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RESOLUTION NO. _____

Adopting County Policy regarding Indigent defense pursuant to certain portions of RCW 10.101, and Washington State court rule.

WHEREAS, RCW 10.101.030 requires counties to adopt standards that include: compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination.

WHEREAS, WCC 2.09 currently set standards of indigent defense services relating to the Whatcom County Public Defender’s office as prescribed by RCW 10.101;

WHEREAS, Whatcom County maintains a centralized hub for the assignment of indigent defense services via the Whatcom County Office of Assigned Counsel. Indigent defense services are provided through three distinct sources: the Public Defender’s office, contract with private attorneys to provide indigent defense services, and maintenance of panel of private attorneys that may be appointed to provide indigent defense services. The Policy adopted herein shall be of equal application to all forms of indigent defense service provided within the scope of cases assigned by the Whatcom County Office of Assigned Counsel;

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NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that Whatcom County policy regarding indigent defense services be hereby adopted as shown in the attached Exhibit A.

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Civil Deputy Prosecutor

(Current Executive's Name),
County Executive

() Approved () Denied

Date Signed: _____

WHATCOM COUNTY PUBLIC DEFENDER'S OFFICE CASE WEIGHTING POLICY

Rev. 4/21/2020

1.0 PURPOSE

The purpose of this policy is to adopt and publish a uniform system for weighting cases when applying mandatory and advisory numerical caseload standards for attorneys employed by the Whatcom County Public Defenders Office in the Superior, Juvenile, and District Courts of Whatcom County. This policy only applies for purposes of calculating attorney caseloads under the Washington Supreme Court Standards for Indigent Defense and does not apply for the purposes of compensation.

This policy will assist the court, Public Defender's Office, and the Office of Assigned Counsel in managing case appointments and caseloads in accordance with applicable caseload standards.

This policy recognizes that the appropriate use of case weighting and case counting is to allow reasonable workloads for public defense attorneys consistent with current workload conditions and consistent with applicable rules, standards, and performance guidelines.

2.0 APPLICABLE COURT RULES, STANDARDS, AND LAWS

- 2.1 Washington State Rules of Professional Conduct for attorneys.
- 2.2 Washington State Supreme Court standards for attorneys appointed to represent persons at public expense under court rules CrR 3.1, CrRLJ 3.1, JuCR 9.2.
- 2.3 Washington State Bar Association "Standards for Indigent Defense Services."
- 2.4 Washington State Bar Association "Performance Guidelines for Criminal Defense Representation."

2.5 RCW Ch. 10.101.

2.6 Chapter 2.09 WCC.

3.0 DEFINITIONS

3.1 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 constitutionally mandated legal representation.

- a. The definition of a case is not impacted by number of counts contained in a single cause number.
- b. When multiple charges or counts arise from a singular set of facts, the case weighted credit will be determined by the most serious charge or count alleged.
- c. In courts of limited jurisdiction multiple citations from the same set incident can and will be counted as one “case.”

3.2 CASE WEIGHT. The numerical multiplier assigned by this policy to apply to specific types of cases to generally recognize the greater or lesser attorney workload required for those cases compared to an average case under a numerical caseload standard.

3.3 CASE CREDIT. The weight value of a particular case type in the general case weighting system adopted by this policy or in a particular case as actually assigned to a particular attorney.

3.4 WCPDO. Whatcom County Public Defender’s Office.

3.5 CASELOAD. The collection of cases in which an attorney is appointed or designated to provide constitutionally mandated legal services to clients in a calendar year.

3.6 DOCKET or CALENDAR. A grouping of filings where a public defense attorney is designated.

- 3.7 FULL TIME.** It is presumed that a full time public defense attorney spends approximately 1,800 hours annually on client representation. It is expected that other work time is spent on administrative activities, CLE attendance, participation in professional associations and committees, vacations, holidays, and sick leave.
- 3.8 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 (i.e., material witness, diversion advice, or sentence violations).
- 3.9 PARTIAL REPRESENTATIONS.** Situations where clients are charged with crimes and a public defense attorney is appointed and representation is shortened or delayed (see Section 5.0 Partial Representation).
- 3.10 PUBLIC DEFENSE ATTORNEY.** A licensed attorney who is employed by the WCPDO or contracted by the WCPDO to represent indigent defendants.
- 3.11 SUPERIOR COURT CASES.** This refers to cases in which a person is charged with a crime in Superior Court.
- 3.12 DISTRICT COURT CASES.** This refers to cases in which a person is charged with a crime in District Court.
- 3.13 JUVENILE COURT CASES.** This refers to offender and truancy cases involving children in the Juvenile Division of Superior Court.

