

**WHATCOM COUNTY
PUBLIC DEFENSE
ADVISORY
COMMITTEE**

Memo

To: The Whatcom County Council
The Honorable Barry Buchanan, Chair

And to: The Honorable Satpal Sidhu,
Whatcom County Executive

From: Robert E. Olson, Judge *RO*
Whatcom County Superior Court
Advisory Committee Chair *pro tempore*

Date: April 30, 2020

Re: Public Defense Policies for Conflict of Codefendants and
Case Weighting Standards

Esteemed members of the Whatcom County Council and Executive Sidhu:

Whatcom County Code 2.09.090 establishes a Public Defense Advisory Committee, mandating that the Committee “advise the county executive and the county council on matters regarding the defense of the indigent.” Over the course of the past few months, the committee has met several times to discuss the state of indigent defense. The Committee’s work has been greatly assisted by the input from the Whatcom County Prosecuting Attorney Civil Division, Mr. George Roche, Senior

Deputy Prosecutor, and the Director of the Whatcom County Public Defender Office, Mr. Starck Follis, and Chief Deputy Public Defender, Ms. Maialisa Vanyo.

The obligation to provide indigent defense is ultimately a nondiscretionary obligation arising under both our State and Federal Constitutions. The Advisory Committee has noted a number of challenges in meeting this obligation. However, it is important to note that the professional attorneys employed by the County in furtherance of this obligation, all are of the highest caliber and perform their duties to the very best of their abilities and to the highest standards. I can say this both as a former employee of the Whatcom County Public Defender Office and as a Superior Court Judge.

The three most prominent challenges facing proper indigent defense in Whatcom County are

1. County Code Chapter 2.09, caseload standards and case weighting;
2. Codefendants and Public Defender conflicts of interest; and
3. Resources for Whatcom County's criminal justice system.

Because many stakeholders, including the Council, the Executive and the Prosecuting Attorney, necessarily have an interest in how any policy changes are effected, the Advisory Committee recognizes that the details of any changes will need thorough discussion, vetting, legal authorization and implementation. Thus, this memorandum is not going to recommend specific plans, but, rather, a series of policy principles we believe are necessary to meet the County's indigent defense obligations.

Caseload Standards and Case Weighting

Whatcom County currently receives State funds for indigent defense through the State Office of Public Defense (OPD). The American Bar Association, the Washington State Bar Association, and OPD all mandate both standards for indigent

defense and case load limits for attorneys providing indigent defense. OPD specifically requires that our public defenders meet caseload standards as a condition of receiving State funding, and actively tracks the number of cases being handled by Whatcom County Public Defenders. In recent years OPD has expressed concerns about Chapter 2.09 of the County Code, stating specifically that we are out of compliance with RCW 10.101.030. Additionally, OPD has repeatedly asked that Whatcom County enact legislation that would establish case weighting within indigent defense practice.

Crudely, cases can be counted on the basis of a single cause number equaling one case. But counting cases in this way fails to appreciate the differences that exist within the cases themselves. For example consider the difference between a high profile murder case, and a case involving the simple possession of drugs. Case weighting policies account for the different workloads presented by different types of crimes, and strengthen the criminal justice system as a whole. Most similarly situated counties in western Washington have already implemented case weighting policies. Attached to this memorandum as Appendix A is a sample case weighting plan developed by the Whatcom County Public Defender Office that demonstrates how cases could be weighted to ensure that attorneys representing clients with more serious charges can provide an adequate defense and meet our county's due process obligations: Because it appears quite obvious that different types of cases require a different volume of legal professionals' thought power and work effort, the Advisory Committee recommends that Whatcom County adopt a case weighting policy of which the plan developed by the Public Defender Office is an excellent example. Additionally, the Advisory Committee recommends that Whatcom County Code be amended to conform to the requirements of RCW 10.101.030.

Codefendants and Public Defender Conflicts of Interest

At present, our Public Defender Office decides on a case-by-case basis whether codefendants in a crime are sent out of the Office because a conflict of interest exists in endeavoring to represent both defendants. Attached as Appendix B is an April 10, 2020, memorandum from Mr. George Roche. Mr. Roche advises the Public Defender regarding the Office's legal obligations and risks of liability. While the current rules governing conflicts give the Public Defender some discretion regarding what cases should be conflicted, the exercise of that discretion, *i.e.*, a decision to keep codefendants rather than sending one of the defendants to a county contracted conflict attorney, necessarily represents a potential liability if a later court decision determines that the Public Defender should not have kept all codefendants. In addition to this potentially giving rise to lawsuits for civil liability, it would also likely mean that the criminal case was reversed and would have to be re-tried, with all of the attendant costs and risks to public safety. Conflicts of interest are quite dynamic, and they change frequently throughout the timeline of any given case. Many of the co-defendant cases that are not initially conflicted by the Public Defender's Office require conflict immediately before trial because of an emerging conflict of interest, which creates added administrative costs and presents many legal issues in the case itself. Therefore, the Advisory Committee, in line with Mr. Roche's view regarding best practices, recommends that Whatcom County establish a strict policy that the Public Defender Office conflict out all codefendants.

