

# Managing Public Defense Services

Tips and Best Practices



# In this training, we will learn:

- What public defenders do and why we need them
- Legal standards
- Retention and recruitment
- Contracts
- Evaluating performance
- Share best practices



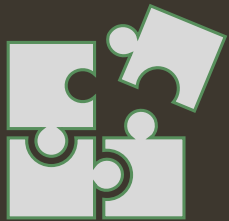
# Why we need public defenders

- Ensure that courts and prosecutors are following the law and applying it fairly
- Ensure that police investigations are done correctly
- Find witnesses, evidence, or explanations that police may not otherwise have access to, or may have overlooked
- Efficiently present and explain their client's circumstances so that judges and prosecutors can make well-informed decisions
- Protect the innocent
- It's the law

# What public defenders do



- Meet with client: read all police reports, review photos/videos, review elements of offense, review criminal history, review sentencing, get client's side of the story, educate about options



- Investigate: interview police officer, interview witnesses, look for surveillance video, additional witnesses, subpoena medical records, school records, work records



- Meet again with client: review investigation, decide on an offer or trial



- Review case for legal issues: speedy trial, search and seizure, Miranda
- Research and write motions: review case law, construct argument, type up documents and orders
- Communicate with PA about discovery, possible resolution

- Plea: review all paperwork, go over sentencing/terms of probation, collateral consequences (gun rights, immigration, housing)
- Trial: research and write in limine motions, subpoena witnesses, develop opening and closing arguments, questions for witnesses, prepare jury instructions
- Sentencing: gather information and witnesses to tell the story of how your client arrived at this point, present evidence of mitigation, communicate with family members, prepare client, advise of appellate rights, file motion for appeal.



# Why do I need to know this?

- The majority of the work is happening outside the court room
- Attorneys who get what they need to do good work will stay
- The better you understand the full scope of the work that defenders do, the more effective you will be in recruiting the right attorneys for the job



# Legal Standards

- General Rule (GR) 42
- Supreme Court Standards for Indigent Defense - CrR 3.1, CrRLJ 3.1, JuCR 9.2
- RCW 10.101.030 and the WA State Bar Association's Standards for Indigent Defense Services
- Rules of Professional Conduct (RPC)



# Qualifications: the bare minimum

- Washington State Bar
- Law relevant to the practice area
- Washington Rules of Professional Conduct
- Performance Guidelines approved by the Washington State Bar Association
- Consequences of a conviction or adjudication, including immigration and civil commitment
- Mental health issues
- Able to identify the need to obtain expert services
- Seven hours of continuing legal education per year in relating to public defense

# Minimum Qualifications Increase with the Severity of the Charge

- Class C felonies
- Class B felonies
- Class A felonies
- Sex Offenses
- Life Without Parole
- Adult vs. juvenile
- All are explained in Criminal Rule 3.1 (CrR 3.1 / CrRLJ 3.1)

[https://www.courts.wa.gov/court\\_rules/](https://www.courts.wa.gov/court_rules/)

# Hypothetical

- Assault 4<sup>th</sup> Degree
- Domestic Violence
- Gross Misdemeanor
- CrRLJ 3.1



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## Hypothetical, cont.

- Mr. Smith: practiced personal injury law for 10 years, and during that time he has tried three cases in civil court and won millions of dollars in damages for his clients.
- Can you give this case to Mr. Smith?
- What questions should you ask?



# Examples of Maximum Caseloads and Where to Find More Information

- Felonies: 150 per year
- Misdemeanors: 300 weighted, 400 unweighted
- Accounting for mass calendars/arraignments, etc
- Take into account public defense caseloads from contracts with other jurisdictions, privately retained work, and other work that cuts into business hours
- <https://opd.wa.gov/index.php/standards>



# https://opd.wa.gov/index.php/standards



The screenshot shows a web browser displaying the Washington State Office of Public Defense website. The browser's address bar shows the URL <https://opd.wa.gov/index.php/standards>. The website header features the Washington State Office of Public Defense logo and a navigation menu with links for HOME, ABOUT OPD, PROGRAMS, RESOURCES, SEARCH, and QUICK LINKS. The main content area is titled "Public Defense Improvement Program" and "Washington State Supreme Court Standards for Indigent Defense". It lists various rules, certification forms, and orders, along with tools and resources. A large green arrow points to the "Tools and Resources" section.