4.0 SCOPE OF REPRESENTATION

Matters included in the scope of representation as set forth below shall not receive any additional case weighed credit beyond that which is already assigned to the case:

- 4.1** The scope of representation in an appointed case is from the date of assignment through all subsequent stages of the legal proceedings in the trial court until entry of final judgment together with the necessary preparation, filing and/or entry of notice of appeal and motions/orders for finding of indigency and appointment of counsel on appeal.
- 4.2** In criminal and juvenile offender cases, the scope of representation in the case also includes (1) restitution hearings requested or noted while the court retains jurisdiction over the case and (2) motions for relief from judgment that are requested while the court retains jurisdiction over the case.
- 4.3** In district court and juvenile offender cases, the scope of representation in the case spans from initial appearance until the end of any probationary period imposed as part of a sentence.
- 4.4** Except as noted above, the scope of representation does not extend to other post judgment motions for relief from judgment and/or “collateral attack” under court rule or as defined in RCW Ch. 10.73.
- 4.5** The scope of representation in a case includes any failures to appear by the client and interim inactivity of the case for that reason, which will neither reduce nor add to the credit assigned to the case if the previously appointed attorney is later appointed or assigned to complete the case on reappearance of the client. Provided, if the interval between the failure to appear and reappearance is greater than twelve months, the reassignment is presumptively a new case unless adjusted by the Chief Deputy/Director.
- 4.6** The scope of representation in a case includes future review hearings in the case scheduled at the time of entry of diversion, deferred disposition, deferred prosecution, or sentencing, plus any subsequent proceedings thereon if ordered.
- 4.7** The scope of representation in a case includes proceedings on the original case after termination from therapeutic court without

successful completion. Cases reassigned to the Drug Court attorney do not count as a case credit, rather the Drug Court attorney receives calendar credit as discussed in 5.5.1.

- 4.8 The scope of representation includes any limited proceedings on remand from appeal if the same attorney is appointed for that purpose, but does not include remands for new trial.
- 4.9 The scope of representation does not include alleged violations of a prior sentence or disposition.
- 4.10 The scope of representation in a truancy contempt petition includes all subsequent review hearings or warrants for that petition.

5.0 PARTIAL REPRESENTATION

- 5.1 **Partial Representations – no contact with client.** Cases where the assigned attorney has only had incidental contact with the client before transfer or dismissal will not receive any credit.
- 5.2 **Partial Representations – transfer or dismissal.** Cases where only a partial representation occurs because the attorney withdraws for a conflict, is relieved by retained counsel, the case is transferred or reassigned by the court or Chief Deputy/Director, or the case is dismissed on motion of the prosecution can be assigned a weighted case credit by the Chief Deputy/Director consistent with these policies for the case but only up to the maximum weighted credit otherwise allowed.
- 5.3 **New Attorney in Partial Representations.** If a different attorney is appointed or assigned after a partial representation by a different attorney the new attorney will be assigned full credit if appointed or assigned prior to trial or plea of guilty in the case.
- 5.4 **Temporary Coverage of Limited Hearings.** The temporary coverage of a limited hearing or appearance in a case by another attorney due

to short term unavailability of appointed attorney will not be counted as a case and no case credit will be added or subtracted to the number of cases or credits for either attorney.

5.5 Therapeutic Court Calendar Credits. When an attorney is assigned to represent groups of clients in therapeutic courts, the attorney's maximum caseload should be reduced proportionally by the amount of time they spend on preparing for and appearing at such calendars.

5.5.1 Drug Court Calendar Credit. The drug court attorney's maximum caseload should be reduced by 1.25 adult felony case credits monthly (15 case credits annually) or 2.0 juvenile case credits monthly (24 case credits annually).

5.5.2 Mental Health Court Calendar Credit. The mental health court attorney's maximum caseload should be reduced by .75 adult felony case credits monthly (9 case credits annually), or 2.0 adult misdemeanor case credits monthly (24 case credits annually).

