA Council on Public Defense**  
**Response to the Emergency Caused by Pandemic Driven Increased**  
**Public Defender Caseloads**

**Public defenders struggle to represent their clients** because of a **combination of a** surge of newly filed cases, unresolved cases open for longer than average, backlogs of trials, and a push to re-open jury trials has resulted in overwhelming public defenders. Many lawyers have felony caseloads of over 100 open felonies.

**Counties and Cities must provide public defense resources to address increased workloads and should address the backlog as a systemic issue.**

Recommendations include:

- Using the newly available federal funds to increase defender resources.
- Meeting with public defense providers to reconsider the number of cases assigned to ensure adequate time to work on each case during this emergency.
- Working with courts, defenders, and prosecutors to consider creative alternatives.
- Comparing the open, unresolved case numbers with pre-pandemic caseloads.
- Respecting the defenders’ assessment of their workloads and the resources they need to have adequate time for each client.

**Public defender caseloads continue to increase as cases take longer to resolve.**

Felony case resolutions in 2020 were 28% less than in 2019. Simultaneously, many prosecutors chose to “hold” cases until the pandemic eased and are now filing them.<sup>1</sup> One county prosecutor had more than 700 cases holding to file.

<b>County</b>	<b>Felony resolutions</b>	<b>Felony Filings</b>
<b>Benton</b>	Decreased 31%	Decreased 4%
<b>Cowlitz</b>	Decreased 51%	Decreased 10%
<b>King</b>	Decreased 29%	Decreased 11%
<b>Whatcom</b>	Decreased 34%	Increased 4%

Courts suspended jury trials and deferred hearings. In many jurisdictions, many cases remain unresolved. This delay has increased workloads for defenders who struggle to represent new clients and meet their obligations for existing clients.

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<sup>1</sup> Administrative Office of the Courts and King County Felony Filing and Case Resolution data



A recent survey by the Office of Public Defense documented the strain defenders across the state are experiencing. The report stated: “The COVID-related backlog of criminal and juvenile cases in the courts uniquely impacts defense attorneys.”<sup>2</sup>

Highlights include:

- 90% of the attorneys reported interviews and trials are more difficult.
- 69% spend more time per case during the pandemic.
- 90% report witness interviews and trial preparation are more difficult.
- 65% have seen their pending caseloads increase.
- 58% of respondents with felony caseloads have a higher percentage of serious or violent cases.

Survey responses included the following:

- “The volume of cases means less time for all of my clients. I find too that clients need more attention and contact during this time.”
- “We cannot resolve cases in a fair and efficient manner.”
- “The court flooded our dockets with the backlog of arraignments and pre-trials, which meant we were required to provide attorney coverage every day which left us little time to do other work such as research, or client meetings.”
- “Prosecutors keep filing non-violent cases and judges continue issuing warrants. Both actions make the case backlog worse, burden public defense, and increase the number of people in our courthouses and jails. Prosecutors need to take the lead in reducing cases in the system and being very bold about resolving the ones in the system.”

**Public defenders must comply with their ethical obligations to provide diligent representation.**<sup>3</sup> If a lawyer has an excessive workload, “the lawyer should not accept new clients.” Washington’s Standards require the same. Public defense attorneys should not accept “workloads that, by reason of their excessive size, interfere with the rendering of quality representation.”<sup>4</sup>

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<sup>2</sup> Defending Clients in the COVID-19 Environment: Survey Results from Private and Public Defense Counsel, Washington State Office of Public Defense; [https://www.opd.wa.gov/documents/00847-2021\\_DefendingClients.pdf](https://www.opd.wa.gov/documents/00847-2021_DefendingClients.pdf)

<sup>3</sup> Formal Opinion 06-441 *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation*, American Bar Association Standing Committee on Ethics and Professional Responsibility [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ethics\\_opinion\\_defender\\_caseloads\\_06\\_441.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf)

