

Public Defense Improvement

District & Superior Court Cases

Purpose

This policy implements a system for weighting public defense cases for purposes of certifying to public defense misdemeanor and felony caseloads pursuant to Washington Supreme Court's Standards for Indigent Defense. This policy recognizes that appropriate case weighting allows reasonable workloads for public defense attorneys consistent with applicable rules and standards.

Applicable Court Rules, Regulations & Standards

- A. Washington State Rules of Professional Conduct ("RPC")
- B. Criminal Rules for Superior Court ("CrR"), as applicable to adult and juvenile proceedings; & Criminal Rules for Courts of Limited Jurisdiction ("CrRLJ")
- C. Washington Supreme Court Standards for Indigent Defense ("SID")
- D. Benton County Public Defense Ordinance #470

Definitions

- A. **Case:** the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation.
 - a. In courts of limited jurisdiction multiple citations from the same incident can be counted as one "case."
 - b. The number of counts in a single cause number does not affect the definition of a "case."
 - c. When there are multiple charges or counts arising from the same set of facts, the weighted credit will be assigned based on the most serious charge.
- B. **Case Weighting:** the process of assigning a numerical value, or "weighted credit," to specific types of cases that recognizes the greater or lesser attorney workload required for those cases compared to an average case.
- C. **Caseload:** the complete array of cases in which an attorney represents or provides service to clients.
- D. **Docket/Calendar Representation:** a grouping of filings where a public defense attorney is designated to represent indigent defendants on a provisional basis, without screening for indigency (as provided and authorized by RCW

10.101.020(4)), and without an expectation of further or continuing representation¹. Examples include, but are not limited to, first appearance calendars/arraignment calendars, fine/legal financial obligation review calendars, and probation or sentence violation calendars.

- E. **Full Time:** working approximately forty hours per week. It is presumed that a “full-time” public defense attorney spends approximately 1,800 hours annually on case representation. It is expected that other work time is spent on administrative activities, attending CLEs, participating in professional associations or committees, and spending time on vacation, holiday, or sick leave.
- F. **Local Factors:** practices, characteristics, or challenges that are unique to the delivery of public defense in a given jurisdiction, and that substantially impact the time required for effective delivery of public defense services.
- G. **Non-Charge Representation:** matters where public defense attorneys represent clients who are eligible for public defense representation for matters that do not involve the filing of new criminal charges. Examples include, but are not limited to, sentence violations, extraditions, and representations of material witnesses.
- H. **Partial Representations:** situations where clients are charged with crimes, but representation is either cut short at early stages of the case or begins significantly later. Such situations include, but are not limited to, client failures to appear, preliminary appointments in cases in which no charges are filed, withdrawals or transfers for any reason, representation on a misdemeanor or gross misdemeanor case at or later than the juncture wherein the prosecution is seeking to revoke a previously entered Stipulated Order of Continuance or Deferred Prosecution, where the attorney either did not previously represent the defendant on the same case, or when more than a year has elapsed since the conclusion of representation on the same case (ie concluding with the entry of the Stipulated Order of Continuance or Deferred Prosecution).
- I. **Public Defense Attorney:** a licensed attorney who is employed or contracted to representing indigent defendants. “Public Defense Attorney” also refers to a licensed attorney who is list-appointed to represent indigent defendants on a case-by-case basis.
- J. **Weighted Credit:** one weighted credit represents a type of case which, on average, requires six hours of attorney time.

¹ In the instance of sentence violation or financial obligation review dockets, subsequent provisional representation on the docket by a public defense attorney as a result of a) court mandated re-appearance for the sole purposes of compliance check, proof of completion of sentence requirement, production of documents or any other purely administrative purpose; or b) a subsequent summons by the court, separate allegation of sentence or financial obligation violation, defendant-initiated court appearance or other similar reason, shall not constitute an expectation of “further or continuing representation” so as to take such cases out of the definition of Docket/Calendar Representation.

Caseload Limits

As provided in the Washington Supreme Court Standards for Indigent Defense, the caseload of a full-time public defense attorney should not exceed 300 misdemeanor weighted credits per year, which is equivalent to the time spent on 400 average misdemeanor cases per year; 150 felony cases, or 250 juvenile criminal cases. The caseload of a full-time Rule 9 Intern who has not graduated from law school may not exceed 75 misdemeanor weighted credits per year.

