

Washington State Judicial Branch

2025-2027 Biennial Budget

Appellate Caseload Standard Implementation

Agency: Office of Public Defense

Decision Package Code/Title: 1T – Appellate Caseload Standard Imp.

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests funding to reduce caseloads for contracted attorneys who represent indigent clients on appeal to the Washington Court of Appeals and Supreme Court. The Washington State Bar Association recently updated the public defense caseload standard for indigent appeals, limiting appellate attorneys to no more than 25 cases per year, compared to the prior standard of 36 cases per attorney per year. OPD seeks to implement the updated caseload standard by Fiscal Year 2027. OPD also requests funding for 1 FTE program assistant to administer appellate contracts.

Fiscal Summary: Funding is requested to reduce attorney caseloads for indigent appeals and to add 1 FTE OPD program assistant.

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
Staffing						
FTEs	1.0	1.0	1.0	1.0	1.0	1.0
Operating Expenditures						
Fund 001-1	\$1,842,000	\$4,087,000	\$5,929,000	\$4,087,000	\$4,087,000	\$8,174,000
Total Expenditures						
Total	\$1,842,000	\$4,087,000	\$5,929,000	\$4,087,000	\$4,087,000	\$8,174,000

Package Description:

As directed by [Chapter 2.70 RCW](#), OPD provides appellate public defense services to indigent clients with a right to counsel at public expense in criminal, dependency and termination, juvenile offender, and civil commitment cases. OPD requests funding to implement the Washington State Bar Association (WSBA) approved caseload standard limiting indigent appellate attorneys to no more than 25 cases per attorney per year. The WSBA Board of Governors adopted this appellate caseload standard at its September 7, 2024 meeting,¹ and called for immediate implementation.²

Appellate Caseload Standards

In 2012, the Washington State Supreme Court adopted court rules that included public defense caseload standards promulgated by the WSBA limiting appellate attorneys to no more than 36 cases per attorney per year, at an average of 350 transcript pages per case. OPD complies with the 2012 court rule by contracting with qualified appellate attorneys for an annual fee for up to 36 cases per attorney. OPD implements the limit of 350 transcript pages per case with a case-weighting system that awards an additional case credit for each 800 pages of transcript, based on historical data showing that an additional credit for every 800 pages maintains average transcript lengths at or below 350 pages.

¹ Updated WSBA Standards for Indigent Defense Services, available at [standards-for-indigent-defense-services_2024.09.07_final.pdf \(wsba.org\)](#) See Standard 3.K, Other Case Types, Appeals.

² Standard 3.O, Implementation of Standards, provides for phased implementation of other updated standards but directs that the appellate caseload standard is effective upon adoption by the WSBA Board of Governors.

In the ensuing 12 years, appellate attorney workload has become more complex and time-intensive. Practice standards at trial now typically produce more thoroughly litigated cases, which create a substantial record to be examined for issues on appeal. For example, criminal cases frequently include extensive police body camera and other video footage, as well as other electronic evidence that can be quite voluminous. Non-criminal matters, such as dependency and civil commitment cases, often involve highly specialized medical and psychiatric evidence and expert testimony.

The increasing complexity of appellate litigation led the WSBA Council on Public Defense to assemble a subcommittee to review and update the caseload standard.³ Although the WSBA subcommittee decided that more data is needed to inform a final appellate caseload standard, it determined that the 2012 standard is too high and immediate relief is warranted to avert a crisis in appellate public defense. The WSBA Board of Governors voted to adopt an interim standard of no more than 25 cases per attorney⁴ pending completion of a Washington-specific appellate workload study.⁵ It is anticipated that the WSBA will submit its updated appellate standard to the Washington Supreme Court for consideration as a Court rule.

OPD Appellate Program

OPD contracts with highly experienced and skilled attorneys to represent indigent clients on appeal. In order to retain existing experienced attorneys as appellate contractors, it is necessary to expedite implementation of the WSBA's interim caseload standard. OPD requests funding for 17 full-time appellate contract attorneys by the end of the 2025-27 biennium.

OPD also requests funding for 1 FTE program assistant to support administration of the appellate contracts requested in this decision package as well as the contracts already added to respond to a recent case assignment backlog. Taken together, they represent a 60 percent increase in appellate contracts, which necessitates additional administrative support.

Fully describe and quantify expected impacts on state residents.

Funding this decision package ensures that contracted appellate attorneys can devote the time and attention necessary to effectively represent each of their clients on appeal. This decision package helps indigent clients receive quality representation from attorneys with manageable caseloads.

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

OPD considered waiting until a final appellate caseload is adopted, but the timing for that action is uncertain and delay risks significant loss of appellate public defenders. Moving quickly to implement the interim appellate caseload standard will retain valued contract attorneys.

