

Washington State Judicial Branch

2026 Supplemental Budget

Implementing Parents Representation Caseload Standards

Agency: Office of Public Defense

Decision Package Code/Title: D8 – Parents Rep. Caseload Standards

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests funding to implement court-ordered caseload limits for contracted attorneys who represent indigent parents in dependency and termination of parental rights cases. The Washington Supreme Court has amended court rules governing family defense caseload standards and is limiting each full-time attorney to 45 clients with 60 open and active cases starting July 1, 2026 and 35 clients with 40 open and active cases, starting July 1, 2028. OPD also requests funding to expand prefiling legal representation for parents at risk of child removal and dependency court action. Prefiling representation typically reduces dependency filings and is expected to limit the number of additional contracted attorneys required in future years to comply with caseload standards. (General Fund – State)

Fiscal Summary:

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
Staffing						
FTEs	0.00	4.00	2.00	4.00	10.00	7.00
Operating Expenditures						
Fund 001-1	\$0	\$6,161,000	\$6,161,000	\$6,993,000	\$17,606,000	\$24,599,000
Total Expenditures						
	\$0	\$6,161,000	\$6,161,000	\$6,993,000	\$17,606,000	\$24,599,000

Package Description:

The Washington State Office of Public Defense (OPD) requests \$6,161,000 to implement Supreme Court Order No. 25700-A-1656 that amends court rules governing family defense caseload standards in child welfare cases. The updated caseload standards limit each full-time defense attorney to 45 clients with 60 open and active cases starting July 1, 2026 and 35 clients with 40 open and active cases starting July 1, 2028. These standards apply to all attorneys representing parents and children in dependency and termination of parental rights cases. OPD provides attorneys for indigent parents, and this decision package is specific to parent representation. The Office of Civil Legal Aid (OCLA) provides attorneys for children and may submit a separate decision package related to its representation.

The OPD Parents Representation Program currently contracts with 129 FTE attorneys and 60 social service professionals to support the attorneys. Full-time contracted attorneys currently are working a 65-client caseload, which OPD was able to implement within existing resources for fiscal year 2026 in anticipation of the Supreme Court’s updated caseload standards. OPD previously assigned up to 80 clients per FTE contract attorney.

To implement the first phase of the updated Supreme Court caseload standards in July 2026 (45 clients/60 open cases), OPD must add 26.5 FTE contracted attorneys and 10.0 FTE contracted social service professionals. To implement the second phase in July 2028 (35 clients/40 open cases), OPD anticipates needing an additional 51.0 FTE contracted attorneys and an additional 17.0 FTE contracted social service professionals. The annual contract fee is \$210,491 per FTE contract attorney and \$99,000 per contracted social service professional. OPD also must pay for associated expert costs, travel costs, onboarding orientation, and ongoing training for each Parent Representation Program contractor.

This request includes \$500,000 to expand prefiling legal representation into one to two additional counties. In counties where prefiling legal representation is available, dependency filings typically decline or resolve more quickly. Thus, expanding prefiling parent representation is expected to limit the number of additional OPD contract attorneys needed to comply with caseload standards in future years. In addition, prefiling representation keeps infants out of foster care and prevents unnecessary family separation.

OPD is not able to implement the Supreme Court’s updated family defense caseload standards or expand prefiling legal representation without additional funding. State funding for child welfare cases, including legal representation, is eligible for partial federal reimbursement under Title IV-E of the Social Security Act.

Background

OPD Parents Representation Program.

As directed by [Chapter 2.70 RCW](#), through its Parents Representation Program OPD administers the right to counsel for all indigent parents facing state removal of their children or termination of their parental rights. OPD contracts with qualified attorneys throughout the state to represent parents in every county. The Legislature initiated the Parents Representation Program as a pilot project in 2000 and expanded it statewide in response to evaluations that consistently found improved outcomes with OPD-administered representation, including more successful family reunifications and faster case resolutions.

Caseload Standards.

Since its inception, the OPD Parents Representation Program has implemented a caseload of 80 open and active cases. The Supreme Court adopted an 80-case caseload standard in 2012.

In 2023, the Supreme Court asked the Washington State Bar Association (WSBA) Council on Public Defense (CPD) to review a newly released National Public Defense Workload Study and advise the Court on any recommendations the Court should consider. In response, the WSBA undertook a review of caseload standards in a variety of public defense practice areas. For the family defense practice area, the CPD’s review included a caseload study among attorneys currently representing parents and children involved in child welfare proceedings (See Attachment A – Subcommittee Report to CPD). Based on caseload study data, the WSBA Board of Governors approved updated family defense standards and recommended adoption by the Supreme Court.

The CPD’s family defense caseload study found that reduced caseloads are warranted due to the increased complexity of child welfare cases since 2012. Continual statutory changes and an evolving body of caselaw have increased the overall number of court hearings, have made contested hearings more likely, and have amplified technical, medical, and sociological issues that increase demands on defense representation. For example, dependency petitions include more serious allegations against parents, including complex medical cases alleging purposeful broken bones or medical child abuse. Additionally, family defense often involves countering bias about what constitutes “good parenting,” which typically is based on a U.S.-centric white, middle class norm of parenting. Black, Indigenous and other Parents of Color are disproportionately overrepresented in child welfare filings as are parents with disabilities and parents rooted in cultures outside North America. The vast majority of dependency cases overwhelmingly involve parents living in poverty.

Prefiling Legal Representation

The Legislature has funded prefiling legal representation for parents since fiscal year 2021. OPD currently contracts with three organizations to provide prefiling representation in six Washington counties.¹ They partner with local hospitals,

¹ Prefiling legal representation is currently offered by the F.I.R.S.T. Clinic, which provides services to King and Snohomish Counties; Family First Legal Advocates (FFLA), which provides services to Whatcom and Skagit Counties; and Central Washington Preventative Legal Advocacy Project (CWPLAP), which provides services to Yakima and Kittitas Counties.

medical and holistic service providers, and the Department of Children, Youth, and Families (DCYF) to assist parents who have recently given birth or are pregnant and are at risk of having their newborns placed in foster care. Many of these parents are struggling with substance use disorder.² Approximately 29% of all children who entered out-of-home care in 2024 were under the age of 1 year old, and in particular, when parental substance abuse was a factor in the removal decision, approximately 49% of those children removed in 2024 were under the age of 1 year old.³ Black children are nearly twice as likely as white children to end up in foster care after an initial dependency case is opened, and Indigenous children are approximately three times as likely as white children to end up in foster care.⁴ The prefiling attorneys consult with parents to help them understand child safety concerns identified by DCYF, and negotiate with DCYF to implement effective alternatives to child removal.

Prefiling representation utilizes a multidisciplinary approach to address family safety concerns and avoid a dependency filing. An OPD prefiling attorney advises parents of their rights and the implications of ignoring DCYF, and ensures that all relevant state policies are followed during the investigation. An OPD social services professional provides emotional support and resources that can include food and infant care products, safe housing, and quick admittance to in-patient treatment that allows newborns to stay with their mothers during the critical maternal-infant bonding period while also addressing child safety concerns.

Across the state, prefiling representation makes a demonstrable impact in the lives of the families they serve.⁵ In 2024, OPD's prefiling contractors closed 295 cases, and 77% of those cases did not result the filing of a dependency petition. In the first half of 2025, the prefiling contractors have closed 156 cases, and 70% of those cases did not result in the filing of a dependency petition. For cases in which DCYF does file a dependency petition on a parent served by a prefiling legal representation program, out-of-home placement of the child is less likely.

Fully describe and quantify expected impacts on state residents.

This decision package implements Court-ordered attorney caseloads, which helps ensure constitutional and statutory rights to effective counsel for the thousands of indigent parents involved in child welfare cases each year. It creates a professional environment where OPD-contracted attorneys can devote the time and attention necessary to effectively represent each of their indigent clients in dependency and termination of parent rights cases. It prevents attorney burnout and turnover due to excessive workload, and it assists in recruiting new practitioners to a sustainable public service career.

In addition, this decision package expands prefiling legal representation to help parents work in a collaborative manner with child welfare and medical professionals to prevent unnecessary family separation. Removing a child from their family can cause great harm and trauma that spans generations.⁶ The American Academy of Pediatrics (AAP) has found that keeping babies with their mothers can reduce the need for morphine treatment in drug-affected newborns.⁷ During

² [Washington State Center for Court Research Dependency Dashboard](#).

³ [Office of Innovation, Alignment and Accountability Prevention Dashboard](#).

⁴ [DCYF Disproportionality & Disparity in Child Welfare Dashboard](#).

⁵ Notably, the F.I.R.S.T. Clinic has received statewide and national recognition for its prefiling legal representation work, and has been called upon to provide training, support, and mentorship to other programs across the country. See Abramo, "[Snohomish Moms Dealing With Addiction Get Help To Keep Their Newborns](#)," The Imprint, June 2022; see also "The F.I.R.S.T. Legal Clinic: A New Frontier of Partnerships to Stop Trauma," American Bar Association, July 2022. Of its many accolades, the F.I.R.S.T. Clinic recently received the WSBA Pro Bono and Public Service APEX Award in September 2023 and the Children's Justice Conference Lee Ann Miller Group Award in April 2024.

⁶ See, e.g., Shanta Trivedi, "The Harm of Child Removal," 43 N.Y.U. Rev. L. & Soc. Change 523, 525 (2019).

⁷ See Puma Nanayakkara, MD (MBBS), Eat Sleep Console Toolkit for Washington, 2020; see also DOH Communications, State agencies announce changes in policy and best practices for infants and parents affected by substance use at birth, June 26, 2023.

these first weeks and months of bonding, parents also respond well to treatment because their brains are uniquely open to substantive changes in behavior, thinking, motivation, and patterns.⁸

DCYF has reported 27 fentanyl-related critical incidents (child fatalities and near-fatalities) in 2024, and another 15 fentanyl-related critical incidents in the first quarter of 2025.⁹ DCYF has indicated that what is needed to address these critical incidents are the types of services prefiling legal representation finds for parents – housing, services to meet parents’ basic needs, the parent-child assistance program (PCAP), substance use disorder treatment, mental and behavioral health treatment, and more.¹⁰ Prefiling legal representation helps ensure that families facing the fentanyl epidemic receive critical services recommended by DCYF.

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

OPD considered waiting to respond to the Supreme Court’s updated caseload standards until the 2027-2029 biennial budget. But the agency determined that such delay risks significant loss of Parents Representation Program attorneys to other practices that attorneys perceive as having more manageable caseloads. In addition, ignoring a Supreme Court Order undermines fundamental principles of jurisprudence, particularly when done by a state agency that is directed to ensure the right to effective counsel. OPD decided that the best option is to begin reducing caseloads as quickly as possible in order to retain valued contract attorneys and demonstrate respect for the rule of law.

