

Washington State Judicial Branch

2025 Supplemental Budget

Appellate Backlog Response

Agency: Office of Public Defense

Decision Package Code/Title: S1—Appellate Backlog Response

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests funding to cover an emergent backlog of case assignments and increased workload in the Appellate Program. A software error concealed the magnitude of growing workload until June 2024. To address the workload and avoid a greater backlog and court delays, OPD is adding 11 FTE contract attorneys for Fiscal Year 2025. OPD requests .3 FTE attorney trainer to develop and implement training for newly recruited and less-experienced appellate contractors. OPD further requests funding to cover an appellate workload study as recommended by the Washington State Bar Association.

Fiscal Summary: Funding is requested for 0.3 FTE OPD appellate attorney trainer, 11 FTE contract attorneys for the Appellate Program, and an appellate workload study.

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.00	0.30	0.30	0.00	0.00	0.00
Operating Expenditures						
Fund 001-1	\$0	\$2,152,000	\$2,152,000	\$0	\$0	\$0
Total Expenditures						
Total	\$0	\$2,152,000	\$2,152,000	\$0	\$0	\$0

Will this decision package be submitted in the 2025-2027 biennial budget? Yes

Package Description:

Backlog of Case Assignments and Increased Workload – 11 FTE Contract Attorneys and .3 Trainer

The Office of Public Defense (OPD) Appellate Program provides contracted attorneys to represent indigent clients before the Washington Court of Appeals and Supreme Court in criminal, juvenile offender, dependency and termination, and civil commitment cases. A full-time appellate contract attorney handles the equivalent of 36 cases per year at an average 350 transcript pages, as mandated by current Supreme Court Standard for Indigent Defense 3.4. Appellate attorneys are credited for one case assignment for each case assigned, as well as for every 800 pages of trial transcript, based on data showing that counting an additional credit every 800 pages maintains an average of 350 pages or less per case credit.

Factors Contributing to Workload Increase

While the number of filings in the Court of Appeals and Supreme Court have not increased, other factors contribute to significant growth in workload for OPD’s contracted appellate attorneys.

- The workload increase is due in large part to more cases presenting very long trial transcripts. Transcript lengths averaged approximately 800 pages between Fiscal Year 2020 and Fiscal Year 2023, but rose to an average 929 pages in Fiscal Year 2024. Ninety-nine more case credits were assigned for long transcripts in Fiscal Year 2024 than in Fiscal Year 2023.
- The workload increase is also partly due to more appointments of appellate counsel for children in dependency and termination cases on appeal. RCW 13.34.212(3), provides a phased-in right to counsel for children in dependency and termination cases. As this right to counsel expands to cover more counties, more children

receive counsel at trial in dependency and termination cases, and the number of children requiring appellate counsel increases as well. The number of children receiving appellate counsel in dependency and termination cases rose from eight in Fiscal Year 2023 to 24 in Fiscal Year 2024.

- In addition, appellate counsel increasingly is needed for indigent clients in minor guardianship cases under RCW 11.130.200(5). Counsel was appointed on three such cases in Fiscal Year 2023, and nine in Fiscal Year 2024.

Software Error Creates Backlog of Case Assignments

Compounding the workload growth, a latent error in the Appellate Program's case management software concealed much of the workload increase until June 2024 – the end of the fiscal year. At that time, OPD discovered that more than 100 cases were not properly counted by the defender Data software. Ultimately, Fiscal Year 2024 closed with a backlog of 117 case credits. The software bug did not cause the backlog, but it prevented OPD from implementing a more timely response to the growing workload.

OPD has made policy changes to address the software problem and prevent future case management errors. Going forward OPD will reconcile its primary case management reports with contractor records on a quarterly basis to ensure no cases are omitted from the case credit count. OPD has consistently performed quarterly caseload audits in the past, but the audits reconciled case assignments only, they did not verify that assigned cases were correctly counted in case credit tracking reports.

OPD Response

To address both the workload growth as well as the case assignment backlog, OPD is adding contract attorneys for Fiscal Year 2025. Of these, 3.25 FTE contracts are covering the workload growth and 5.75 FTE contracts are tackling the backlog of case assignments, in order to eliminate the backlog as quickly as is practical and avoid delays in the courts. OPD estimates that this approach will resolve the case assignment backlog within Fiscal Year 2025.