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## Public Defense Improvement Program

Washington State Supreme Court Standards for Indigent Defense 

### Rules, Certification Forms, and Orders

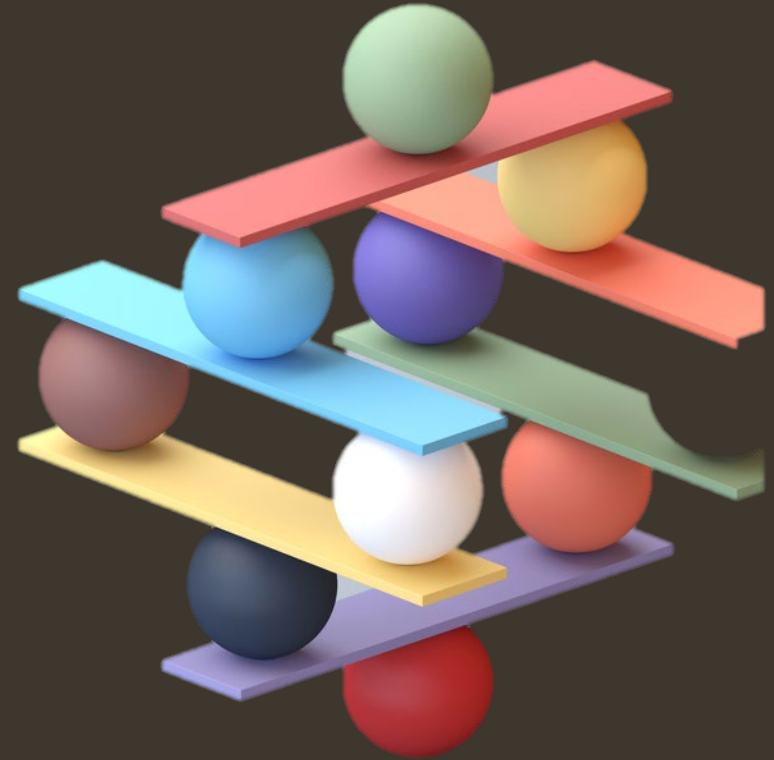
- Superior Court Criminal Rule 3.1 - [Rule](#)  | [Standard](#) 
- Criminal Rules for Courts of Limited Jurisdiction 3.1 - [Rule](#)  | [Standard](#) 
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-  [Sample Attorney Certification Form- Updated August 2013](#)
-  [Sample Attorney Certification Form- Updated August 2013](#)
- [Washington Supreme Court Orders Regarding Standards for Indigent Defense](#)

### Tools and Resources

- [Frequently Asked Questions](#)
-  [OPD Model Misdemeanor Case Weighting Policy](#)
- [Calculators for Measuring Caseloads](#)
-  [2019 Audit of Compliance with the Standards \[PDF\]](#)
-  [Report on Implementation of the Standards \(2013\)](#)
- [Judicial Webinar \(2012\)](#) 

# Caseload or Workload?

- Increased Complexity: offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources.
- Increased Complexity = lower caseload
- Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.





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## Public Defense Improvement Program

### Sample Calculators for Measuring Caseloads Pursuant to the Supreme Court's Caseload Limits

Measuring compliance with the Supreme Court's caseload limits can be mathematically challenging when attorneys represent clients on a mixture of case types, or regularly spend time on attorney-of-the-day calendars. The Office of Public Defense has developed some sample Excel calculators for purposes of measuring caseloads. It is not required to use these caseload calculators. Rather, they are provided as an optional tool. If you would like an excel calculator for a different grouping of case types than provided in the below examples, please contact an OPD Public Defense Services Manager at [opd@opd.wa.gov](mailto:opd@opd.wa.gov)

 [Calculator for Mixed Criminal/Juvenile Caseloads](#)

 [Calculator for Mixed Caseloads including Dependencies](#)

 [Calculator for Misdemeanor Cases and Attorney-of-the-Day Calendar Time](#)