OPD considered waiting to expand prefiling legal representation until the 2027-2029 biennial budget. However, OPD rejected this option because prefiling legal representation has been an effective tool in six counties in preventing unnecessary family separation and in securing successful outcomes without court involvement. Prefiling legal representation can resolve issues in a short amount of time (from weeks to a few months), and is more cost-effective than delaying representation until a dependency case is filed, which can take years to resolve. OPD determined that a modest proposal to expand prefiling representation in one to two counties could limit the number of additional OPD contract attorneys needed to comply with the dependency caseload standards in future years.

What are the consequences of not funding this request?

Not funding this request could result in the following consequences:

- OPD likely will lose contractors to other agencies providing legal services in the child welfare system or to other legal disciplines. Some attorneys have departed OPD in favor of a contract with the Office of Civil Legal Aid (OCLA), which already implements the 45 clients/60 open cases caseload.
- OPD likely will experience increased difficulty in recruiting qualified attorneys to contract with the Parents Representation Program.
- Child welfare-involved families could suffer from poor representation. Attorneys with high caseloads are less efficient. As prior evaluations have shown, when attorneys are overworked reunifications take longer and there are fewer of them. <https://opd.wa.gov/find-legal-help-and-information/parents-representation-program/history-parents-representation-program>
- Additionally, not funding this decision package could increase the risk that some contracted attorneys may provide ineffective assistance of counsel, potentially exposing the state to liability.
- Not funding an expansion of prefiling legal representation would allow preventable family separation to occur, specifically those involving newborn children.

⁸ Feldman, Ph.D., “The Biology of Love: Synchrony and the Affiliative Brain in Health and Psychopathology,” University of Washington Center for Child & Family Well-Being, February 2020.

⁹ [Q1 2025 Critical Incident Briefing Slides, DCYF Critical Incidents Briefing, July 29, 2025.](#)

¹⁰ *Id.*

- Absent an expansion of prefiling legal representation, more children, especially from BIPOC families, will be placed into foster care, and more parents will become involved in lengthy dependency proceedings. Additional dependency filings are traumatic for families and are costly for the State.

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

This decision package implements Supreme Court-ordered attorney caseload standards for OPD’s longstanding Parents Representation Program and expands OPD’s existing prefiling legal representation program.

Decision Package expenditure, FTE and revenue assumptions

Staffing Assumptions

Agency Oversight for Contracted Legal Representation and Social Work Services

Beginning July 1, 2026 through June 30, 2028, OPD requires salary, benefits, and associated standard costs for 3.0 FTEs: Managing Attorney (1.0 FTE), Social Services Manager (1.0 FTE), Program Assistant (1.0 FTE)

Beginning July 1, 2028 and ongoing, OPD’s staffing need for contractor oversight will increase to a total of 9.0 FTEs (3.0 FTE in each job classification).

Managing attorneys and social service managers provide oversight and technical assistance as directed by statute including contract oversight, approving expert services, and supporting training goals. OPD anticipates that the large number of new contractors will be new to the Parent Representation field and need more assistance. The Program Assistant positions are needed to support the managers.

Financial Services Support

Beginning July 1, 2026 and ongoing, OPD’s financial services staff will be drafting contracts, sending invoices, and making payments on approximately 100 additional contracts – representing about a 55% increase in Parents Representation Program contractor-related work. There are currently two staff dedicated to this effort. This request will fund one additional Financial Analyst FTE.

Other Non-Standard Costs

Contractor Training (Object E). To ensure qualified parent representation, OPD provides regular, relevant training to attract new Parents Representation Program contractors as well as to update knowledge and skills for experienced practitioners. Training covers not only current and changing state and federal law but also other areas impacting child welfare law such as social worker policy and practice, racial disparity and disproportionality, psychology, mental illness, and disability.

The Washington Supreme Court and the WSBA regulate the practice of law in Washington and require all attorneys to participate in continuing legal education in order to maintain their license to practice law. OPD’s Parents Representation Program Social Worker Practice Standards also require ongoing annual training for defense social workers. The WSBA requires attorneys to attend a minimum of 45 hours of training for every three-year reporting period. American Bar Association (ABA) Standards for Representing Parents in Abuse and Neglect Cases recommend a minimum 20 hours of relevant training prior to receiving appointments and a minimum of 15 hours of ongoing training per year. Licensed social workers in Washington State must have 36 hours of continuing education with six hours of law and ethics every two years. Offering this ongoing training is estimated to cost \$2,000 per contracted attorney and social work professional FTE.

TOTAL COST FY 2027 & FY 2028: \$73,000

TOTAL COST FY 2029 AND ONGOING: \$209,000

Contractor Travel (Object G). OPD contractors are reimbursed for travel expenses following state travel rules and policies. These costs are estimated based on 2023-2025 average costs at \$2,000 per contracted attorney and social work professional FTE.

TOTAL COST FY 2027 & FY 2028: \$73,000
TOTAL COST FY 2029 AND ONGOING: \$209,000

Client Services - Contractors (Object N). OPD will enter into contracts with attorneys and social service professionals to support the new caseload standards. The following assumptions drive the contracted FTE amounts (See Attachment B):

1. OPD targets 85% capacity for the initial caseload assignment to an attorney FTE which allows for caseloads to grow and for trained attorneys to have capacity to accept conflict cases under their OPD contract.
 - a. A caseload of 45 clients/60 open cases is calculated as $45 \text{ clients} * 85\% = 40 \text{ clients per FTE}$
 - b. A caseload of 35 clients/40 open cases is calculated as $35 \text{ clients} * 85\% = 30 \text{ clients per FTE}$
2. For every 3.0 contract attorney FTEs, OPD estimates needing 1.0 contracted social service professional FTE
3. Prefiling contract attorney 1.5 FTEs and contracted social service professional 1.5 FTEs
4. Contract FTEs are rounded to the nearest 0.5 FTE
5. Case transition costs in the last 3 months of FY 2028
 - a. To prepare for the final drop in caseloads effective July 1, 2028, OPD will need a window to contract with the equivalent of 51, new contracted attorney FTEs so caseloads can be transitioned and assigned from OPD's existing contracted attorneys. These transition costs assume:
 - i. 50% of the FTE will be contracted attorneys and require a one-month transition
 $51 \text{ FTE} * 0.5 * \$18,000 \text{ monthly rate} * 1 \text{ month} = \$450,000$
 - ii. 50% of the FTE will be under contracts with firms employing Rule 9 interns. These will require a three-month transition and cost roughly one-half of the monthly rate
 $51 \text{ FTE} * 0.5 * \$9,000 \text{ monthly rate} * 3 \text{ months} = \$675,000$

TOTAL COST CONTRACT ATTORNEYS FY 2027 & FY 2028: \$5,578,000
TOTAL COST CASE TRANSITION CONTRACT ATTORNEYS (1 MONTH ONE-TIME) FY 2028: \$450,000
TOTAL COST CASE TRANSITION RULE 9 INTERNS (3 MONTH ONE-TIME) FY 2028: \$675,000
TOTAL COST CONTRACT ATTORNEYS FY 2029 AND ONGOING: \$16,313,000

TOTAL COST CONTRACT SOCIAL SERVICE PROFESSIONALS FY 2027 & FY 2028: \$990,000
TOTAL COST CONTRACT SOCIAL SERVICE PROFESSIONALS FY 2029 AND ONGOING: \$2,673,000

Client Services - Experts (Object N). OPD pays directly for and reimburses contractors for authorized expert and litigation costs. The expert and litigation costs are reviewed and approved following OPD's Parent Representation Program Expert and Litigation Costs Policy. These costs are estimated based on FY 2025 average costs at \$21,000 per contracted attorney FTE. Prefiling is assumed at \$24,000 total for any expert needs or other resources identified by social work professionals.

TOTAL COST FY 2027 & FY 2028: \$549,000
TOTAL COST FY 2029 AND ONGOING: \$1,620,000

Partial Federal Reimbursement under Title IV-E of the Social Security Act (Object S). OPD receives funding from Title IV-E of the federal Social Security Act through an interagency agreement with the state Department of Children, Youth, and Families. The funding provides partial reimbursement to states for qualifying expenditures

on child welfare activities, including legal services for parents involved in dependency and termination cases as well as for pre-petition legal services.

The partial reimbursement is available for almost all costs associated with OPD's Parents Representation Program including administration, expert services costs, training costs, vendor contract fees for trial attorneys, social services professional contracts, and for appellate representation in dependency and termination cases.

The reimbursement rate varies based on the percentage of Title IV-E eligible children in Washington. The current working assumption for Title IV-E reimbursement is 23.00% of all OPD costs associated with the dependency and termination cases and any related appeals. This estimate is based on the last billing of FY 2025.

Expenditures by Object	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>	<u>FY 2030</u>	<u>FY 2031</u>
A Salaries and Wages		422,000	422,000	1,084,000	1,084,000	1,084,000
B Employee Benefits		125,000	125,000	321,000	321,000	321,000
E Goods and Services		85,000	85,000	239,000	239,000	239,000
G Travel		89,000	89,000	249,000	249,000	249,000
J Capital Outlays		52,000	8,000	86,000	20,000	20,000
N Grants, Benefits, and Client Services		7,117,000	8,242,000	20,606,000	20,606,000	20,606,000
S Interagency Reimbursements		(1,840,000)	(2,089,000)	(5,259,000)	(5,244,000)	(5,244,000)
T Intra-Agency Reimbursements		111,000	111,000	280,000	280,000	280,000
Total Objects		6,161,000	6,993,000	17,606,000	17,555,000	17,555,000

Staffing

Job Class	Salary	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>	<u>FY 2030</u>	<u>FY 2031</u>
MANAGING ATTORNEY	132,000		1.00	1.00	3.00	3.00	3.00
SOCIAL SERVICES MANAGER	125,000		1.00	1.00	3.00	3.00	3.00
PROGRAM ASSISTANT	74,000		1.00	1.00	3.00	3.00	3.00
FINANCIAL ANALYST	91,000		1.00	1.00	1.00	1.00	1.00
Total FTEs			4.00	4.00	10.00	10.00	10.00

Explanation of standard costs by object:

Salary estimates are current biennium actual rates at Step M.

Benefits are the agency average of 29.58% of salaries.

Goods and Services are the agency average of \$3,000 per direct program FTE.

Travel is the agency average of \$4,000 per direct program FTE.

One-time IT Equipment is \$11,000 for the first fiscal year per direct program FTE. Ongoing Equipment is the agency average of \$2,000 per direct program FTE.

Direct Program Support for direct supervision and direct financial/contracting support is \$13,700 per direct program FTE.

Agency Indirect is calculated at a rate of 10.00% of direct program salaries and benefits.

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

Fair and Effective Administration of Justice

The fair and effective administration of justice requires caseload limits that allow public defense attorneys to represent each client effectively. The Council on Public Defense caseload study demonstrates that phasing in 45 clients/60 open cases and 35 clients/40 open cases will arrive at a dependency caseload that supports effective assistance of counsel for every indigent client. Access to prefiling representation reduces the imbalance of legal power between the parent and the Department of Children Youth and Families.