5.6 Representation at First Appearance, Arraignment, and Probation Violation Dockets. Regardless of the case counting and weighting system adopted by this policy, the following special limitations apply:

5.6.1 Resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case. The resolution of a case at first appearance as an infraction shall not be counted as a "case" but rather is credited within the time allocated to recurring calendars without continued representation.

5.6.2 Cases on a criminal or offender first appearance, arraignment, warrant return, sentence review, or probation violation docket where the attorney is designated, appointed, or contracted to represent groups of clients on that docket

without expectation of further or continuing representation will not be counted directly. Instead, the attorney's hours needed for appropriate client contact and preparation as well as the appearance time spent on such dockets will be calculated by the Chief Deputy/Director and then applied to reduce the attorney's caseload standard for the time for the work devoted to such representation.

6.0 NUMERICAL CASELOAD STANDARDS

6.1 The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

6.1.1 Superior Court Adult Felony Cases: 150 case credits per attorney per year.

6.1.2 Juvenile Offender Cases: 250 case credits per attorney per year.

6.1.3 District Court Cases: 400 case credits per attorney per year.

6.1.4 Involuntary Commitment Proceedings: 250 case credits per attorney per year.

6.2 General considerations in applying numerical standards:

6.2.1 Caseload limits reflect the maximum caseloads for fully supported, full-time defense attorneys for cases of average complexity and effort in each case type specified.

6.2.2 If a public defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionally to determine a full caseload.

6.2.3 A small upward variation in annual caseload and a variation in monthly caseload are consistent with the workload limits

inherent in the numerical caseload standards while allowing for the inherent variability of caseload and the inherent difficulty of precise administration. Such variations may be expected to occur without violating this policy or the numerical caseload standards and such variations shall not preclude attorneys from filing Certificates of Compliance.

6.2.4 The assigned attorney may request that the Chief Deputy/Director adjust the credit assigned upwards for substantial work or “extraordinary cases” in which the credit assigned does not adequately reflect the complexity or time and effort involved in the representation. Should calendar credits, including those assigned for therapeutic courts or training lead duties, deviate from time actually spent, the attorney may request that the Chief Deputy/Director adjust the credits assigned. The Chief Deputy/Director’s decision will be final.

7.0 CASE WEIGHTED CREDITS

The following case weighted credits shall be assigned to cases within the court and case types listed:

7.1 ADULT FELONY SUPERIOR COURT

CASE TYPE	CASE WEIGHT CREDITS
HOMICIDE AND ATTEMPTED HOMICIDE, 3 STRIKES, CLASS A SEX OFFENSES	3.0
CLASS B & C SEX OFFENSES, ROBBERY FIRST, BURGLARY FIRST, ASSAULT FIRST	2.0
OTHER FELONIES	1.0
FAST TRACK	0.5

FAST TRACK CONVERTED TO FULL CASE	0.5
SSOSA/DOSA CONTESTED REVOCATION HEARING	0.5
NGRI & POST-CONVICTION	0.5
FUGITIVE	0.5
DRUG COURT	1.25/month
MENTAL HEALTH COURT	0.75/month
TRAINING LEAD	1.25/month
FIRST APPEARANCE/ARRAIGNMENT ROTATION	1.0/month

7.2 DISTRICT COURT - NO WEIGHTING

CASE TYPE	CASE WEIGHT CREDITS
MISDEMEANORS	1.0
CALENDAR ROTATION	6.5/month
MENTAL HEALTH COURT	2.0/month

7.3 JUVENILE COURT

CASE TYPE	CASE WEIGHT CREDITS
CLASS A FELONIES AND ALL SEX OFFENSES	2.0
ALL OTHER CASES	1.0
DIVERSION ADVICE APPOINTMENTS	0.25
DETENTION & RRC CALENDARS	1.5/month
ARRAIGNMENT CALENDAR	1.0/month
PROBATION CALENDAR	1.0/month
TRUANCY CALENDAR	1.0/month

7.4 INVOLUNTARY COMMITMENTS - NO WEIGHTING

7.5 MIXED CASELOAD CREDITS

7.3.1 One adult felony credit equals approximately 12 hours of work. One adult misdemeanor credit equals approximately 4 hours of work. One juvenile credit equals approximately 7.2 hours of work. One involuntary commitment credit equals approximately 7.2 hours of work.

7.3.2 one adult felony credit = three adult misdemeanor credits = two juvenile credits = two involuntary commitment credits