Clipboard: Paste, Cut, Copy, Format Painter

Font: Calibri, 11, Bold, Italic, Underline, Text Color, Background Color, Font Color

Alignment: Left, Center, Right, Justify, Merge & Center

Number: Currency, Percentage, Decimals, Thousands Separator

Styles: Conditional Formatting, Format as Table

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	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
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# Monthly Caseload Calculations - Misdemeanor Cases and Attorney-of-the-Day Calendars

2	<b>Approximate % of My Work</b>													
3	<b>Time Spent on Public Defense</b>													
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

For each month, type in the number of new misdemeanor case assignments, and the total number of hours spent monthly on attorney-of-the-day calendars. A full-time caseload is a total of 400.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Total
5													
6	New Misdemeanor Cases (non case weighted)	25											25
7	Calendar Hours	40											40
8	Calendar Case Equivalentents	8.8	0	0	0	0	0	0	0	0	0	0	8.8
9	<b>Monthly Totals</b>	<b>33.8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>33.8</b>

## Caseload Compliance Report

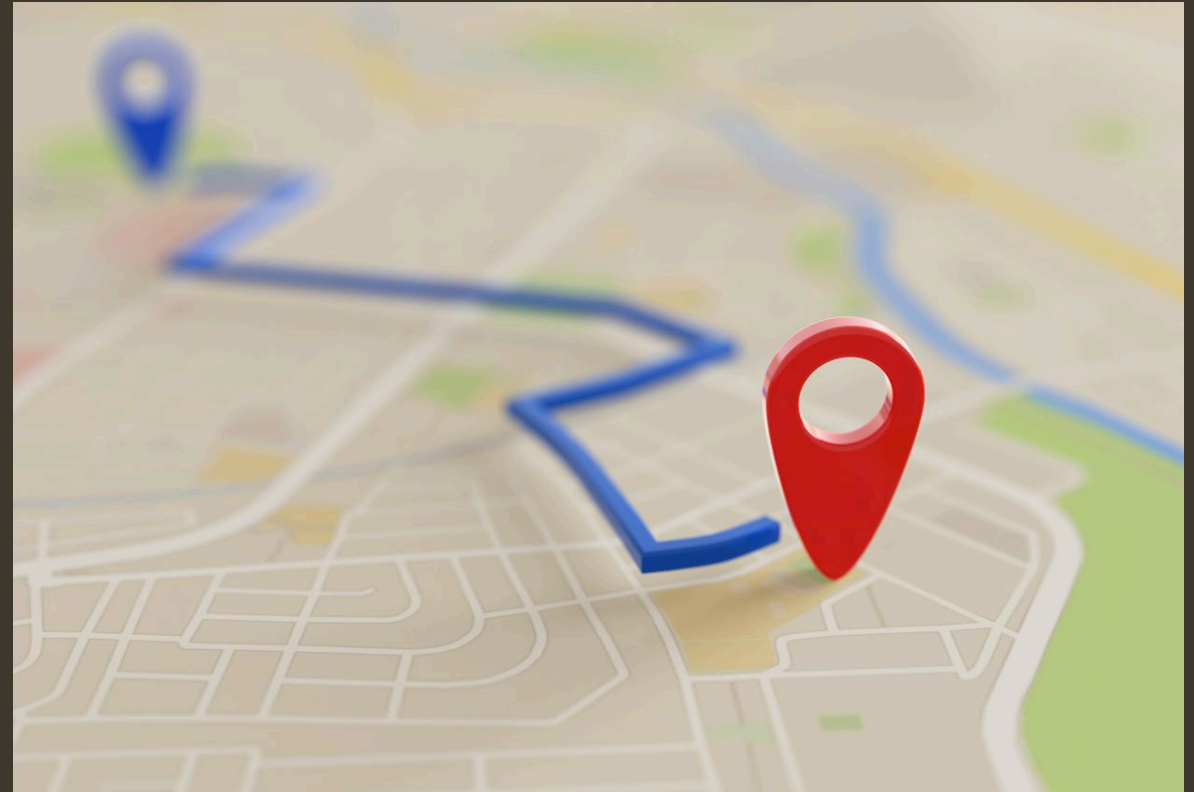
The following percentages show whether the attorney's monthly caseload is proportional to the amount of work time spent on public defense. If a monthly percentage shows more than 100%, the attorney has more cases than are permitted by the Supreme Court's case limits.