Most of the newly contracted appellate attorneys do not have significant appellate experience. To ensure that they can comply with the Supreme Court's Standards for Indigent Defense and provide competent representation to their clients, OPD is adding .3 FTE attorney trainer. Washington State Bar Association (WSBA) appellate guidelines require attorneys to be supervised on their first five appellate briefs, and an OPD attorney trainer can provide oversight to facilitate contractor compliance. The OPD attorney trainer also is responsible for training, issue spotting, reviewing briefs, helping contractors prepare for oral arguments, staffing cases, researching novel legal issues, and providing technical assistance to contractors.

Additional Resources to Support Large Contract Firms

The Appellate Program software error most severely impacted OPD contractor Nielsen, Koch & Grannis (NKG). NKG is one of OPD's two Seattle-based law firms with appellate contracts. The software bug resulted in 100 more case credits being assigned to NKG than their contract authorized. NKG agreed to keep the excess cases in exchange for an increased contract fee to allow them to add 1 FTE contract position to their appellate practice. This approach permits NKG to manage the excess case credits with less administrative waste and negative impact on clients than would follow if 100 cases were reassigned across multiple contractors.

Separately, OPD is funding an additional 1 FTE contract position at its other Seattle-based appellate contractor, Washington Appellate Project (WAP). WAP is OPD's largest Appellate Program contractor, employing 14.58 attorney FTEs. Due to its size, WAP faces persistent Family and Medical Leave Act (FMLA) absences that it is unable to cover without an additional attorney position. Hiring temporary coverage for individual FMLA leave periods is impractical; by the time a temporary attorney is trained and performing efficiently, the original attorney is back from leave and the

temp must be let go. OPD determined that the best solution is to add a full-time attorney position for WAP so that sufficient staff are available to cover case assignments when WAP attorneys take FMLA.

A Study to Inform Appellate Caseload Standards, as Recommended by the Washington State Bar Association

Upon recommendation of the Washington State Bar Association (WSBA), OPD requests funding to study appellate attorney workloads and develop appropriate caseload standards for public defense providers in criminal and certain civil appeals where there is a right to counsel.

The WSBA and its Council on Public Defense recently considered caseload standards for appellate public defense attorneys, and based on a review of information presently available they determined that additional study is required to develop a final standard. Several other states have performed appellate workload studies, and a Council subcommittee reviewed these studies in hopes of using them to support updated caseload standards in Washington. However, differences in appellate procedure among the states limited the ability to rely on existing studies to inform Washington standards. No state that has performed a workload study of appellate practice is a close enough analogue to Washington to use as a baseline for developing a revised standard. For that reason, the Council and WSBA proposed that a workload study be performed specific to Washington appellate practice.

The WSBA will administer the workload study and has issued an RFP, which is attached to this decision package.

Fully describe and quantify expected impacts on state residents.

Funding this decision package will ensure that, to the extent practical, indigent clients have counsel timely appointed and their rights effectuated. Some delay is inevitable, as the assignment backlog already exists. But OPD's solution ensures that well-resourced, professional appellate contractors are assigned to cases in an orderly, fair, and reasonably swift process.

Adding an in-house appellate attorney trainer is the most cost-efficient way to ensure new appellate contractors can meet caseload standards and comply with performance guidelines. This position provides the oversight necessary for OPD to contract with attorneys who do not meet the minimum requirements for filing appellate briefs without supervision, greatly expanding the pool of potential contract applicants in a tight labor market.

Explain what alternatives were explored by the agency and why this was the best option chosen.

OPD considered waiting until the Fiscal Year 2025-2027 biennial budget to add contract attorneys, instead of hiring immediately and seeking supplemental funding. That delay would double the existing backlog, assuming Fiscal Year 2025 workload neither increases nor decreases compared to Fiscal Year 2024. It would require OPD to request substantially more FTEs to tackle a much larger backlog, increasing costs to the state and further delaying appellants' right to counsel.