<sup>4</sup> Washington Supreme Court, Indigent Defense Standard 3.2 <https://www.opd.wa.gov/standards>



**The conditions the federal court condemned and led to financial liability for municipalities in *Wilbur v. City of Mount Vernon*<sup>5</sup> are happening again.** Defenders have not been able to meet confidentially with in-custody clients or to conduct investigations consistently. These conditions seriously undermine the ability of the defenders to give each client the time and effort necessary to ensure constitutionally adequate representation. As the Federal Court noted, “actual innocence could conceivably go unnoticed and unchampioned.”<sup>6</sup> Without additional resources, cities and counties could face tremendous financial liability because of the denial of effective representation to thousands of indigent clients.

**Local efforts to address excessive public defense workload may include these and other systemic approaches:**<sup>7</sup>

- Delay filing or diverting some cases to be resolved non-criminally.
- Reduce reliance on pre-trial incarceration.
- Reserve show cause and review hearings for the most serious allegations.
- Adjust case assignments.
- Increase public defense attorney and staff resources.

For public defense attorneys who are compensated per case or on a flat monthly fee, the contracted number of cases may exceed a reasonable workload because of a surge in cases and the backlog of pending cases. In that case, caseloads should be adjusted downward.

Local officials could review the Advisory Notice by WSBA Council on Public Defense on Implementation of the Standards for Indigent Defense During the Coronavirus Emergency.<sup>8</sup>

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<sup>5</sup> *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013).

<sup>6</sup> *Wilbur v. City of Mount Vernon and City of Burlington*, 989 F. Supp. 2d 1122, 1126 (2013)

<sup>7</sup> ABA Eight Guidelines of Public Defense Related to Excessive Workloads (2009).

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_eight\\_guidelines\\_of\\_public\\_defense.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.pdf).

<sup>8</sup> Available at [https://www.opd.wa.gov/documents/00804-2020\\_WSBAnotice.pdf](https://www.opd.wa.gov/documents/00804-2020_WSBAnotice.pdf).

**Advisory Notice by WSBA Council on Public Defense**

**Implementation of the Standards for Indigent Defense  
During the Coronavirus Emergency**

- **Coronavirus impact on public defense attorney workloads.**

COVID-19 and the restrictions imposed to limit exposure to the virus have dramatically altered how public defense attorneys can hold confidential meetings with clients, go to court safely, investigate, and prepare cases. Attorneys must ensure that their clients' due process rights are protected, but also must protect their clients, themselves, their staff, and their families from exposure to the novel Coronavirus.

As courts begin to resume hearings and trials, and as prosecutors start to file a backlog of cases, public defense attorneys face an increased volume of cases and an increased complexity in their work. For example, the public defense workload becomes more complicated when attorneys must utilize time-consuming telephone/video conferences for client meetings and court appearances, or when social distancing requirements hamper an attorney-client communication during in-person court activities.

These new conditions require courts and public defense attorneys to pay close attention to the Standards for Indigent Defense adopted by the Washington Supreme Court, which establish minimum requirements for public defense representation. *See* CrR 3.1 Stds, CrRLJ 3.1 Stds, and JuCR 9.2 Stds. Attorneys who represent persons in other assigned cases will also be impacted by the current crisis, including involuntary treatment commitment, 71.09 commitment, family defense, status cases, support enforcement, and appeals.

The purpose of this notice is to assist public defense agencies, contract and list appointed attorneys, courts, and local contracting authorities in interpreting and applying the Standards for Indigent Defense during the Coronavirus emergency and ongoing recovery efforts. Additional guidance can be found in the WSBA performance guidelines, WSBA Standards for Indigent Defense, Washington Defender Association Standards for Public Defense Services, and the pending involuntary treatment guidelines.



- **Applying the standards during the coronavirus emergency and recovery.**

The Standards for Indigent Defense identify numeric caseload limits and require that caseloads must be reduced to accommodate unusual circumstances or increased workload.