11	<b>Monthly Caseload</b>	<b>101.4%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>
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13	<b>Annual Caseload to Date</b>												<b>8.5%</b>
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# Recruitment and Retention

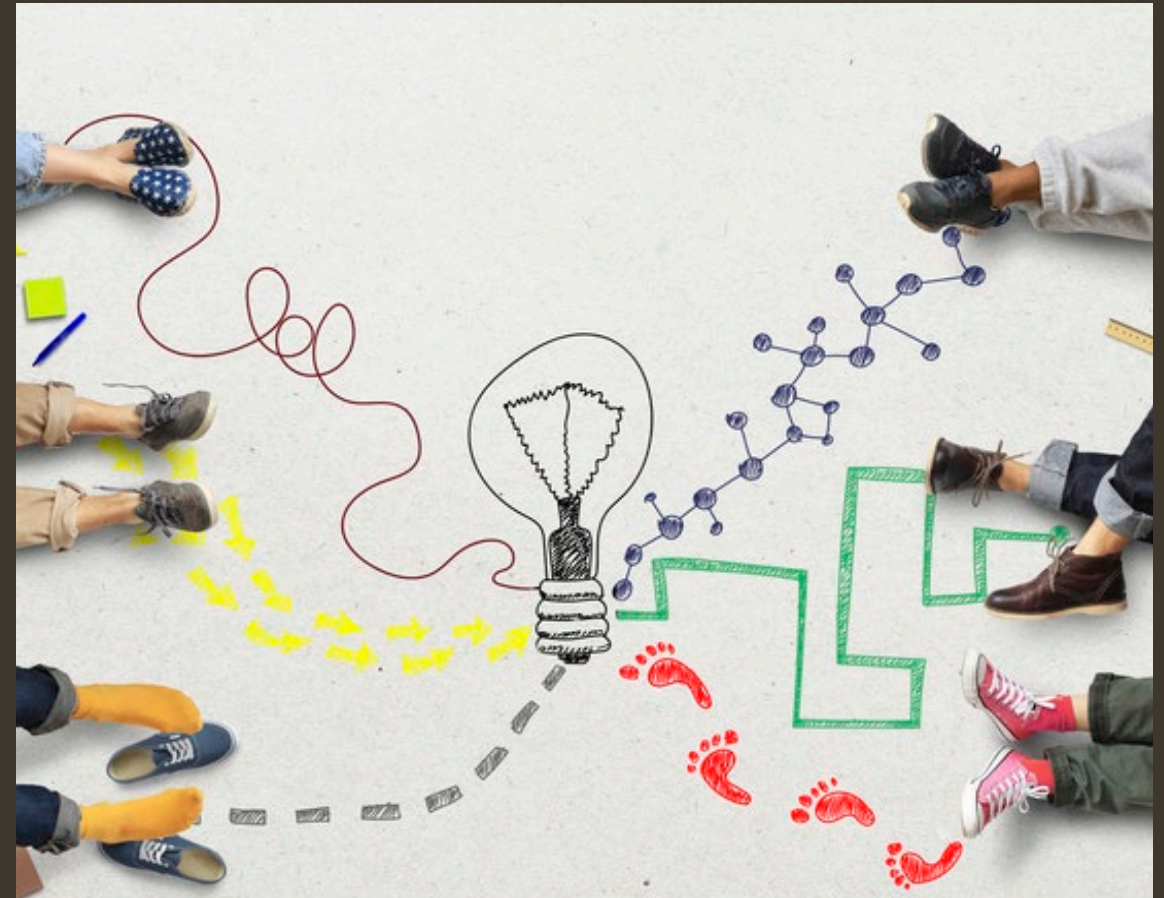
1. Financial Incentives
2. Support
3. Relocation
4. Culture
5. Pipeline



# Recruitment and Retention

**What is working in your community?**

**What are your challenges?**



# Contracts: Best Practices

- Require tracking and reporting of stats
- Reporting of legal work hours outside of the contract
- Require ongoing training and compliance
- Contractor does not pay for conflict counsel
- Extraordinary compensation