OPD also explored contracting with 3.25 FTEs immediately to prevent the backlog from growing, and requesting additional contracted FTEs in the biennial budget to begin reducing the backlog. This alternative risks expanding the backlog because OPD cannot guarantee that workload will remain constant. Even if the backlog does not grow, this alternative would delay assignment of counsel for much longer than is ideal, frustrating effective appellate relief for many and delaying the enforcement of vital constitutional rights for many others.

Adding an in-house appellate attorney trainer is the most cost-efficient way to ensure new appellate contractors can meet caseload standards and comply with performance guidelines. This position provides the oversight necessary for OPD to contract with attorneys who do not meet the minimum requirements for filing appellate briefs without supervision, greatly expanding the pool of potential contract applicants in a tight labor market.

What are the consequences of not funding this request?

Office of Public Defense
Maintenance Level – S1—Appellate Backlog Response

With a backlog of 117 case credits, up to 117 clients with a constitutional or statutory right to counsel are projected to be put on a waiting list for appointment of counsel. Due to the delay in appointment of counsel, clients with short sentences might serve their entire sentences before appellate relief can be provided. And, although OPD is prioritizing appointment of counsel for dependency and termination clients, there may be a wait list for these cases as well if filings exceed OPD's capacity. In that event, parents wrongfully separated from their children might find reunification impossible. When delays occur in dependency and termination cases parents can lose hope and suffer relapses or recurrences of mental health issues, making reunification impossible even if their dependency or termination cases are ultimately reversed on appeal. OPD believes this decision package strikes the right balance between reduction of the delay and fiscal responsibility.

Is this an expansion or alteration of a current program or service?

No. This decision package addresses timely operations in OPD's Appellate Program.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Job Title Classification	Workload Assumptions/Description	
	FY 25	
OPD Attorney Trainer	0.30	OPD attorney trainer

Use Standard Costs?

No.

If No, Explain Additional Costs	Description/Assumptions	
	FY25	
Contracts	\$1,912,773	11 appellate contract attorneys @ \$218,598 each staggered hiring approach – see grid below
Goods and Services	\$22,000 \$11,000	OPD Staff Training/Attorney Training One-time Start up costs for OPD staff
Travel	\$11,000	OPD Staff – Attorney Trainer
Equipment		Included in one-time start-up costs
Contract	\$150,000	Appellate Workload/Standards Study

Staggered Starts	XT FTEs	# of months	Monthly	Total	38.11	FY24 Base
July	2	12	\$18,217	\$437,196	40.11	Hired
September	3	10	\$18,217	\$546,510	43.11	In-process
October	3	9	\$18,217	\$491,859	46.11	Future
November	3	8	\$18,217	\$437,208	49.11	Future
TOTAL	11			\$1,912,773		

Office of Public Defense
Maintenance Level – S1—Appellate Backlog Response

Appellate Response - Atty Trainer		
		FY25
11 Appellate Contrators		\$1,912,773
Range 77M .3 FTE		
Attorney Trainer Salary		\$34,635
Benefits		\$9,695
Total		\$44,330
Appellate Caseload Standards Study		\$150,000
Start-up		\$11,000
Training		\$22,000
Travel		\$11,000
TOTAL		\$2,151,103

How does the package relate to the Judicial Branch principal policy objectives?

Fair and Effective Administration of Justice

This decision package reduces wait times experienced by indigent clients with a constitutional or statutory right to counsel, ensuring that the right to appeal and the availability of appellate relief are protected.

Accessibility

This decision package maintains timely access to appellate counsel for indigent clients with disabilities who would have great difficulty accessing the courts without the assistance of counsel.

Access to Necessary Representation

This decision package maintains access to counsel for indigent clients with a constitutional or statutory right to appeal.

Commitment to Effective Court Management

This decision package avoids severe delays in appointment of counsel which could lead to a waste of judicial and court resources. Appellate courts are unable to process cases unless defense counsel is available to complete critical case stages such as filing the opening brief.

Sufficient Staffing and Support

This decision package ensures that OPD's Appellate Program has adequate in-house training and oversight as well as sufficient contractors to address a backlog of cases and cover continuing appellate workload levels. The workload study will provide data to inform future decisions about the appropriate number of contractors.