Access to Necessary Representation

This decision package supports access to necessary representation by implementing a manageable caseload that helps attorneys devote adequate time and attention to each of their indigent clients. Further, this decision package promotes access to an attorney when parents first come into contact with the child welfare system. Access to legal representation prior to the filing of a dependency case can help a parent understand their legal options when facing the potential removal of their child from their care.

Are there impacts to other governmental entities?

Implementing updated family defense caseload standards may favorably impact other parties and the courts by reducing defense requests for continuances in dependency cases. Expanding prefilng services may positively impact the workload of the courts by reducing the number of dependency cases filed.

Stakeholder response:

At its September 18, 2025 meeting, the OPD Advisory Committee voted to endorse this decision package. The Washington State Bar Association (WSBA) and the Washington Defender Association (WDA) support OPD implementation of the updated family defense caseload standards. Current and prospective contract attorneys support OPD implementation of the updated family defense caseload standards and expansion of OPD’s prefilng legal representation program.

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

Yes. Supreme Court Order No. 25700-A-1656 updates caseload limits for all attorneys providing family defense representation in child welfare cases. OPD is responsible for administering representation of parents in child welfare cases statewide.

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

No. This decision package does not require any statutory changes.

Are there impacts to state facilities?

No. This decision package does not impact state facilities.

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

- Supreme Court Order No. 25700-A-1656 (See Attachment C)
- [WSBA proposal on family defense standards and published proposal comments](#)
- [“Supporting Early Legal Advocacy Before Court Involvement in Child Welfare Cases,”](#) ABA Center on Children and the Law, March 2021.
- [“How can pre-petition legal representation help strengthen families and keep them together?”](#), Casey Family Programs Strong Families Strategy Brief, February 2020.
- Abramo, [“Snohomish Moms Dealing With Addiction Get Help To Keep Their Newborns”](#), The Imprint, June 2022.
- Ballou and Drewing, [“The F.I.R.S.T. Legal Clinic: A New Frontier of Partnerships to Stop Trauma,”](#) American Bar Association, July 2022.

Are there information technology impacts?

No. This decision package does not impact information technology.

Agency Contacts:

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From: Subcommittee on Indigent Defense Standards for Family Defense¹

To: Washington State Bar Association Council on Public Defense

Date: July 18, 2024

Re: Recommended Revisions to Family Defense Standards Contained in WSBA and Court Standards for Indigent Defense

In March 2024, the Council on Public Defense convened a subcommittee to address standards for family defense practice. For the purposes of this report, “family defense” refers to the practice of representing parents² and children in cases filed under RCW 13.34, 13.36, and 13.38, et seq.

Existing Framework:

In Washington, unlike criminal public defense, family defense is administered by two different state agencies rather than by counties.³ The Washington State Office of Public Defense (OPD) Parents Representation Program administers parent representation; the Washington State Office of Civil Legal Aid (OCLA) Children’s Representation Program administers child and youth representation. Most family defense work is performed by solo practitioners and small firms who have contracts with one or both state agencies. Indeed, in some smaller counties, filings are low enough that attorneys in that county cannot make up a fulltime caseload with a contract alone – yet, because each parent and alleged parent requires a different attorney, and considering the inevitable conflicts, there will necessarily need to be multiple attorneys in any jurisdiction even when the number of cases is low. Only in King County is the majority of parent and child representation provided by a county public defense agency.

The right to counsel in these cases has evolved over time.⁴ Because implementation of this right has developed along somewhat different timelines for parents and children, multiple standards have been

¹ Members of the Subcommittee: Tara Urs (Chair) (Special Counsel, King County Department of Public Defense); Judge Sharonda D. Amamilo (Thurston County Superior Court), Brett Ballew (Office of Public Defense Co-Supervising Attorney), Bailey Zydek (Program Manager, Children’s Representation Program, Washington State Office of Civil Legal Aid), Sharea Moberly (Office of Public Defense Managing Attorney), Laura Hughes (Parent Defense Attorney), and Crystal Alford (Parent Defense Attorney). Special thanks to the incredible support provided by Catherine Schur (Assistant General Counsel, Office of General Counsel, Washington State Bar Association) and Malia Brink (Senior policy attorney at the Deason Criminal Justice Reform Center at the Southern Methodist University Dedman School of Law).

² In addition to parents, other people entitled to representation by statute include guardians, custodians, and Indian Custodians who are named as respondents in dependency, guardianship, and termination petitions. RCW 13.34.070; RCW 13.34.090; RCW 13.36.040(1). For ease of reference, this report will refer only to “parents.”

³ RCW 2.70.020; RCW 2.53.045. However, the work of assigning cases is funded by counties in some (but not all) counties in the state. Counties also pay, separately, for representation parents may receive in RCW 11.130 guardianship cases. Guardianship cases pursuant to RCW 11.130 are not addressed here.

⁴ See RCW 13.34.090; RCW 13.36.040(1). For example, in 1975, Washington State Supreme Court found a constitutional right to counsel in termination of parental rights cases, holding that “the nature of the rights in question and the relative powers of the antagonist, necessitate the appointment of counsel.” *In re Myricks*, 85 Wn.2d 252 (1975). Five years later, *Myricks* was abrogated by the United States Supreme Court. *Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 31, 101 S. Ct. 2153, 2161, 68 L.

created. The existing WSBA Standards for Indigent Defense Services (“WSBA Standards”) and the Washington Supreme Court’s Standards for Indigent Defense (“Court Rule Standards”) set a “caseload limit of 80 open dependency/termination of parental rights cases for parent and child(ren) representation per attorney per year.”⁵ Pursuant to the WSBA Standards, a “case” is defined as a “a dependency or termination of parental rights petition”⁶ and, therefore, excludes representation on petitions for a dependency guardianship filed pursuant to RCW 13.36, even though the appointment of counsel is statutorily required.⁷ The Court Rule Standards do not specifically define a case for purposes of family defense representation.

In 2022, pursuant to HB 1219,⁸ different standards of practice and caseload limits for attorneys representing children were developed by the Children Representation Workgroup⁹ and adopted by the Washington State Supreme Court Commission on Children in Foster Care. These standards set the following caseload limit: *Attorneys representing children and youth in dependency and termination hearings on a full-time basis should be assigned to represent no more than 45 trial-level (not appellate) dependency clients at a time and no more than 60 total cases (including dependency and cases collateral to the dependency case, in which representation is required to properly protect the client’s interests in the dependency case).*¹⁰

Ed. 2d 640 (1981). Despite the federal constitutional underpinnings of *Myricks*, Washington courts have held the case has continued validity on state constitutional grounds. *Matter of Dependency of S.K-P.*, 200 Wn. App. 86, 97, 401 P.3d 442, 449 (2017), *aff’d sub nom. Matter of Dependency of E.H.*, 191 Wn. 2d 872, 427 P.3d 587 (2018) (noting that “stare decisis protects” the holding in *Myricks*).

⁵ WSBA Standards for Indigent Defense, Standard 3.K (rev. Mar. 8, 2024) (available at https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/wsba-indigent-defense-standards-as-approved-by-bog-2024.03.08.pdf?Status=Master&sfvrsn=3c831ff1_5); Standard 3.4, CrR 3.1 Stds, JuCR 9.2 Stds, CrRLJ 3.1 Stds.

⁶ WSBA Standards, Definitions.

⁷ RCW 13.36.040(1).

⁸ See HB 1219, enacted 2021 (avail. at <https://app.leg.wa.gov/billsummary?BillNumber=1219&Year=2021&Initiative=false>), codified at RCW 13.34.212(3)(a); see also RCW 13.34.267(7); RCW 2.53.045.

⁹ Available at: <https://www.courts.wa.gov/subsite/CommFC/docs/revised%20practice%20standards%20for%20representation%20of%20children%20and%20youth%20in%20dependency%20cases.pdf>.

¹⁰ Notably, this standard also contains the following footnote eleven:

The caseload standard (number of maximum cases for each attorney) reflects the majority recommendation from the Children Representation Standards workgroup. It was reached after significant deliberation and discussion among workgroup members, a minority of whom dissent[] based on professional and lived experience that the maximum caseload number of 60 cases is too high to allow attorneys to meet these new practice standards; to recruit and retain a diverse group of attorneys; and to maintain, build, and continue support of children’s representation in these matters. No member at any point advocated for a higher caseload than that reflected in these Standards. The recommendation of maximum of 45 clients, maximum of 60 cases, is being put forward in part because of the workgroup’s unanimous recommendation that this caseload

Neither the 80 open active case caseload (from the WSBA Standards and Court Rule Standards) nor the 45 open active client caseload (adopted by the Foster Care Commission) was based on a workload study.

Under the existing standards, unlike other public defense attorneys, family defense attorneys are not required to certify that they comply with the Court Rule Standards. Further, unlike other public defense attorneys, caseloads are currently measured based on the number of “open and active” cases rather than new assignments or, in the case of child and youth representation, a hybrid of “open and active” cases and a client maximum.

Despite the complexity of the law in this area, and the fundamental constitutional rights at stake, existing WSBA and Court Rule standards do not require any prior legal experience or supervised practice prior to an attorney representing a client on a dependency case.¹¹ For termination cases, attorneys representing parents and youth must have six months’ dependency experience or significant experience in conducting complex litigation.¹²

Finally, recent legislative changes and decisions of the State Supreme Court have underscored both the importance of providing high-quality family defense representation and have increased the amount of work required in these cases. For example, the legislature has recently enacted the Keeping Families Together Act which requires additional judicial inquiry into questions of family separation and relative placement, among other things, at a shelter care hearing.¹³ Likewise, the legislature enacted HB 1747 in 2022, which requires courts to consider guardianship as an alternative to the termination of parental rights at multiple stages in a proceeding.¹⁴ Recent decisions from the Washington State Supreme Court have underscored the importance of adhering to the Indian Child Welfare Act from the earliest stages of a case, which has required additional advocacy from family defense attorneys and resulted in more cases applying the Act.¹⁵

It is against this backdrop that the Subcommittee began its work.

Workload Studies Undertaken in Other States:

In order to evaluate the existing standards, the Subcommittee began by collecting and reviewing caseload and workload studies undertaken in other states. The Subcommittee reviewed standards, workload studies, and caseload reports from Iowa, Indiana, Louisiana, Massachusetts, Michigan, North Carolina,

standard may need to be adjusted after further experience and objective, independent research.

[. . .]

[T]he Children’s Representation Standards workgroup further recommends that the caseload standard be reviewed, reconsidered and, if appropriate, updated by a workgroup of independent researchers, practitioners, young people with lived experience, and experts in the field convened by the Supreme Court Commission on Children in Foster Care by July 2027 at the latest; [. . .].

¹¹ See WSBA Standards, Standard 14.C.4.a, b; CrR 3.1, Standard 14.2(L).