Obviously, such a decision will have a number of consequences that must be considered by all stakeholders. At present, Whatcom County has a patchwork system of contracted conflict attorneys working in the private bar to take conflict cases on a case-by-case basis. At the end of last year and the beginning of this year, that system was severely stressed, and there were a number of times where the Court Clerk's Office could not find attorneys to take conflict cases, leaving indigent

defendants with no representation for various periods of time. Those cases finally found representation, but only by reaching out to attorneys in Island County. There are a number of other possibilities for providing conflict counsel that have been discussed, including contracts with local firms who receive a set number of cases per year or month for a bottom-line dollar amount, structuring a second County Public Defender Office that can absorb the bulk of codefendant conflict cases, or trying to orchestrate a relationship with a sister-county public defender office to fund an attorney or attorneys in both offices to take conflict defendants for each other.

While the cost of implementing this policy may seem out-of-reach at this time, and recognizing that transition costs would probably not be recoupable, it is worth noting that a strict policy of conflicting out all codefendants would likely reduce the current Public Defender workload, and resources from that office could be readjusted to a second county office or to fund contracts with private law firms.

Resources for Whatcom County's Criminal Justice System

The Advisory Committee recognizes that the current emergency involving the COVID-19 outbreak has had, and will certainly continue to have, negative economic effects with their consequential impact on County resources. Nonetheless, while the Courts and our whole criminal justice system are in a mode of reduced operations at this time, as restrictions ease, it should not be doubted that there will likely be a lengthy surge of both new cases and cases that have been deferred. Protecting Whatcom County's obligation to provide proper indigent defense must receive a priority, exactly because many people who in the past might have been able to afford hiring private defense counsel will now have been out work and will likely qualify for publicly appointed counsel. So, the surge for our Public Defender Office will be twofold; cases will increase because restrictions are being eased and more people will be eligible for a public defender. The Advisory Committee recommends that the County decisions be as protective as possible of public defense resources, and

contemplate finding additional local sources of revenue but also consider lobbying for State or Federal relief specifically earmarked to support our County's criminal justice system.

Thank you for taking the time to consider the Committee's advice.

**WHATCOM COUNTY
PROSECUTING
ATTORNEY**

Memo

To: Public Defender Advisory Committee and Satpal Sidhu

CC: Tyler Schroeder, Chris Quinn, Karen Frakes, Starck Follis, Maialisa Vanyo

From: George Roche

Date: 5/13/2020

Re: Standards for Indigent Defense and County Code Ch. 2.09

As you all know, the County is running into a variety of issues with indigent defense services; this memorandum discusses three of those issues. The first two issues outlined in this memorandum relate to standards listed in RCW 10.101.030, and the sufficiency of the existing chapter 2.09 WCC. The second issue relates to caseload limits set by the Washington's Court Rules, specifically the Standards for Indigent Defense services (*SID*).¹ More specifically, the third issue centers on the felony caseload limit of 150 cases per year, as prescribed by *SID* 3.4. During the 2019 calendar year, the County was forced to address the issue of caseload limits

¹ See https://www.courts.wa.gov/court_rules/pdf/CrR/SUP_CrR_03_01_Standards.pdf

through outsourcing, and the allocation of funding for temporary employees. However, the issue does not appear to be limited to the 2019 calendar year.

This memorandum will outline my thoughts on these issues, and to argue in favor of both amending County code chapter 2.09 and implementing a case-weighting policy through legislative action.

I. Background

In 2010, the Washington State Supreme Court reminded us of the fundamental right that all persons have to effective indigent defense counsel.² In the wake of the Supreme Court's *ANJ* opinion, it was apparent that some jurisdictions had strayed so far from the constitutional promise of effective representation that the Supreme Court felt it was necessary to promulgate a set of rules related to indigent defense services. Those rules (the *SID*) have been in effect since October 2012, and are applied within the court rules governing criminal procedures.³

Historically, the Whatcom County Public Defender's Office (PD's office) has been successful in its efforts to provide representation that is consistent with the *SID*, but recent years have presented significant challenges in meeting felony caseload standards. The PD's office is currently grant-compliant with the Washington State Office of Public Defense (OPD), and expects to continue taking advantage of those funding opportunities under RCW 10.101.050. However, OPD has expressed significant reservations about the sufficiency of the County's relevant code provisions, and has asked that the County adopt code provisions consistent with the requirements of RCW 10.100.030.

II. Issues

² See *State v. A.N.J.*, 168 Wash. 2d 91 (2010).