Consistent with obligations under these Standards, public defense agencies, courts, and contracting authorities, in consultation with public defense attorneys, should reconsider the number of cases assigned to ensure adequate time to work on each case during this emergency.

- **Reduced caseloads may be necessary to maintain compliance with the standards.**

**Standard 3.2** establishes that public defense attorneys may not accept cases beyond their ability to provide quality representation to all their clients.

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. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.

**Standard 3.3** limits the number of cases lawyers can handle and recognizes that if there is a “surge” of cases beyond normal expectations or if the cases assigned become more complex, the caseload must be reduced. The standards state that:

Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort.

Caseload limits assume a reasonably even distribution of cases throughout the year.

Reasonably even distribution of cases throughout the year means that lawyers will not be assigned more than 1/12 of their annual maximum caseload in any given month. For felonies, this is 12 cases per month. For misdemeanors, it should be no more than 33 misdemeanor cases per month.

Standard 3.3 also requires that when the public defense workload becomes more difficult or time-consuming due to work circumstances, per-attorney caseloads should be reduced.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources.

- **Attorneys should determine ability to handle caseload.**

Each attorney should evaluate and determine their capacity to provide quality representation to all clients within the typical numeric caseload limits. 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.

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.” *State v. Graham*, 194 Wn.2d 965, 968, 454 P.3d 114 (2019). The Court credited the defender’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).

*Graham*, 194 Wn.2d at 970.

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.

*Graham*, 194 Wn.2d at 969.

Options to address increased workload may include adjusting case assignments, increasing resources including additional public defenders and staff, as well as other systemic approaches, as presented in the appendix.

Some attorney contracts pay based on each case assigned or pay a flat monthly fee for a specific number of cases. In these situations, as courts resume hearings and trials, the contracted number of cases may exceed a reasonable workload because of a surge in cases and the backlog of pending cases. Defenders are also less able to resolve cases, complete investigations, and meet with clients in the way they would have before the coronavirus crisis. If the workload required to provide quality representation increases, because of delays and barriers in investigating cases and meeting with clients, the caseload should be adjusted downward. Basic contract principles require that when circumstances change significantly, the parties should be open to renegotiation and amendment of contracts. Public defense providers should accept fewer cases or be compensated additionally to hire more staff. Additional resources for public defender services may also be necessary to re-open courts for trial and disposition hearings.

- **Coronavirus funding and resources should be directed to public defense.**

Many local governments are receiving significant emergency funding from federal and state Coronavirus mitigation sources. These emergency resources can and should be used to support public defense services.

For example, CARES Act funding may be used to increase the number of public defense attorneys and staff to address surging workloads, as well as to provide personal protective equipment for public defense attorneys, staff, and clients. Emergency funding may also be used to provide new technology to public defense attorneys, their clients, and jails to facilitate effective participation in court-conducted hearings, permit confidential attorney-client communications and to allow for timely electronic filing of pleadings.

- **Appendix One**

In considering how to address the emergency, the American Bar Association's *Eight Guidelines of Public Defense Related to Excessive Workloads* (2009) should guide public defense providers, local governments, and the courts.

**Possible systemic options to address coronavirus impacts on public defense workload.**

- Contract with additional attorneys to spread out new case assignments more equitably.
- 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 for adult criminal and juvenile offender cases.
- Enhance prosecutorial review of cases filed by law enforcement officers, to minimize the number of cases that might otherwise result in early dismissal.
- Continue to minimize the number of in-custody defendants.
- Reduce status hearings for pre-trial and compliance hearings.
- Allow counsel to waive their client's appearances for non-essential hearings.
- Expand diversion alternatives.
- 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 hearings for the most serious allegations.
- Encourage courts to accept ex-parte orders with electronic signatures in all non-testimonial matters.
- Request that courts that have not initiated remote hearings begin doing so to reduce backlog.
- Consult with the Washington State Office of Public Defense or experienced practitioners in how to implement the Standards.