¹² *Id.*

¹³ See Laws of 2021, ch. 211, § 9 (E2SHB 1227).

¹⁴ Laws of 2022, ch. 127, § 1-4 (SHB 1747).

¹⁵ *E.g. Matter of Dependency of Z.J.G.*, 196 Wn.2d 152, 163, 471 P.3d 853, 859 (2020).

New York, Oregon, Rhode Island, and Wyoming.¹⁶ The Committee also reviewed standards created by the ABA and the Family Justice Initiative.

Reviewing existing studies, it became apparent that there is tremendous variation in the way different state dependency systems operate. For example, in Indiana most children in the system are not separated from their families, which is starkly different from the way the system functions in Washington. Because of those differences, there is unlikely to ever be a single, national workload study for family defense attorneys. Further, the differences between the state systems made it difficult to draw conclusions based on the lessons in many other jurisdictions.

However, one jurisdiction, Oregon, is substantially the same as Washington's. The Subcommittee decided, therefore, to use Oregon's study as a jumping off point for this inquiry. To confirm that Oregon offers a useful comparison, the Subcommittee met with an Oregon attorney who participated in their Delphi process and compared the various hearings and stages of a case with Washington. After confirming that Oregon's process was similar enough to Washington's, the Subcommittee chose to focus on the Oregon study as a model.

This strategy made sense for several reasons. In addition to resembling Washington's family defense system, Oregon's study was conducted recently, in 2022. Therefore, the study considered some recent trends in family defense representation that would similarly impact Washington attorneys. The study was conducted by the ABA Standing Committee on Legal Aid and Indigent Defense and Moss Adams, organizations well versed in public defense workload studies, and used the Delphi methodology, a rigorous method commonly used for such studies. Finally, Deputy Director for the Public Defender Workload Study Projects Malia Brink, who oversaw the Oregon study, was willing to help adapt its findings to Washington.¹⁷

In the end, after consultation with attorney workload experts, the Subcommittee determined that, rather than taking the time and expense to conduct a new Delphi study specific to family defense in Washington, it would be equally valid and more efficient to use the Oregon study as a foundation for an abbreviated workload study in Washington. As described in Appendix B, the Subcommittee worked with Malia Brink to develop a process which included two meetings of well-respected attorneys doing both parent and child representation, to compare Washington workloads to Oregon. The Subcommittee's recommendations adopt the recommendations of the resulting Washington-specific memorandum.¹⁸

Considerations of the Subcommittee:

After significant discussion, the Subcommittee decided to recommend a single caseload number for both parent and child representation. There are several reasons for this. First, the existing WSBA Standards and Court Rule Standards have a single caseload limit for attorneys representing both parents and children – recommending a single number would, therefore, be consistent with the existing standards. Second, in reviewing the Oregon workload study it became apparent that attorney workloads for child and parent representation are roughly equivalent, justifying similar treatment. Third, treating both kinds of representation the same lessens the administrative burden particularly for attorneys who maintain mixed

¹⁶ See Appendix C for links to the reports reviewed.

¹⁷ See Appendix B, Memorandum of Malia Brink.

¹⁸ *Id.*

caseloads with both parent and child clients. Fourth, by setting a lower caseload standard for child representation in 2022, the Child Representation Workgroup's standards created an incentive for experienced family defense attorneys to leave parent representation for child representation, disadvantaging parent representation. The standards should not, unnecessarily, create competition for attorneys between two different state agencies who are often contracting with the same pool of lawyers. Finally, there are administrative inefficiencies inherent in having two different standards applied by two state agencies; these standards should create incentives for the two agencies to work together and create similar processes whenever workable.

Further, the Subcommittee determined to recommend a caseload standard of a combined cap on the number of current clients as well as a cap on the total number of open and active cases. The Child Representation Workgroup also recommended this method of counting and, according to OCLA, this has proved not only to be a workable system but a preferred one, as contractors appreciate the certainty that comes with knowing the maximum number of clients that they could have at any one time. In addition, in our discussions, including in meetings with the attorneys who reviewed the Oregon workload study, it was generally agreed that there will always be significant overlap between activities in either a termination or guardianship case, and the parallel dependency case, as those cases will be running concurrently. For example, time spent in working to return a child home in the dependency, will – if successful – also resolve a termination or guardianship case. The overlap in that work supports counting clients rather than cases.

The Subcommittee, however, determined a standard based solely on client number, while certainly workable, was not sufficient. Because there are some jurisdictions in Washington in which termination cases are filed on approximately half of all dependency cases, an attorney doing only parent representation in a jurisdiction with high termination filings could be well within a caseload maximum of 35 clients but still have an untenable caseload of 35 dependency cases and around 17 termination cases. For that reason, both a case cap and a client cap are proposed. The recommended standard is for family defense attorneys to represent no more than 35 clients in no more than 40 open and active cases at any given time.

Finally, the Subcommittee weighed whether to adopt a caseload based on annual assignments, as in the criminal context, rather than an open and active caseload limit. Although the Memorandum of Malia Brink also offers a methodology for counting weighted case *assignments*, the Subcommittee does not recommend adopting that proposal. Changing the current method of counting family defense caseloads, from open and active cases to new case assignments, would require significant administrative and practice changes in both state agencies administering these contracts. Because family defense has not, thus far, counted case assignments, and because the burden of the relatively complex math will fall on solo practitioners who may carry two different contracts, the Subcommittee determined to recommend the proposed caseload that creates both a client and an open and active case cap.¹⁹

¹⁹ In addition, the Subcommittee recognized that, in the criminal context where case durations are frequently shorter than family defense cases, counting open and active cases can result in an extremely large number of new assignments because it creates an incentive for attorneys to resolve their cases quickly by, for example, “meeting and pleading” – a practice that is generally discouraged. This is especially so if attorneys are paid on a per case basis. Yet, dependency practice is quite different, and the same

However, in recognition of the fact that the two state agencies may eventually wish to adopt case weighting standards, discretion is provided in the proposed standards for the two state agencies to develop such standards in the future.

The Subcommittee did not address the certification requirement or appellate requirements as those are the subject of other subcommittees convened by the Council on Indigent Defense.

Social Work Ratio Requirements:

In 2019, a large study of more than 28,000 cases in New York, examined the question: *what kind of parental representation should child welfare systems provide to promote child safety and timely permanency?*²⁰ The study compared outcomes for children when parents in dependency cases are represented by either experienced solo, panel attorneys or a salaried attorney working in a nonprofit law office that provides interdisciplinary representation (including defense social workers and parent advocates working on the defense team).

The study found that interdisciplinary representation decreases children's length of time spent in foster care, promotes timely "permanency," and does not impact the likelihood of children experiencing a subsequent substantiated report of child maltreatment. Further, because of the decreased burden on the system, an interdisciplinary law office approach to parental representation may save millions of government dollars.

Washington has long embraced the value of interdisciplinary representation, in many ways pioneering the practice of making defense social work supports available to solo practitioners. The nature of family defense cases necessarily requires significant amounts of work out of court, not only to advocate for clients in their interactions with state actors, but also to assist clients in making the kinds of changes to their life that will ultimately resolve the case. Most dependency cases in Washington result in the child returned home a parent, an outcome that frequently requires the parent to make very significant life changes.

In consultation with the Washington State Office of Public Defense leadership responsible for administering existing defense social work supports, it became clear that to achieve the benefits of interdisciplinary representation in Washington, significantly more defense social support is required. There is, at present, a waiting list for defense social work supports and attorneys are required to "triage" their cases. The Subcommittee agreed that the current situation can lead to the inequitable treatment of similarly situated clients. As a result, the Subcommittee elected to adopt ratios of social workers to attorneys that are specific to family defense. The recommended ratio of parent defense attorney to social workers is one to one.

concerns do not apply because family defense cases typically remain open for upwards of a year and attorneys have significantly less control over the timing of resolution of a case.

²⁰ Gerber, Lucas A., Yuk C. Pang, Timothy Ross, Martin Guggenheim, Peter J. Pecora, and Joel Miller. "Effects of an interdisciplinary approach to parental representation in child welfare." *Children and Youth Services Review* 102 (2019): 42-55.

Experience and Supervision Requirements:

Finally, the Subcommittee determined that the lack of any meaningful experience and supervision requirement for family defense representation in the existing Indigent Defense Standards was problematic. First, the existing standards create more stringent supervision and experience requirements for other civil cases, including contempt of court and involuntary treatment; yet, family defense cases implicate similarly significant constitutional rights but the Standards require only familiarity with generalized legal concepts. Further, unlike criminal law and criminal procedure, dependency law is not a core subject taught in law school, underscoring the need for additional training, experience, and supervision.

Prior to the work of this Subcommittee, both OPD and OCLA were developing new systems to allow for improved supervision and training. Both agencies recognize the need to develop structures to onboard a new generation of family defense attorneys, trained in rigorous standards, and prepared to address this complex, evolving area of law. Indeed, for OCLA and OPD, as contracting agencies, there are limitations on the amount and nature of any oversight they are able to provide. Therefore, the Subcommittee decided to recommend new supervision and experience standards for family defense, consistent with the recommendations of OPD and OCLA.

Recommendations:

See attached Appendix A for recommendations.

Suggested Amendments to WSBA Standards for Indigent Defense

Markup:

DEFINITIONS

1. [Unchanged.]

2. Case – A “case” is a new court filing or action that names a person who is eligible for appointment of a public defense attorney; for example, an adult criminal charging instrument, a juvenile court offender or BECCA petition, a dependency, Title 13 guardianship, or termination of parental rights petition, a civil commitment petition, or an appeal. For additional explanation in relation to caseload capacity, refer to Standards 3.H and 3.I.

3. – 7. [Unchanged.]

8. Family Defense – Family defense is the practice of representing all people statutorily and constitutionally entitled to legal representation in cases under RCW 13.34, 13.36, and 13.38, et seq.

9. Family Defense Social Worker or Family Defense Social Service Worker – A family defense professional with a degree in Social Work (or allied field) who provides professional services to assist the attorney and to help meet the basic and complex needs of the client. At the discretion of the agency or firm, individuals without a degree in Social Work (or other field), but who can demonstrate lived or professional experience in the dependency system may serve the same role with the title of “Family Defense Social Service Worker.”

[Remaining definitions unchanged with the exception of renumbering to accommodate new definitions 8 and 9.]

STANDARD ONE: Compensation

[Unchanged.]

STANDARD TWO: Duties and Responsibilities of Counsel

[Unchanged.]

STANDARD THREE: Caseload Limits and Types of Cases

Standard:

3.A. – 3.G. [Unchanged.]

3.H. Definition of case.

A “case” is a new court filing or action that names a person who is eligible for appointment of a public defense attorney; for example, an adult criminal charging instrument; a juvenile court offender or BECCA petition; a dependency, Title 13 guardianship, or termination of parental rights petition; a civil commitment petition, or an appeal.

3.I. – 3.J. [Unchanged.]