³ The *SID* has been enacted in both the Superior court rules, CrR, and in the rules for courts of limited jurisdiction, CrRLJ.

1. RCW 10.100.030

RCW 10.100.030 requires that the County adopt standards for indigent defense service, and articulates a series of topics that should be addressed in local codes statewide. Our current standards for indigent defense services are outlined in chapter 2.09 WCC, and it only provides a generic catchall standards section. OPD has recently objected to our existing code as being insufficient in light of RCW 10.100.030. In response I argued that the catchall provision requires our compliance with outside standards sufficient to satisfy the requirements RCW 10.100.030. However, it would be preferable to modernize this code section to reflect the changes on indigent defense standards statewide. I am currently drafting a proposed amendment to chapter 2.09 WCC, and I will circulate that draft for commentary.

2. Conflicts of Interest

Pursuant to WCC 2.09.080, the Public Defender is obligated to notify the Director of Assigned Counsel of any apparent conflict of interest, and the Director of Assigned Counsel then must re-assign those cases to outside firms. This standard is subjective, and can be read as being broader than the standards set by the Rules of Professional Conduct (RPCs). Therefore, amendment to county code is advisable.

3. Case-weighting

Currently, the County is facing two separate (albeit connected) issues presented by the standards set by *SID* 3.4: (1) the PD's office is in danger of running afoul of the caseload limits prescribed by *SID* 3.4, and (2) ensuring compliance with *SID* 3.4 by implementing the proposed case-weighting policy during the 2020 calendar year will result in a quantifiable increase to the caseload of the PD's office..

The possible ramifications of *SID* 3.4 violations could include: loss of outside funding sources, collateral attack on criminal convictions, civil liability related to due process violations⁴, and civil municipal liability.

III. Legal Standards

1. RCW 10.101.030

This statute requires us to adopt internal standards that specifically address:

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.

Adapting our code to incorporate these standards is an absolute necessity. OPD is strongly encouraging us to make that change, and has offered us examples enacted by other counties. Legislative action is required to come into compliance with state law. Currently, the Public Defender is working in conjunction with the Prosecutor's Office to draft proposed changes to the code, and with your support the Public Defender will pursue these amendments as soon as possible.

2. Conflicts of Interest

Generally, RPCs 1.7, 1.8, 1.9, 1.10, 1.11, and 1.12 govern conflicts of interest. I will dispense with a detailed analysis of the many intricacies that exist within the scope of these rules, and instead will focus specifically on the issue of co-defendant representation at the Public Defender's office. This issue is centered on RPC 1.7's prohibition against representing a client when there is a significant risk that the representation will be limited by the responsibilities owed to another client. When

⁴ The city of Mount Vernon recently experienced liability related to inadequate indigent defense services. See *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122 (W.D. Wash. 2013).

client interests are directly opposed to one another, the analysis is relatively clear. However, in practical application many co-defendants begin their defenses in a lock-stepped approach toward a common defense objective, and later develop opposing interests. Currently the Public Defender retains co-defendants until the attorneys believe there is a significant risk of opposing client objectives. This practice is consistent with the RPCs, but the County's current code presents a subjective standard that complicates this analysis and exposes the County to unnecessary liabilities.

The County code should require the Public Defender to adhere to the RPCs addressing conflicts of interest by specific reference, and further to adhere to the RPCs in their entirety. General adherence to the RPCs should set a sufficient standard for purposes of the County code, and would allow the Public Defender the required latitude to handle conflicts within the bounds of the law.

The Director should review conflicts on a case by case basis, and determine if withdrawal is appropriate under the circumstances. Results may vary based on the philosophy of the Director at the time, but all decisions must comport with the standards set by the RPC. The Advisory Committee and other interested County officials should offer the Public Defender some guidance on conflict philosophies relating to cases involving co-defendants. At this time, the Prosecutor's Office has advised the Public Defender that best practices would dictate withdrawal in all cases involving co-defendants. This practice would ensure the prevention of potential RPC violations, help preserve the integrity of the criminal process, and avoid potential civil liability. However, I acknowledge that this approach is extremely conservative, and more than required by the RPCs. That said, the practice of conflicting all co-defendant cases as a matter of course has been adopted by both Pierce and Thurston counties.

3. Case-Weighting

As previously discussed, the *SID* was enacted to ensure indigent criminal defendants receive due process of law, but, unfortunately, clarity begins to fade at that point. *SID* 3.4 presents some ambiguity by outlining the caseload limits as a “should not” standard. Original proposals set a more onerous standard of “shall not,” but, when the *SID* was adopted in 2012, it focused on a more liberal interpretation of the caseload limit.

To properly understand the objectives set by *SID* 3.4, I believe it is necessary to consider *SID* 3.2 in its entirety:

The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.