- A. Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort.
- B. Caseload limits are set to ensure that all public defense attorneys have adequate time to provide quality representation.
- C. Caseload limits assume a reasonably even distribution of cases throughout the year.
- D. If the public defense attorney is carrying a mixed caseload with non-misdemeanor cases, the attorney's caseload should be calculated proportionately by case type, as provided in the Standards.
- E. If the public defense attorney also maintains a private law practice, the public defense caseload should be proportionate to the percentage of work time the attorney devotes to public defense.
- F. If the attorney provides public defense services in multiple courts, the combination of cases from all courts are used for caseload calculations.

Applicability of this Policy

This policy only applies to the following types of Cases:

- A. Cases on sentence or probation violation calendars (held in courts of limited jurisdiction);
- B. Cases on fine or legal financial obligation review calendars (held in Courts of Limited Jurisdiction or Superior Court);
- C. Provisional representation by public defense attorneys at preliminary appearance or arraignment docket calendars (held in Courts of Limited Jurisdiction or Superior Court);
- D. Provisional representation by public defense attorneys at preliminary appearance, arraignment docket calendars and sentence or probation violations hearings (held in the Juvenile Division of Superior Court);

Case types to which this Policy does not apply are counted as “cases” irrespective of the complexity or seriousness (or lack thereof) of the case, toward a 400 case annual maximum for misdemeanor/gross misdemeanor cases, 150 case annual maximum for felony cases, and 250 case annual maximum for juvenile criminal cases.

Weighted Credits

A. **Guilty Pleas at First Appearance or Arraignment**

As required by Standard 3.5, resolution of cases by pleas of guilty to criminal charges at a first appearance or arraignment hearing are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients. Therefore, if the attorney is appointed as counsel of record, these guilty pleas must be valued as one case.

B. **Sentence Violations and Other Non-Charge Representation**

a. Except for cases that qualify under the definition of Docket/Calendar Representation, sentence violations and other non-charge representations (not including such cases where the only allegation is failure to pay legal financial obligations or where the only allegation is a new criminal offense and the case is assigned to “track” with the new criminal case) shall all be counted as **0.28 case credits (1/3 case credit less the 0.05 case credit downward adjustment because of local factors)**.

b. Sentence violations and other non-charge representations where the only allegation is a new criminal offense and the case is assigned to “track” with the new criminal case **shall not be counted, by the attorney appointed to the new criminal case, as an additional case credit toward that attorney’s annual maximum caseload under the SID.** However, contractual provisions or policies may provide additional compensation to that attorney for having the sentence violation added to the new charge case.

c. Sentence violations and other non-charge representations where the only allegation is failure to pay legal financial obligations shall all be counted as **0.20 case credits (0.25 case credit less the 0.05 case credit downward adjustment because of local factors)**.

d. Sentence violations and other non-charge representations in Juvenile Court shall be counted as **0.33 case credits**.

C. **Docket/Calendar Representation**

Cases on a criminal first appearance or arraignment docket where the attorney is designated, appointed, or contracted to represent groups of clients without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal or amendment to an infraction), and cases on a sentence violation, probation violation or failure to pay legal financial obligation docket where the attorney is designated, appointed, or contracted to represent

groups of clients without an expectation of further or continuing representation beyond that particular docket, are not counted individually. Instead, the attorney's hours needed for appropriate client contact, preparation, and court time are calculated as a percentage of the net annual hours of work time, and then applied to reduce the attorney's caseload. **Each hour of such docket time is assigned 0.17 weighted credits (based on a 300 weighted credit annual caseload maximum) for such time on dockets in Courts of Limited Jurisdiction (pursuant to the Model Weighting System published by the State Office of Public Defense) and 0.075 weighted credits for such time on dockets in Superior Court².**

Adjustments

A. Local Factors

Due to the listed local factors that have been identified as reducing attorney time, the maximum downward adjustment of 0.05 case credits (in counting cases in Courts of Limited Jurisdiction only) is applicable to this policy:

- a. Court calendars or dockets dedicated to public defense cases, resulting in reduced attorney wait time (in Benton County District Court only);
- b. Security badges issued to public defenders (including contract defenders) allowing them to bypass lines at metal detectors;
- c. Regular use of technological tools to reduce time of representation (including, but not limited to electronic discovery and a web-portal to facilitate the interaction of contract attorneys with the Benton County Office of Public Defense);
- d. Close proximity of the jail to courtrooms (located on same campus, within easy walking distance);

² Based on an assumption of such attorneys working 2,000 hours a year on a caseload of 150 cases.