3.K. Other Case Types.¹⁴

Appeals: 36 appeals to an appellate court hearing a case on the record and briefs per attorney per year. (The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)

Family Defense: Family defense attorneys shall not represent more than 35 family defense clients or carry more than 40 open and active family defense cases at any given time. State agencies responsible for administering family defense representation may adopt case weighting standards not inconsistent with these standards. A supervising attorney assigned as co-counsel may count that client or case towards their total under this rule. ~~80 open dependency/termination of parental rights for parent and child(ren) representation per attorney per year.~~

Civil Commitment: 250 Civil Commitment cases per attorney per year.

3.L. – 3.N. [Unchanged.]

¹⁴ The standards under this subsection, with the exception of family defense caseload standards, are under review. To provide guidance in the interim, the prior standards are included only until revisions are approved.

3.O. Implementation of Standards

Standard 3 shall be implemented in phases and shall go into effect on July 2, 2025. The 2024 revisions to these Indigent Defense Standards shall be implemented on the following schedule:

Until July 2, 2025, the caseload standards as adopted in pre-existing *WSBA Standards of Indigent Defense Services* and *Court Rule Standards of Indigent Defense* shall apply: The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following:

150 Felonies per attorney per year;

300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year;

250 Juvenile Offender cases per attorney per year.

Phase 1:

Beginning July 2, 2025, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 110 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 280 misdemeanor case credits. Beginning July 2, 2025, family defense attorneys shall not represent more than 45 family defense clients or carry more than 60 open and active cases at any given time.

Phase 2:

Beginning July 2, 2026, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 90 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 225 misdemeanor case credits. Beginning July 2, 2026, family defense attorneys shall not represent more than 35 family defense clients or carry more than 40 open and active cases at any given time.

Phase 3:

Beginning July 2, 2027, and for any twelve-month period following, each full-time felony attorney shall be assigned cases constituting no more than 47 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 120 misdemeanor case credits.

STANDARD FOUR: Responsibility for Expert Witnesses

Standard:

4.A. [Unchanged]

4.B. Mitigation Specialists, Social Workers

Mitigation specialists and social workers shall be made readily available to public defense attorneys to provide support, such as release plans, treatment services, housing, health care, and to develop dispositional and sentencing alternatives.

In public defense agencies, by July 3, 2028, a minimum of one full-time mitigation specialist or social worker shall be provided for every three full-time attorneys. Public defense agencies shall make meaningful progress towards this ratio prior to July 3, 2028.¹⁵ Attorneys representing clients in post-adjudication phases may require different resources. Public defense agencies that do not employ a sufficient number of mitigation specialists or social workers to meet this ratio shall enter into contracts with additional mitigation specialists or social workers to provide the same resource level.

For public defense agencies responsible for administering the funding for parent representation, by July 3, 2028, a minimum of one full-time family defense social worker or family defense social service worker shall be provided for every one full-time attorney representing parents in family defense proceedings, on a pro rata basis according to the size of the contract. Public defense agencies responsible for administering

¹⁵ Support staff necessary for effective representation “includes one supervisor for every ten attorneys; one investigator for every three attorneys; one social service caseworker for every three attorneys; one paralegal for every four felony attorneys; and one secretary for every four felony attorneys.” Bureau of Justice Assistance, United States Department of Justice’s *Keeping Defender Workloads Manageable*, 10 (2001), available at <https://www.ncjrs.gov/pdffiles1/bja/185632.pdf>. See also, National Association for Public Defense Policy Statement on Public Defense Staffing (May 2020), available at <https://publicdefenders.us/resources/policy-statement-on-public-defense-staffing/>.

1 the funding for parent's defense shall make meaningful progress towards the ratio of one full-time family
2 defense social worker or family defense social service worker for every one full-time parent's defense
3 attorney prior to July 3, 2028. Public defense agencies responsible for administering the funding for child
4 and youth representation shall ensure that adequate social work support services are made available to
5 meet the case and support needs of children and youth in family defense cases.

6 Temporary reductions in agency staff because of illness, disability, or reasonable delay in filling vacancies
7 do not constitute failure to comply with this standard. Attorneys representing clients in post-adjudication
8 phases may require different resources.

9 Public defense attorneys under contract or in assigned counsel systems should have access to mitigation
10 specialists and social workers, consistent with 4.A.

11 4.C. – 4.E. [Unchanged.]
12

13 **STANDARD FIVE – SEVEN** [Unchanged.]
14

15 **STANDARD EIGHT: Reports of Attorney Activity**

16 ***Standard:***

17 Jurisdictions and family defense contracting agencies shall require all public defense attorneys to use a
18 case-reporting and management information system that includes the number and types of assigned
19 cases, attorney hours, and case dispositions. Data from these systems should be routinely reported to
20 public defense administrators in a manner in which confidential, secret, and otherwise non-public
21 information and secrets are not disclosed. Consistent with Standard Eleven, public defense administrators
22 should review these reports on a regular basis to monitor compliance with these Standards.

23 For attorneys under contract, payment should be made monthly, or at times agreed to by the parties,
24 without regard to the number of cases closed in the period.
25

26 **STANDARD NINE: Training**

[Unchanged.]

STANDARD TEN: Supervision

Standard:

10.A. General Provisions.

In public defense agencies and contracted private law firms, a minimum of one full-time supervisor should be employed for every ten full-time public defense attorneys or one half-time supervisor for every five public defense attorneys. Full-time supervisors should not carry caseloads, but supervisors may act as co-counsel in a limited number of cases to provide mentoring and training experience for their supervisees. Part-time supervisors should limit their caseloads on a pro-rata basis. Supervisors should have training in personnel management and supervision. Supervisors should be qualified under Standard 14 for the practice area(s) they are supervising.

10.B. Supervision for Family Defense Representation

Supervising Attorney Standard: Where a contracted provider is contracted for more than one full-time equivalent (FTE), they shall designate one full-time supervising attorney for every ten full-time family defense attorneys. A parttime supervising attorney should limit their caseload on a pro-rata basis. Supervisors may act as co-counsel in a limited number of cases to provide mentoring and training experience for their supervisees. To be a supervising attorney for family defense cases, the attorney must meet the criteria as set forth in Standard 14.C.4.a. Where a contracted provider is contracted for one FTE or less, the Office of Public Defense or the Office of Civil Legal Aid shall make available programs to support co-counsel opportunities, mentoring programs, or training experiences, as set forth in Standard 14.

STANDARD ELEVEN – STANDARD THIRTEEN [Unchanged.]

STANDARD FOURTEEN: Qualifications of Attorneys

Standard:

1 14.A. – 14.B. [unchanged]

2 14.C. Attorneys' Qualifications by Category/Type of Case and Representation Type (Trial or Appellate)

3 1. – 3. [unchanged]

4 **4. Civil Cases – Trial Court Cases**

5 **a. ~~Representing Children and Youth in Dependency~~Family Defense Cases – Attorneys**
6 ~~representing children and youth in dependency matters should be familiar with expert~~
7 ~~services and treatment resources available in dependency cases.~~

8 i. **Youth –** Each lead counsel representing children and youth in a ~~dependency~~
9 family defense matter shall meet the following requirements:

10 ~~i.1.~~ Meet the minimum requirements set forth in Section 14.A₂ and

11 2. ~~Abide, at minimum, by the requirements for training and experience in~~
12 the [Representation of Children and Youth in Dependency Cases Practice,](#)
13 [Caseload and Training Standards,](#) ~~Washington Supreme Court~~
14 ~~Commission on Children in Foster Care, at the Request of the Legislature~~
15 ~~(Rev. Sept. 2022),¹⁶ established in accordance with Section 9, Chapter~~
16 [210, Laws of 2021 and adopted by the Washington State Supreme Court](#)
17 [Commission on Children in Foster Care.](#)

18 ii. ~~Have knowledge, training, experience, and ability in communicating effectively~~
19 ~~with children, or have participated in at least one consultation per case either~~
20 ~~with a state Office of Civil Legal Aid resource attorney or other attorney qualified~~
21 ~~under this section; and~~

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23
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25
26 ¹⁶ Available at: <https://www.courts.wa.gov/subsite/CommFC/docs/revised%20practice%20standards%20for%20representation%20of%20children%20and%20youth%20in%20dependency%20cases.pdf>.

1 iii. Attorneys representing children and youth in termination of parental rights cases
2 shall have six months' dependency experience or have significant experience in
3 conducting complex litigation.

4 **b.ii. Representing Parents and Respondents in Family Defense Cases in Dependency**

5 **Cases** – Attorneys Each counsel representing parents in a dependency family
6 defense matter should be familiar with expert services and treatment resources
7 available in dependency cases. Each lead counsel representing children and youth
8 in a dependency matter shall meet the following requirements:

9 i. 1. Meet the minimum requirements as outlined in Section 14.A; and

10 ii. 2. Be familiar with the [American Bar Association Standards of Practice for](#)
11 [Attorneys Representing Parents in Abuse and Neglect Cases and the](#)
12 [Family Justice Initiative Attributes](#); and

13 i. ~~Attorneys representing parents in termination of parental rights cases shall have~~
14 ~~either six months' dependency experience or significant experience in handling~~
15 ~~complex litigation.~~

16 **iii. All Family Defense Attorneys:**

17 1. **Must complete an orientation training on dependency, guardianship,**
18 **and termination law.** Where a contracted provider has an identified
19 supervising attorney, the supervising attorney may provide this
20 orientation. Where a contracted provider does not have an identified
21 supervising attorney, this orientation shall be provided by the contracting
22 agency.

23 2. **Must have proficiency.** Where a contracted provider does not have a
24 supervising attorney, the contracting agency must perform an
25 assessment of proficiency and the need for any further orientation or
26 consultation before the contracted attorney can conduct any fact-finding

1 or evidentiary hearing on their own. To be assessed as proficient and able
2 to effectively fulfill the duties of representing families in dependency
3 courts, the contracting agency shall consider, at a minimum, the
4 following:

- 5 i. The number of years of experience doing complex litigation.
- 6 ii. The number of years of dependency experience.
- 7 iii. Whether the attorney has experience using experts in
8 dependency or termination proceedings.
- 9 iv. Education, certification, or other demonstrated proficiency in
10 child welfare.
- 11 v. Whether they have previously acted as lead counsel in any of the
12 following proceedings:
 - 13 1. Shelter Care
 - 14 2. Dependency Fact Finding
 - 15 3. Title 13 Guardianship or
 - 16 4. Termination Trial.

17 For attorneys who do not have a supervising attorney and who have been
18 assessed by a contracting agency as lacking proficiency to handle a fact-
19 finding or other evidentiary hearing on their own, the Office of Civil Legal
20 Aid and the Office of Public Defense shall provide a consultation program
21 for that attorney that:

- 22 i. Is consistent with RPCs regarding confidentiality, including but
23 not limited to RPC 1.6
- 24 ii. Is designed to assist attorneys new to family defense in
25 dependency, guardianship and termination cases, and
26

1 iii. Will allow consultants to provide technical assistance and
2 additional representation to parents or children assigned to the
3 attorney.