How does the package impact equity in the state?

Address any target populations or communities that will benefit from this proposal.

Indigent clients who face a loss of liberty or family due to state action benefit from appellate counsel being assigned in a timely manner to effectuate their rights.

Describe the how the agency conducted community outreach and engagement.

OPD consulted with contract attorneys about their needs. The agency also participated in the WSBA's review of appellate caseload standards, which produced the WSBA's recommendation for an appellate workload study.

Consider which target populations or communities would be disproportionately impacted by this proposal.

Explain why and how these equity impacts will be mitigated.

The justice system already disproportionately impacts communities of color, indigenous communities, and communities with low socioeconomic opportunity, all of which are more likely to utilize public defense when summoned to court. This proposal ensures continued availability of high quality appellate public defense representation for these communities.

Are there impacts to other governmental entities?

This decision package assists efficient operations of the appellate courts and prosecuting agencies. Delays in assignment of counsel will be reduced and courts will experience fewer disruptions to case processing schedules. Prosecuting attorney's offices and the Attorney General's Office will be able to proceed with work on cases that are on appeal.

Stakeholder response:

Appellate contractors support OPD's requests to address the case assignment backlog, keep up with workload growth, and fund an appellate workload study to inform updated caseload standards.

Are there legal or administrative mandates that require this package to be funded?

The appellate cases at issue all involve clients with a constitutional or statutory right to counsel and right to appeal. Funding this decision package ensures that delays in the assignment of counsel are reduced and will avoid major delays in clients accessing legal help to which they have a constitutional or statutory right.

Does current law need to be changed to successfully implement this package?

No

Are there impacts to state facilities?

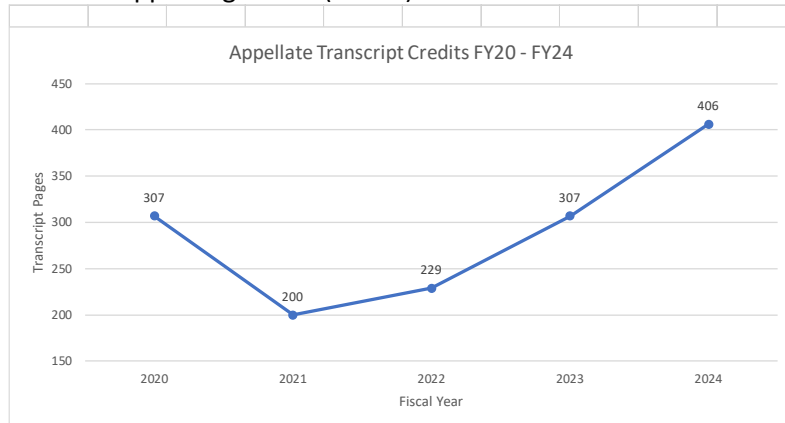
No

Are there other supporting materials that strengthen the case for this request?

- WSBA's draft RFP for an appellate workload study.
See Attachment A: S1 – Appellate Backlog Response – WSBA Appellate Workload Study
- Letter from Washington Appellate Project regarding appellate workload study.
See Attachment B: S1 – Appellate Backlog Response – Washington Appellate Project Cover Letter to OPD

Office of Public Defense
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- Supporting charts (below) illustrate factors that contribute to increased workload:



Children's Rep Appeals	
FY	Credits
2020	5
2021	9
2022	8
2023	7
2024	26

Guardianship Appeals	
FY	Credits
2021	1
2022	1
2023	3
2024	9

Are there information technology impacts?
No

Agency Contact:
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WASHINGTON STATE B A R A S S O C I A T I O N

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

Please direct questions regarding this RFP to Catherine Schur, 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*

RFP Release Date:	September 20, 2024
Questions Due By:	October 4, 2024
Questions Answered By:	October 11, 2024
Proposal Due Date:	November 1, 2024
Award Announcement:	November 22, 2024
Tentative Contract Start Date:	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.¹ 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

¹ [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. 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. 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.