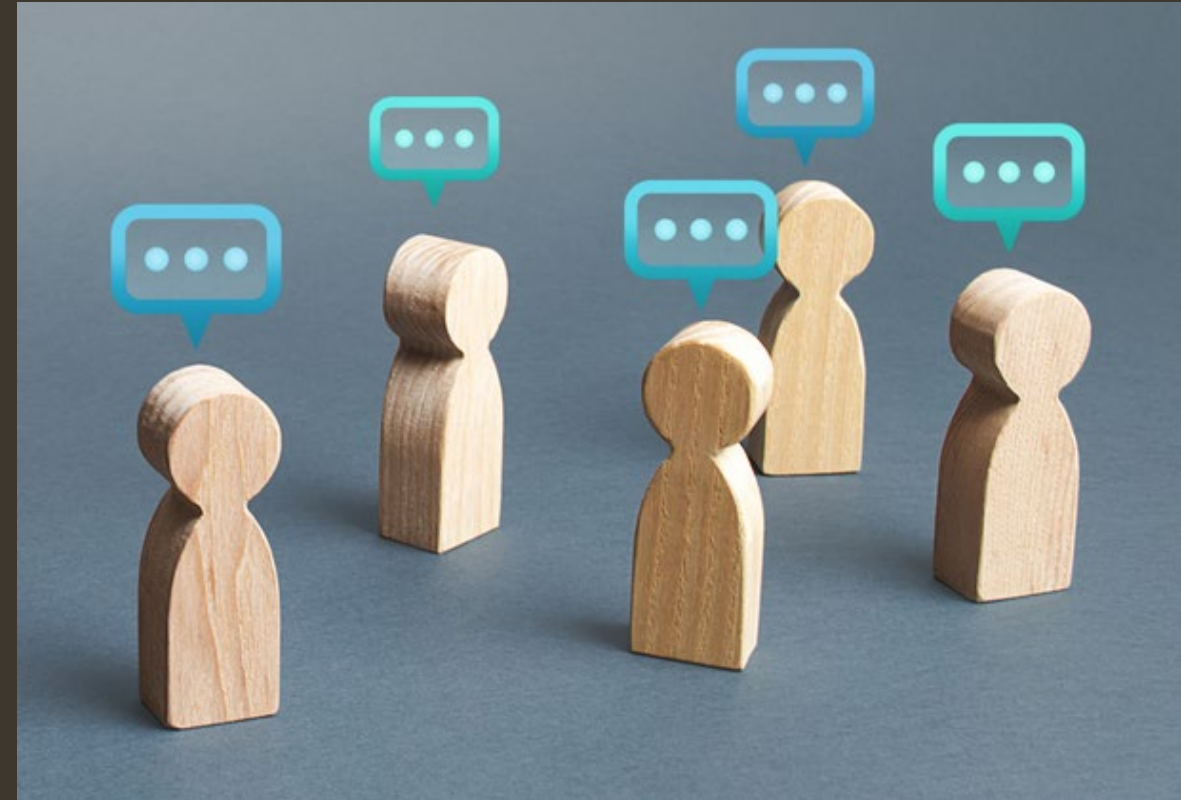
# Contracts: Best Practices, cont.

- Procedure if attorney is approaching caseload limit
- Pay structure
- Performance evaluation standards
- Ask OPD! We are here to help.



# Evaluating Performance: Why and How

- Defenders should be systematically reviewed for quality and efficiency according to nationally and locally adopted standards.
- People want feedback – your voice is an important motivator!





# Evaluating Performance: What to Look for

1. Regularly using investigators, social workers, experts?
2. Within the caseload standards?
3. Sufficiently qualified?
4. Regular training?
5. Filing and litigating motions, setting cases for trial?
6. Juggling multiple contracts and/or taking on private clients on top of their contract with you?

# Actions that will lead to problems

1. Underfunding public defense
2. Allowing parties with adverse interests a voice in public defense
3. Financial disincentives for thorough work
4. Not asking for help



# How you can help

- Confidential space
- Control workload
- Established process for accessing investigators
- Social workers
- Compensation - Parity
- Supervision
- Collaboration





# Questions?

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