4 **be. Civil Commitment Cases** [Unchanged.]

5 **cd. Representing Clients Acquitted by Reason of Insanity** [Unchanged.]

6 **de. Sex Offender Commitment Cases** [Unchanged.]

7 **ef. Contempt of Court Cases** [Unchanged.]

8 **5. – 6.** [Unchanged.]

9
10 **STANDARD FIFTEEN – NINETEEN** [Unchanged.]

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DEFINITIONS

1. [Unchanged.]

2. Case – A “case” is a new court filing or action that names a person who is eligible for appointment of a public defense attorney; for example, an adult criminal charging instrument; a juvenile court offender or BECCA petition; a dependency, Title 13 guardianship, or termination of parental rights petition; a civil commitment petition; or an appeal. For additional explanation in relation to caseload capacity, refer to Standards 3.H and 3.I.

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[Remaining definitions unchanged with the exception of renumbering to accommodate new definitions 8 and 9.]

STANDARD ONE: Compensation

[Unchanged.]

STANDARD TWO: Duties and Responsibilities of Counsel

[Unchanged.]

STANDARD THREE: Caseload Limits and Types of Cases

Standard:

1 3.A. – 3.G. [Unchanged.]

2 3.H. Definition of case.

3 A “case” is a new court filing or action that names a person who is eligible for appointment of a public
4 defense attorney; for example, an adult criminal charging instrument; a juvenile court offender or BECCA
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6 commitment petition, or an appeal.

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8 3.K. Other Case Types.¹⁷

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10 (The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average
11 length of 350 pages. If attorneys do not have significant appellate experience and/or the average
12 transcript length is greater than 350 pages, the caseload should be accordingly reduced.)

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14 more than 40 open and active family defense cases at any given time. State agencies responsible for
15 administering family defense representation may adopt case weighting standards not inconsistent with
16 these standards. A supervising attorney assigned as co-counsel may count that client or case towards their
17 total under this rule.

18 Civil Commitment: 250 Civil Commitment cases per attorney per year.

19
20 3.L. – 3.N. [Unchanged.]

21
22 3.O. Implementation of Standards

23
24
25 ¹⁷ The standards under this subsection, with the exception of family defense caseload standards, are under
26 review. To provide guidance in the interim, the prior standards are included only until revisions are
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Beginning July 2, 2025, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 110 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 280 misdemeanor case credits. Beginning July 2, 2025, family defense attorneys shall not represent more than 45 family defense clients or carry more than 60 open and active cases at any given time.

Phase 2:

Beginning July 2, 2026, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 90 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 225 misdemeanor case credits. Beginning July 2, 2026, family defense attorneys shall not represent more than 35 family defense clients or carry more than 40 open and active cases at any given time.

Phase 3:

Beginning July 2, 2027, and for any twelve-month period following, each full-time felony attorney shall be assigned cases constituting no more than 47 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 120 misdemeanor case credits.

STANDARD FOUR: Responsibility for Expert Witnesses

Standard:

4.A. [Unchanged]

4.B. Mitigation Specialists, Social Workers

Mitigation specialists and social workers shall be made readily available to public defense attorneys to provide support, such as release plans, treatment services, housing, health care, and to develop dispositional and sentencing alternatives.

In public defense agencies, by July 3, 2028, a minimum of one full-time mitigation specialist or social worker shall be provided for every three full-time attorneys. Public defense agencies shall make meaningful progress towards this ratio prior to July 3, 2028.¹⁸ Attorneys representing clients in post-adjudication phases may require different resources. Public defense agencies that do not employ a sufficient number of mitigation specialists or social workers to meet this ratio shall enter into contracts with additional mitigation specialists or social workers to provide the same resource level.

For public defense agencies responsible for administering the funding for parent representation, by July 3, 2028, a minimum of one full-time family defense social worker or family defense social service worker shall be provided for every one full-time attorney representing parents in family defense proceedings, on a pro rata basis according to the size of the contract. Public defense agencies responsible for administering

¹⁸ Support staff necessary for effective representation “includes one supervisor for every ten attorneys; one investigator for every three attorneys; one social service caseworker for every three attorneys; one paralegal for every four felony attorneys; and one secretary for every four felony attorneys.” Bureau of Justice Assistance, United States Department of Justice’s *Keeping Defender Workloads Manageable*, 10 (2001), available at <https://www.ncjrs.gov/pdffiles1/bja/185632.pdf>. See also, National Association for Public Defense Policy Statement on Public Defense Staffing (May 2020), available at <https://publicdefenders.us/resources/policy-statement-on-public-defense-staffing/>.

1 the funding for parent's defense shall make meaningful progress towards the ratio of one full-time family
2 defense social worker or family defense social service worker for every one full-time parent's defense
3 attorney prior to July 3, 2028. Public defense agencies responsible for administering the funding for child
4 and youth representation shall ensure that adequate social work support services are made available to
5 meet the case and support needs of children and youth in family defense cases.

6 Temporary reductions in agency staff because of illness, disability, or reasonable delay in filling vacancies
7 do not constitute failure to comply with this standard. Attorneys representing clients in post-adjudication
8 phases may require different resources.

9 Public defense attorneys under contract or in assigned counsel systems should have access to mitigation
10 specialists and social workers, consistent with 4.A.

11 4.C. – 4.E. [Unchanged.]
12

13 **STANDARD FIVE – SEVEN** [Unchanged.]
14

15 **STANDARD EIGHT: Reports of Attorney Activity**

16 ***Standard:***

17 Jurisdictions and family defense contracting agencies shall require all public defense attorneys to use a
18 case-reporting and management information system that includes the number and types of assigned
19 cases, attorney hours, and case dispositions. Data from these systems should be routinely reported to
20 public defense administrators in a manner in which confidential, secret, and otherwise non-public
21 information are not disclosed. Consistent with Standard Eleven, public defense administrators should
22 review these reports on a regular basis to monitor compliance with these Standards.

23 For attorneys under contract, payment should be made monthly, or at times agreed to by the parties,
24 without regard to the number of cases closed in the period.
25

26 **STANDARD NINE: Training**

[Unchanged.]

STANDARD TEN: Supervision

Standard:

10.A. General Provisions.

In public defense agencies and contracted private law firms, a minimum of one full-time supervisor should be employed for every ten full-time public defense attorneys or one half-time supervisor for every five public defense attorneys. Full-time supervisors should not carry caseloads, but supervisors may act as co-counsel in a limited number of cases to provide mentoring and training experience for their supervisees. Part-time supervisors should limit their caseloads on a pro-rata basis. Supervisors should have training in personnel management and supervision. Supervisors should be qualified under Standard 14 for the practice area(s) they are supervising.

10.B. Supervision for Family Defense Representation

Supervising Attorney Standard: Where a contracted provider is contracted for more than one full-time equivalent (FTE), they shall designate one full-time supervising attorney for every ten full-time family defense attorneys. A parttime supervising attorney should limit their caseload on a pro-rata basis. Supervisors may act as co-counsel in a limited number of cases to provide mentoring and training experience for their supervisees. To be a supervising attorney for family defense cases, the attorney must meet the criteria as set forth in Standard 14.C.4.a. Where a contracted provider is contracted for one FTE or less, the Office of Public Defense or the Office of Civil Legal Aid shall make available programs to support co-counsel opportunities, mentoring programs, or training experiences, as set forth in Standard 14.

STANDARD ELEVEN – STANDARD THIRTEEN [Unchanged.]

STANDARD FOURTEEN: Qualifications of Attorneys

Standard:

1 14.A. – 14.B. [unchanged]

2 14.C. Attorneys' Qualifications by Category/Type of Case and Representation Type (Trial or Appellate)

3 1. – 3. [unchanged]

4 **4. Civil Cases – Trial Court Cases**

5 **a. Family Defense Cases –**

6 **i. Youth** – Each lead counsel representing children and youth in a family defense
7 matter shall meet the following requirements:

- 8 1. Meet the minimum requirements set forth in Section 14.A; and
- 9 2. Abide, at minimum, by the *Representation of Children and Youth in*
10 *Dependency Cases Practice, Caseload and Training Standards*, (Rev. Sept.
11 2022),¹⁹ established in accordance with Section 9, Chapter 210, Laws of
12 2021 and adopted by the Washington State Supreme Court Commission
13 on Children in Foster Care.

14 **ii. Parents and Respondents in Family Defense Cases** – Each counsel representing
15 parents in a family defense matter shall meet the following requirements:

- 16 1. Meet the minimum requirements as outlined in Section 14.A; and
- 17 2. Be familiar with the *American Bar Association Standards of Practice for*
18 *Attorneys Representing Parents in Abuse and Neglect Cases and the*
19 *Family Justice Initiative Attributes*.

20 **iii. All Family Defense Attorneys:**

- 21 **1. Must complete an orientation training on dependency, guardianship,**
22 **and termination law.** Where a contracted provider has an identified
23 supervising attorney, the supervising attorney may provide this
24

25
26 ¹⁹ Available at: <https://www.courts.wa.gov/subsite/CommFC/docs/revised%20practice%20standards%20for%20representation%20of%20children%20and%20youth%20in%20dependency%20cases.pdf>.

1 orientation. Where a contracted provider does not have an identified
2 supervising attorney, this orientation shall be provided by the contracting
3 agency.

4 **2. Must have proficiency.** Where a contracted provider does not have a
5 supervising attorney, the contracting agency must perform an
6 assessment of proficiency and the need for any further orientation or
7 consultation before the contracted attorney can conduct any fact-finding
8 or evidentiary hearing on their own. To be assessed as proficient and able
9 to effectively fulfill the duties of representing families in dependency
10 courts, the contracting agency shall consider, at a minimum, the
11 following:

- 12 i. The number of years of experience doing complex litigation.
- 13 ii. The number of years of dependency experience.
- 14 iii. Whether the attorney has experience using experts in
15 dependency or termination proceedings.
- 16 iv. Education, certification, or other demonstrated proficiency in
17 child welfare.
- 18 v. Whether they have previously acted as lead counsel in any of the
19 following proceedings:
 - 20 1. Shelter Care
 - 21 2. Dependency Fact Finding
 - 22 3. Title 13 Guardianship or
 - 23 4. Termination Trial.

24 For attorneys who do not have a supervising attorney and who have been
25 assessed by a contracting agency as lacking proficiency to handle a fact-
26 finding or other evidentiary hearing on their own, the Office of Civil Legal

Aid and the Office of Public Defense shall provide a consultation program
for that attorney that:

- i. Is consistent with RPCs regarding confidentiality, including but
not limited to RPC 1.6
- ii. Is designed to assist attorneys new to family defense in
dependency, guardianship and termination cases, and
- iii. Will allow consultants to provide technical assistance and
additional representation to parents or children assigned to the
attorney.

b. Civil Commitment Cases [Unchanged.]

c. Representing Clients Acquitted by Reason of Insanity [Unchanged.]

d. Sex Offender Commitment Cases [Unchanged.]

e. Contempt of Court Cases [Unchanged.]