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August 20, 2024

Director Larry Jefferson
Washington State Office of Public Defense
711 Capitol Way South, Suite 106
Olympia WA 98501
Sent via email

Dear Larry,

In March, the Washington State Bar Association's Council on Public Defense tasked the appellate standards subcommittee with recommending revisions of the appellate caseload standards contained in the WSBA and Washington Supreme Court Standards for Indigent Defense. After review of the data available on appellate workloads, we have determined that further study is necessary to accomplish this task. The CPD and appellate subcommittee request that OPD participate with WSBA and outside researchers to undertake such a study.

A study supporting revision of the appellate caseload standards is necessary because it has become clear from the experiences of attorneys appointed to represent indigent clients in appellate cases that the current 36-case limit is too high. In a survey of appellate practitioners conducted by the appellate subcommittee, fully 94% of respondents stated they had to triage or limit case activities because they did not have time for all activities they should perform in their cases. Seventy-two percent said they frequently had to work on the weekends or that they worked every weekend, and 82% said they felt drained and exhausted at the end of their workdays. When asked what would make it easier for the survey-takers to provide constitutionally adequate defense to their clients, "lower caseloads" was the top response.

No study of appellate public defense workloads has been conducted in Washington. In 1989, the Spangenberg Group examined the manner in which Washington was providing appellate public defense. That study recommended the Administrative Office of the Courts conduct a caseload/workload study and establish caseload or work unit standards for all full-time attorneys: "We feel that over the long term, development of a detailed case weighting system specifically for the state of Washington is critical to the provision of quality of appellate representation." In the 35 years since, no such workload study was ever performed.

The 2023 National Public Defense Caseload Study performed by the RAND Corporation, which provided the foundation for recent caseload reductions of trial caseloads for Washington's public defenders, did not examine appellate public defense caseloads. Other state appellate defenders have performed similar Delphi studies using independent, unbiased groups like the National Association of State Courts (Michigan, 2024) and Moss Adams (New Mexico, 2022). The subcommittee reviewed these studies in hopes of leveraging them in support of new standards in Washington. Differences in appellate procedure among states prevented inclusion of appellate

standards in the National Study. The subcommittee found those same limitations frustrated our ability to rely on existing state studies and standards to complete our work.

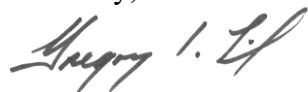
The subcommittee also considered several methods of determining appropriate caseload maximums, with accompanying case-weighting systems, including undertaking studies of appellate workloads without outside assistance. Given that such studies require substantial expertise and the lack of uniform appellate caseload data in Washington, ultimately the subcommittee decided a workload study was necessary to guide a better conclusion.

A workload study is essential to formulate the correct Washington appellate caseload standards. It is anticipated that this study will use methodologies similar to those employed in existing national and state workload studies to evaluate the time required for various appellate case tasks. These time requirements may then be used to develop caseload standards. WSBA is willing to work with researchers to administer a study funded by OPD. Such a study will support OPD's efforts to improve the public defense services it funds. And, such a study will provide OPD the tools to persuade the Legislature to provide funding to hire sufficient appellate lawyers to meet any reduced caseload standard.

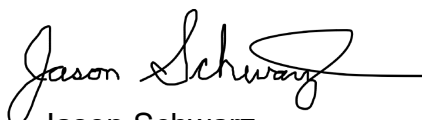
At the July 26, 2024 CPD meeting, the appellate subcommittee presented its recommendation that CPD request that OPD, in conjunction with the WSBA, pursue such a workload study of appellate defenders. The Council on Public Defense voted to approve the appellate subcommittee's recommendation.

Therefore, the CPD and appellate subcommittee respectfully recommend that OPD fund an appellate workload study to be administered by the WSBA. In addition, the subcommittee requests that OPD allocate funding for an independent contractor who is an expert in Washington's appellate public defense practice to act as a liaison with the study researchers and WSBA. The liaison would be available to answer questions about Washington-specific appellate practice while the study is designed, conducted, and reviewed. The subcommittee has drafted a request for proposals for a workload study, which is included with this letter. If this RFP meets with OPD's approval and OPD funds are available to fund the research and liaison, the appellate subcommittee will begin soliciting proposals for the workload study. We look forward to your response.

Sincerely,



Gregory C. Link



Jason Schwarz