³ As part of its review process, the subcommittee surveyed current appellate public defense attorneys, who reported working on average 51 hours per week. In addition, 71 percent of attorneys reported frequently or always working on weekends, 60 percent reported being overwhelmed by their workload, and 31 percent disagreed with the statement, "My current work representing indigent clients in appeals of criminal cases is a sustainable career."

⁴ The interim 25-case standard is based on a National Legal Aid and Defender Association's (NLADA) recommendation published many years ago and without a workload study. Despite the age of the NLADA recommendation, the subcommittee judged that it would offer much-needed relief for appellate public defenders while a formal workload study is conducted.

⁵ The subcommittee recommended and the WSBA agreed to administer a professional workload study to determine the proper caseload standard for appeals in Washington State. The WSBA has published an RFQ seeking an organization to conduct the workload study, which is scheduled to begin by February 1, 2025.

What are the consequences of not funding this request?

Not funding this request will cause OPD-contracted appellate attorneys to work in excess of the WSBA-adopted caseload standard or to leave the OPD contract. Not funding this request risks significant turnover among contracted appellate attorneys, potentially impacting the quality of representation.

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

This decision package adds contracts to implement the WSBA's updated appellate caseload standard.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Job Title Classification	#s of FTE Round to Nearest Tenth				Workload Assumptions/Description
	FY 26	FY 27	FY 28	FY 29	
Appellate Program Assistant	1	1	1	1	Range 50M

Use Standard Costs?

No.

If No, Explain Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 26	FY 27	FY 28	FY 29	
Contracts	\$1,748,784	\$3,995,000	\$3,995,000	\$3,995,000	17 FTE appellate contractors to implement the WSBA-adopted appellate caseload standard by the end of the 2025-27 biennium.
TOTAL	\$1,748,784	\$3,995,000	\$3,995,000	\$3,995,000	

Appellate Standards	FY26	FY27	25-27 Bi
Contract Attorney FTEs	8	9	17
Base Rate	\$218,598	\$235,000	
8 Additional Attorneys (FY26)	\$1,748,784	\$1,880,000	\$3,628,784
9 Additional Attorneys (FY27)	\$0	\$2,115,000	\$2,115,000
17 Attorneys (FY28 & forward)	\$0	\$0	\$0
Total	\$1,748,784	\$3,995,000	\$5,743,784
Program Assistant - Range 50M	\$71,148	\$71,148	\$142,296
Benefits	\$21,344	\$21,344	\$42,688
Total	\$92,492	\$92,492	\$184,984
Total	\$1,841,276	\$4,087,492	\$5,928,768

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

Fair and Effective Administration of Justice

This decision package funds OPD implementation of the WSBA-adopted appellate caseload standard for public defense attorneys practicing in Washington’s appellate courts.

Access to Necessary Representation

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

Sufficient Staffing and Support

This decision package includes a program assistant position at OPD to ensure effective administration of appellate contracts.

How does the package impact equity in the state?

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

Indigent persons who face a loss of liberty or family due to state action benefit when their appellate attorney can devote the time and attention necessary to effectively represent them on appeal.

Describe how the agency conducted community outreach and engagement.

OPD participated in the WSBA appellate caseload subcommittee. Appellate attorneys asked OPD to request funding to support immediate implementation of the updated WSBA caseload standard.

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

Explain why and how these equity impacts will be mitigated.

The justice system disproportionately impacts communities of color, indigenous communities, and communities with low socioeconomic opportunity, all of which are more likely to utilize public defense services. This proposal ensures appellate public defense representation for these communities.

Are there impacts to other governmental entities?

No.

Stakeholder response:

Appellate attorneys have asked OPD to request funding to support immediate implementation of the WSBA interim appellate caseload standard.

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

The WSBA-adopted [standards-for-indigent-defense-services](#), as updated September 7, 2024, establish an interim appellate caseload standard of 25 cases per attorney per year. See Standard 3.K, Other Case Types, Appeals. Standard 3.O, Implementation of Standards, provides that the appellate caseload standard is effective upon adoption by the WSBA Board of Governors.

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

No.

Are there impacts to state facilities?

No.

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

Office of Public Defense

Policy Level – 1T – Appellate Caseload Standard Imp.

- Updated WSBA Standards for Indigent Defense Services, available at [standards-for-indigent-defense-services 2024.09.07 final.pdf \(wsba.org\)](#)

Are there information technology impacts?

No.

Agency Contacts:

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September 12, 2024

Larry Jefferson
via email

Re: Funding to Address Implementation of WSBA Standards

Dear Larry:

I write to repeat my request that OPD seek funding in both its supplemental budget request and biennial request to fund implementation of the recently adopted WSBA Standards reducing the permissible appellate defense caseload from 36 to 25 cases per year. That 30% reduction in cases will require an approximate 45% increase in OPP's budget for appellate contractors.