5. – 6. [Unchanged.]

STANDARD FIFTEEN – NINETEEN [Unchanged.]

APPENDIX B: MEMORANDUM OF MALIA BRINK

MEMORANDUM

To: Washington State Bar, Subcommittee on Indigent Defense Standards for Family Defense

From: Malia Brink

Re: Washington State Dependency Workload Standards

Date: July 15, 2024

Thank you for asking me to consult on the standards applicable to dependency cases in Washington State. This memo serves to document the process of coming to a recommended standard, as well as those recommendations.

THE PROCESS

Initially, I met with subcommittee members about the dependency case process in Washington State, as well as the dependency case process in other states. Following this meeting, subcommittee members identified the case process in Oregon as appearing the most similar to Washington State. A follow-up call with an Oregon dependency attorney confirmed the similarity of the process and identified differences that should be addressed. Importantly, the case types used in the [Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards](#) were deemed appropriate for use in Washington State..

Following this call, I met with subcommittee members to propose a process for modifying the dependency case standards from the [Oregon study](#). First, subcommittee members familiar with dependency representation modified the Oregon dependency attorney case tasks to fit Washington State. The Washington State case task definitions are attached here as Exhibit A. Next, the subcommittee identified well-respected attorneys (luminaries) in Washington State experienced in dependency representation. The group was divided into those experienced in the representation of parents and those experienced in the representation of children. Select attorneys, experienced in both representation of children and parents, were on both lists. Each group was then invited to a meeting to address the case types for their type of client. The two case types for both groups consisted of (1) dependency and (2) termination of parental rights.

Prior to the meetings, participants were provided with background on the purpose of the meeting, as well as the Washington State case task definitions, the Washington Bar and National Standards relevant to parent or child representation, and the Oregon caseload standard time and frequency numbers broken down by case task. Participants were asked to review the Oregon numbers, in light of both the standards and the Washington State case task definitions. They were asked to consider whether, based on their experience representing clients in dependency cases in Washington State, the time estimates were too high, about right, or too low. They were provided an Initial Response worksheet on which to document their preliminary view of the Oregon time and frequency estimates. The Instructions and Initial Response Forms provided to both groups are attached here as Exhibit B.

The meeting for each group took place on July 1, 2024. I facilitated the meeting with attorneys experienced in the representation of children. However, because of an intervening family crisis, Tara Urs facilitated the meeting with attorneys experienced in the representation of parents. Each meeting was scheduled for three hours. During each meeting, the attorneys discussed each case task for each case type – dependency and termination of parental rights. The participants discussed the time they spend representing their clients, what constitutes constitutionally sufficient representation, what additional time might be necessary to fully comply with practice standards, what factors impact time spent or frequency of case tasks, and the differences between Washington and Oregon procedures that might affect the time or frequency estimates. The participants discussed a particular case task until a consensus around the average time and frequency for each task was reached. These discussions led to modifications of the Oregon time and frequency estimates in both directions – adding time and frequency in some case task categories and decreasing time and frequency in others. To the fullest extent possible, this process mirrored the process used by the American Bar Association in conducting the final round a of jurisdiction-specific public defense workload study.¹

THE RESULTS:

The results of the discussions with the Washington State luminaries are summarized in the tables below.

CHILD REPRESENTATION -- DEPENDENCY	NOT CONTESTED (Est. 78%)			CONTESTED (AT LEAST PARTIALLY) (Est. 22%)		
	Hours	Freq.	Total	Hours	Freq.	Total
Client Communication	5	100%	5	6	100%	6.00
Client Advocacy and Support	9	100%	9	9	100%	9.00
Discovery/Case Analysis	8	100%	8	12.5	100%	12.50
Experts	3.5	10%	0.35	4	15%	0.60
Legal Research, Motions Practice, Other Writing	2.5	100%	2.5	5	100%	5.00
Court Preparation	3	100%	3	12	100%	12.00
Court Time	4.5	100%	4.5	25	100%	25.00
Appeal Preparation	2	1%	0.02	3	12%	0.36
Post-Fact-Finding (Jurisdiction) Client Communication	27	90%	24.3	27	90%	24.30
Post-Fact-Finding (Jurisdiction) Client Advocacy and Support	36	90%	32.4	36	90%	32.40
Post-Fact-Finding (Jurisdiction) Hearing Preparation	9	90%	8.1	9	90%	8.10

¹ For more on this process, please see [Use of the Delphi Method in ABA SCLAID Workload Studies](#) (2021).

Post-Fact-Finding (Jurisdiction) Court Time	7	90%	6.3	7	90%	6.30
<i>SUB-TOTALS</i>			103.5			141.6
TOTAL CASE WEIGHT – 111.8 hours/case²						

CHILD REPRESENTATION – TERMINATION OF PARENTAL RIGHTS	NOT CONTESTED (Est. 78%)			CONTESTED (AT LEAST PARTIALLY) (Est. 22%)		
	Hours	Freq.	Total	Hours	Freq.	Total
Client Communication	4	100%	4	8	100%	8
Client Advocacy and Support	1	100%	1	2	100%	2
Discovery/Case Analysis	25	100%	25	30	100%	30
Experts	6	5%	0.3	6	5%	0.3
Legal Research, Motions Practice, Other Writing	3	100%	3	10	100%	10
Court Preparation	8	100%	8	17	100%	17
Court Time	5	100%	5	29	100%	29
Appeal Preparation	0	0%	0	3.5	30%	1.05
Post-Judgment Work	0.5	100%	0.5	0.5	100%	0.5
<i>SUB-TOTALS</i>			46.8			97.6
TOTAL CASE WEIGHT – 57 hours/case						

² Case weight is calculated by taking the total uncontested time (103.47) x est. % cases uncontested (78%) + total contested time (141.56) x est. % cases contested (22%) = 111.8 hours/case.

PARENT REPRESENTATION -- DEPENDENCY	NOT CONTESTED (Est. 67%)			CONTESTED (AT LEAST PARTIALLY) (Est. 33%)		
	Hours	Freq.	Total	Hours	Freq.	Total
Client Communication	6.5	100%	6.5	15	100%	15
Client Advocacy and Support	7.5	100%	7.5	15	100%	15
Discovery/Case Analysis	12	100%	12	15	100%	15
Experts	8	50%	4	10	50%	5
Legal Research, Motions Practice, Other Writing	2.5	100%	2.5	6	100%	6
Court Preparation	6.5	100%	6.5	15	100%	15
Court Time	5	100%	5	25	100%	25
Appeal Preparation	1.5	5%	0.075	2	50%	1
Post-Fact-Finding (Jurisdiction) Client Communication	28	90%	25.2	38	90%	34.2
Post-Fact-Finding (Jurisdiction) Client Advocacy and Support	39	90%	35.1	39	90%	35.1
Post-Fact-Finding (Jurisdiction) Hearing Preparation	22	90%	19.8	22	90%	19.8
Post-Fact-Finding (Jurisdiction) Court Time	15	90%	13.5	15	90%	13.5
<i>SUB-TOTALS</i>			<i>137.7</i>			<i>199.6</i>
TOTAL CASE WEIGHT – 158.1 hours/case						

PARENT REPRESENTATION – TERMINATION OF PARENTAL RIGHTS	NOT CONTESTED (Est. 80%)			CONTESTED (AT LEAST PARTIALLY) (Est. 20%)		
	Hours	Frequency	Total	Hours	Frequency	Total
Client Communication	5	100%	5	15	100%	15
Client Advocacy and Support	0	0%	0	0	0%	0
Discovery/Case Analysis	15	100%	15	25	100%	25
Experts	10	50%	5	14	80%	11.2
Legal Research, Motions Practice, Other Writing	6	100%	6	10	100%	10
Court Preparation	12	100%	12	30	100%	30
Court Time	4.5	100%	4.5	35	100%	35
Appeal Preparation	0.5	1%	0.005	2	75%	1.5
Post-Judgment Work	2	100%	2	3.5	100%	3.5
<i>SUB-TOTALS</i>			<i>49.5</i>			<i>131.2</i>
TOTAL CASE WEIGHT – 65.8 hours/case						

THE RECOMMENDATIONS:

Based on the above consensus determination of the luminary attorneys, it is possible to calculate both a proposed open caseload standard and a proposed annual caseload limit structure.

Open Caseload Limit:

Using the standard Washington State attorney work year, 1650 hours, and the estimated time to close for each case type, one can estimate an open case number for each case type. This number is arrived at by dividing the 1650 hours by the relevant Case Weight and then multiplying the number by the year value of the estimated time to close. For example, the open caseload of Child Rep – Dependency would be calculated by dividing 1650 hours per year by the case weight of 111.8 hours (14.76 cases/year) and then multiplying the result by the average time to close (2.67 years) for a result of an open caseload standard of 39 cases.

Case Type	Case Weight	Est. Time to Close	Est. Open Cases
Child Rep – Dependency	111.8 hours	32 months (2.67 years)	39 cases
Child Rep - Termination	57.0 hours	15 months (1.25 years)	36 cases
Parent Rep - Dependency	158.1 hours	27.7 months (2.30 years)	24 cases
Parent Rep - Termination	65.8 hours	15 months (1.25 years)	31 cases

Deriving an open caseload limit across case types should account for the fact that both the case weight and the time to close are averages. An attorney with either a disproportionate number of simple cases or a disproportionate number of cases open longer than average could potentially still meet with practice standards in a larger number of cases. However, those with more complex cases or a disproportionate number of the more complex case types could easily be overloaded with an open caseload number below the maximum established. To account for these variations, I would generally recommend the open caseload limit be set at either the highest number of open caseload available for range of case types (here 39.4). Alternatively, one could seek to blend the open case standards in accordance with their historical proportion of the caseload. In the absence of such case occurrence data, one could also average the available open case numbers and then apply to multiplier of roughly 120% so as to ensure that attorneys with simpler caseloads are not unduly cut off. This averaging method similarly produces a calculation of roughly 39.3. For all these reasons, I would propose an open caseload standard of 40.

A different way of creating an open caseload standard in dependency matters is to consider the number of clients – rather than the number of cases. This method is particularly relevant in dependency as termination of parental rights cases are almost entirely derived from and co-exist with a dependency case in which the attorney has represented the same client for some time.³ Importantly, the system should not create a standard requiring an attorney with the maximum allowable number of open cases, to decline representation of a client in a termination proceeding, whom they have been representing in the ongoing dependency case. Given the range of dependency cases in which termination is filed, which I understand ranges by county between 15-30%, I would propose an alternative, or co-existing, limit of 35 clients.

Annual Caseload Limit:

More commonly, case weights would be used to limit the number of new cases assigned to an attorneys during a calendar year. While one could simply subtract the case weight for each new case assigned from the annual number of hours available for casework per attorney (1650 hours), such systems are often simplified into a case credit system. To establish a case credit system, you assign one case type a value of 1.0 and establish a comparative case credit based on the comparative value of the case weights. For example, if you use the lowest value case type (Child Rep – Termination) as the 1.0 value case type, you would calculate the other case credit values by dividing the case weight for each case type by the case weight value of the 1.0 value case type (Child Rep – Termination case weight is 57 hours). A case credit chart calculated in this manner for Washington State dependency cases is reflected in the chart below.⁴

³ Generally an attorney would represent a client (parent or child) in the dependency case before a termination petition is filed. However, a recent change in Washington State law would now allow an attorney to be appointed to represent a child under the age of 8 only upon the termination petition. That attorney would then represent the child not only in the termination, but also in the underlying dependency case.

⁴ As noted in footnote 3, there are now circumstances where an attorney might be appointed to represent a child only when a termination petition is filed. That attorney would then represent the child in both the termination and the remainder of the dependency proceeding. Whether such representation should be counted as a full dependency representation, as well as a termination representation is not clear. Likely,

Case Type	Case Weight	Case Credit
Child Rep – Dependency	111.8 hours	2.0
Child Rep - Termination	57.0 hours	1.0
Parent Rep - Dependency	158.1 hours	2.8
Parent Rep - Termination	65.8 hours	1.2

The number of case credits available to each attorney per year is calculated by dividing the number of hours available per attorney per year (1650 in Washington State) by the 1.0 value case weight (here 57 hours). The resulting case credits available per dependency attorney in Washington State would be 29 case credits per year.

CONCLUSION:

The extensive work conducted by the subcommittee and the luminary attorney groups for parent and child representation in Washington State strongly suggests that the existing caseload limit of 80 open dependency cases is too high and does not adequately reflect the attorney time needed in dependency cases today. Washington State should consider reducing the open caseload limit to 40 and possibly combining the open caseload limit with a current client limit of 35. Further, Washington State could consider employing an annual assignment limit, based on a case credit system, that would also account for the blend of dependency cases assigned to each attorney.

partial case credit should be allocated to the dependency representation in this circumstance, but this type of representation is relatively new and nobody the luminary group had sufficient experience with the circumstance to estimate the appropriate allocation at this time.

APPENDIX C: LIST OF REPORTS REVIEWED

Iowa

- Practice standards:
https://www.iowacourts.gov/static/media/cms/StandardsofPractice101413_8A2315866E084.pdf

Indiana

- Workload study: <https://www.in.gov/publicdefender/files/FINAL-FINAL-FINAL-WORKLOAD-STUDY.pdf>

Louisiana

- Workload study:
<https://lpdb.la.gov/Supporting%20Practitioners/Standards/txtfiles/pdfs/Louisiana%20Project%20Report.pdf>

Massachusetts

- Manual: <https://www.publiccounsel.net/wp-content/uploads/2023/11/Assigned-Counsel-Manual.pdf>

Michigan

- System evaluation:
https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/michigan_parent_representation_report.pdf

North Carolina

- System evaluation:
https://www.americanbar.org/content/dam/aba/administrative/child_law/parentrep/northcarolinareport_full.pdf

New York:

- Practice standards:
<https://www.ils.ny.gov/files/Parental%20Representation%20Standards%20Final%20110615.pdf>

Oregon

- Workload study:
https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis-claid-or-proj-rept.pdf

Rhode Island

- Workload study: <https://www.nacdl.org/getattachment/670f9ceb-4c36-407c-93aa-d190ee4460d1/the-rhode-island-project-a-study-of-the-rhode-island-public-defender-system-and-attorney-workload-standards.pdf>

Wyoming:

- System evaluation:
https://www.americanbar.org/content/dam/aba/administrative/child_law/wyolegalrep.pdf

**APPENDIX D: LIST OF RESPECTED ATTORNEYS WHO PARTICIPATED AS SUBJECT MATTER EXPERTS
("LUMINARIES") IN THE JULY 1, MEETINGS**

Attorneys who participated in the child representation group were:

Chris Desmond
Sarah Beth Huot
Dana Petersen
Susan Henwood
Colleen Shea-Brown
Ted Reinbold
Paula Davenport
Michelle Trombley
Chori Folkman
Adam Ballout
Anastasia Blakely
Elysia Ruvinsky
Baily Black
Charles Clapperton

Attorneys who participated in the parent representation group were:

Chris Bajalcaliev
Stephanie Sellers
Elysia Ruvinsky
Eric Johnson
Adam Ballout
Chris Desmond
Laura Hughes
Manda Lyghts
Crystal Alford
Cameron Buhl

Office of Public Defense
2026 Supplemental Budget
Implementing Parents Representation Caseload Standards

Attachment B

Caseload/FTE Summary	Beginning July 2026	Last 3 Months FY 2028	Beginning July 2028
Current Caseload	6,153		6,153
Current Attorney FTE	129.0		129.0
45 Caseload/40 Parents	40		
35 Caseload/30 Parents			30
Parents Covered	5,160		3,870
Cases Needing Coverage	993		2,283
Additional Contract Attorney FTE	25.0		76.0
Additional Contract Attorney FTE (Prefiling)	1.50		1.50
Cost Per Contract Attorney FTE	\$ 210,491		\$ 210,491
Total Contracted Attorney Cost	\$ 5,578,000		16,313,000
Additional Contract Social Services FTE (3:1 Attorney FTE)	8.5		25.5
Additional Contract Social Services FTE (Prefiling 1:1 Attorney FTE)	1.5		1.5
Cost Per Contract Social Services FTE	\$ 99,000		\$ 99,000
Total Contracted Social Services Cost	\$ 990,000		\$ 2,673,000
Additional Contract Attorney FTE		25	
1 Month Case Transition for 50%		1	
Monthly Cost Per Contract Attorney FTE		18,000	
Sub-total		450,000	
Additional Rule 9 Intern		25	
3 Month Case Transition for 50%		3	
Monthly Cost Per Rule 9 Intern @ 50% Attorney Rate		9,000	
Sub-total		675,000	
Total Contracted Case Transition Cost		1,125,000	

Cost Summary	FY 2027	FY 2028	FY 2029	FY 2010 & Ongoing
Client Services				
Contracted Attorney FTE	\$ 5,578,000	\$ 6,703,000	\$ 16,313,000	\$ 16,313,000
Social Work Professional FTE	\$ 990,000	\$ 990,000	\$ 2,673,000	\$ 2,673,000
Contractor Training	\$ 73,000	\$ 73,000	\$ 209,000	\$ 209,000
Contractor Travel	\$ 73,000	\$ 73,000	\$ 209,000	\$ 209,000
Expert and Litigation Services	\$ 549,000	\$ 549,000	\$ 1,620,000	\$ 1,620,000
Sub-Total Client Services	\$ 7,263,000	\$ 8,388,000	\$ 21,024,000	\$ 21,024,000
OPD Staff				
Managing Attorney	\$ 222,000	\$ 211,000	\$ 655,000	\$ 633,000
Social Services Manager	\$ 212,000	\$ 201,000	\$ 625,000	\$ 603,000
Program Assistant	\$ 140,000	\$ 129,000	\$ 408,000	\$ 386,000
Financial Analyst	\$ 164,000	\$ 153,000	\$ 153,000	\$ 153,000
Sub-Total OPD Staff	\$ 738,000	\$ 694,000	\$ 1,841,000	\$ 1,775,000
Total	\$ 8,001,000	\$ 9,082,000	\$ 22,865,000	\$ 22,799,000
Title IV-E Reimbursement	\$ (1,840,000)	\$ (2,089,000)	\$ (5,259,000)	\$ (5,244,000)
2026 Supplemental Request	\$ 6,161,000	\$ 6,993,000	\$ 17,606,000	\$ 17,555,000

FILED
 SUPREME COURT STATE
 OF WASHINGTON
 SEPTEMBER 5, 2025
 BY SARAH R.
 PENDLETON CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE FAMILY DEFENSE
 CASELOAD STANDARDS FOR INDIGENT
 DEFENSE UNDER CrR 3.1, CrRLJ 3.1, AND JuCR
 9.2

O R D E R

NO. 25700-A-1656

The Washington State Bar Association (WSBA) and the Council on Public Defense (CPD) have recommended proposed amendments to the Standards for Indigent Defense under CrR 3.1, CrRLJ 3.1, and JuCR 9.2 related to “family defense,” which their proposed amendments define as “the practice of representing all people statutorily and constitutionally entitled to legal representation in cases under RCW 13.34, 13.36, and 13.38, et seq.” Their proposed amendments include, but are not limited to, recommendations for reducing the caseload standards for family defense attorneys.

The Court published the proposed amendments for comment in January 2025, with a comment deadline of April 30, 2025. Having reviewed the proposed amendments and the comments received, the Court finds that a reduction in the caseload standards for family defense attorneys is warranted, but under a different implementation schedule than proposed by WSBA and CPD.

Now therefore, it is hereby ORDERED:

ORDER

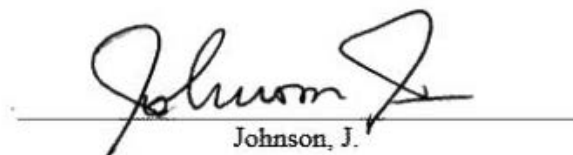
IN THE MATTER OF THE FAMILY DEFENSE CASELOAD STANDARDS FOR
INDIGENT DEFENSE UNDER CrR 3.1, CrRLJ 3.1, AND JuCR 9.2

(a) Beginning July 1, 2026, family defense attorneys shall not represent more than 45 family defense clients or carry more than 60 open and active cases at any given time pursuant to the Standards for Indigent Defense under CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Beginning July 1, 2028, family defense attorneys shall not represent more than 35 family defense clients or carry more than 40 open and active cases at any given time. Rule amendments concerning these revised caseload standards will be issued in the near future, once the Court's review of all pending proposed amendments to the Standards for Indigent Defense is complete.

(b) This order will be published in the Washington Reports.

DATED at Olympia, Washington this 5th day of September, 2025.


CHIEF JUSTICE

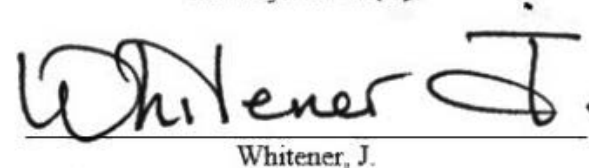

Johnson, J.


Yu, J.

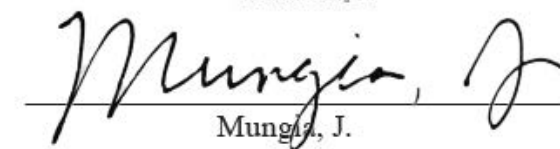

Madsen, J.


Montoya-Lewis, J.


González, J.


Whitener, J.


Gordon McCloud, J.


Mungia, J.