The current state of appellate public defense in Washington is largely attributable to the historical actions, or inaction of, OPD. It was OPD which in 2007 advocated for a significant increase in the caseload standard. It was OPD which for years provided little to no increase in contractor compensation. Despite being told "Not now, we'll get to you later" time and again appellate defenders persisted in their work for clients. You have made clear you want to fix that, to improve both appellate defense and public defense in total. You said today you do not want to take advantage of the dedication of people like me as justification for denying the support and resources we need to serve our clients. If that is the case, you cannot say "not now, we'll get to you later."

At your request the Council on Public Defense created a subcommittee to examine and recommend changes to appellate caseload standards. That subcommittee submitted its proposed amendment to the WSBA Standards for Indigent Defense to the Board of Governors. The Board of Governors adopted the two-part proposal (1) the workload study; and (2) an interim reduction of caseloads. While OPD is funding the workload standard it is not seeking funding of the remaining portion of the amendment. These were not alternatives. The interim standard was intended to provide immediate relief while the workload study progresses. It was intended to alleviate the crisis of "unreasonable" appellate caseloads that led you to ask the Council on Public Defense to act in the first place. And because it was intended to apply immediately, there is no graduated implementation schedule. While the trial standards do not change until July 2025, the appellate standards changed last Saturday.

You have described being on the “precipice” of a caseload crises. Yet OPD’s budget plan does not contemplate doing anything to alleviate that caseload crisis until 2028 at the earliest. I am committed to work with OPD in the near term to implement the standards while available funding may be limited. But, OPD’s refusal to even ask for the funding needed to implement the standards in the next fiscal year is, in a word, insulting.

It is insulting to the attorneys doing this work under the strain of caseloads you described as “unreasonable.” It is insulting to them that you recognized the crisis, called for action, and then refuse to employ the tools you asked for to address it. Is insulting to appellate defenders to again be told “not now, we’ll get to you later.”

At its inception OPD had the singular function of overseeing competent and constitutionally adequate appellate public defense. While additional practice areas have since become a part of OPD’s portfolio, appellate public defense remains the sole practice area which is both constitutionally mandated and solely OPD’s obligation to fund. It is confounding that OPD intends to seek tens of millions of dollars in the next biennial budget to fund trial defenders, yet does not intend to seek a penny to implement appellate caseload standards.

I recognize the difficult budget decisions you have to make. But as you work so hard to improve the house that is Public Defense, I ask that you look first at the rooms you already occupy. How will counties and cities respond to the mandates that they decrease caseloads for their public defenders, when OPD is refusing to do just that for the appellate defenders you fund?

We need additional funding in the both the supplemental and biennial budget in order to comply the WSBA Standards and our Contract.

Our contract makes clear my office and attorneys must comply with the WSBA Standards **in addition to** the Supreme Court Standards

4. STANDARDS: CONTRACTOR shall provide representation in compliance with the Rules of Appellate Procedure, the Rules of Professional Conduct (RPC), the applicable Washington State Bar Association (WSBA) standards, and the Supreme Court Standards for Indigent Defense.

There is no room in that language to allow us to ignore the existing standard. There is no room in that language to suggest the WSBA Standards have no force on our representation unless adopted in court rule. And, of course, OPD signed that contract as well mandating that it ensure we do comply with the WSBA standards.

Contract language aside, the WSBA standards themselves mandate our compliance.

In addition to compliance with both the WSBA and Court Rule Standards, public defense attorneys must comply with the Washington Rules of Professional Conduct (ethical requirements) and be familiar with and consider Performance Guidelines adopted by the WSBA and others for specific practice areas (adult criminal, juvenile court offender, family defense, civil commitment, and appeals).

WSBA Standards on Indigent Defense, p.2 (2024). Again, we must comply with both WSBA standards and Court Rule Standards.

Once again, unlike the trial standards, the appellate standards do not have a delayed implementation timeline, they are the standard now.

An ethical standard crafted by the body tasked with lawyer discipline cannot simply be dismissed as advisory or aspirational. I certainly doubt our insurance provider would agree with such a cabined reading should we face a malpractice suit. Moreover, we know the Supreme Court will not view them as such. In *A.N.J.* the Court made clear an attorney's failure to comply with the WSBA Standards was relevant to a determination of ineffective assistance of counsel even if it found they were not determinative of IAC on their own. Importantly, *A.N.J.* relied on the standards well before any rule was adopted.

September 12, 2024

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Supplemental funding is necessary to permit OPD contractors to perform under the contract, to meet the ethical standard, and to satisfy their constitutional obligations. I am committed to working with OPD to achieve this.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gregory C. Link". The signature is fluid and cursive, with the first name "Gregory" being more prominent.

Gregory C. Link, Director
Attorney At Law