The caseload limits articulated in *SID* 3.4 serve to meet the objective of “quality representation” as outlined by *SID* 3.2, but the standards as a whole do not contemplate a rigidly fixed, or strictly enforced, caseload limit. While all efforts should be made to operate within the *SIDs* prescribed caseload limits, minor deviations will not inherently result in violation or sanction.

This reading of the *SID* is evidenced by the Washington State Bar Association’s (WSBA) companion standards for indigent defense services. While the WSBA’s standards articulate that caseload limits “shall not” be exceeded, the WSBA acknowledges that their standards are merely recommended and are not enforceable against attorneys in disciplinary matters.⁵ The WSBA also expands upon the case-weighting requirements of the *SID* by stating that local government should adopt and publish a numerical case-weighting system. Again, this additional WSBA

⁵ See <https://www.wsba.org/connect-serve/committees-boards-other-groups/council-public-defense>

requirement cannot be strictly enforced against Whatcom County, and the licensure of the attorneys we employ cannot be affected by this requirement. However, case-weighting is a generally accepted practice that ensures the “quality representation” mandated by *SID* 3.2. Absent an enacted case-weighting policy, it is arguable that we are not in compliance with the *SID*.

Another area that lacks clarity is the definition of “per year.” While OPD interprets “per year” as a rolling calendar year, some jurisdictions operate under a calendar year interpretation. The practical effect is that if new attorneys are brought in to serve as relief for caseload issues, they must be given cases incrementally to avoid overloading them. Additionally, OPD’s interpretation must be considered persuasive in light of the significant grant funding we receive. Many jurisdictions have implemented case-weighting policies that acknowledge that cases should be distributed evenly throughout the year, resulting in a per month distribution rate for the purpose of capping caseloads.⁶ Currently our PD’s office endeavors to distribute cases incrementally, and generally conforms to the rolling year interpretation. However, employee turnover has significantly affected this issue and must be accounted for in a case-weighting system. The ability to shift caseloads between employees is necessary to facilitate employee succession, promotion, demotion and transfer.

In closing, the County must also examine any implication a departure from the *SID* may have on our liability insurance. Professional liability related to the PD’s office is covered by the error and omissions policy of our memorandum of liability coverage with the Washington Counties Risk Pool (WCRP). That coverage is contingent upon good faith. Departure from clearly articulated standards of practice could impact an assessment of good faith. It is debatable whether the *SID* is clearly

⁶ For example assignment of felony cases should be at a rate of no more than 12.5 cases per month to ensure yearly compliance with *SID* 3.4.

articulated, but it would be preferable to operate within the standards whenever possible to avoid any potential bad faith litigation with the WCRP.⁷

IV. Conclusion

The *SID* outlines best practices to ensure “quality representation” of indigent defendants, and all efforts should be made to comply with the *SID*. However, the rules themselves are open to some degree of interpretation. To further our understanding of the rules and effectuate greater clarity, Whatcom County should propose and adopt specific case-weighting policies that clarify our internal standard of practice. However, caution should be exercised in this process to avoid potential *Monell* liability.⁸ Under *Monell*, enacting unconstitutional policies can result in direct municipal liability, but careful drafting of case-weighting standards that are based upon the *SID* should avoid liability issues. A risk-avoidance approach that delays implementation of case-weighting policies cannot be used in this case because it is arguable that the failure to implement case-weighting standards can cause a constitutional violation. Additionally, *Monell* liability also can occur if a pattern of disregard for constitutional deprivations is present, or can result from inadequate training at the PD’s office.

A strategy of risk reduction would dictate that the County should engage in legislative action to ensure proper internal policies. Drafting and implementing both a revised chapter 2.09 WCC and case-weighting policies should commence as soon as practicable. An ideal outcome would be to amend the code, and begin implementation of case-weighting policy during the summer of 2020.

⁷ It is worth noting that several of our partner Counties in WCRP have implemented case-weighting policies.

⁸ See, *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 (1978).

WHATCOM COUNTY PUBLIC DEFENDER'S OFFICE CASE WEIGHTING POLICY

Rev. 3/10/2020

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 appointed at public expense 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 appointed 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.

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 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 or contracted to represent indigent defendants. The term also refers to a licensed attorney appointed to represent indigent defendants on a case by case basis.
- 3.11 SUPERIOR COURT CASES.** This refers to cases in which an adult is charged with a crime in Superior Court.
- 3.12 DISTRICT COURT CASES.** This refers to cases in which an adult is charged with a crime in District Court.
- 3.13 JUVENILE COURT CASES.** This refers to 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.
- 4.2** 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 twenty-four 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.

6.2 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 is 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. 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
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MISDEMEANORS	1.0
CALENDAR ROTATION	6.5/month
MENTAL HEALTH COURT	2.0/month

7.2 JUVENILE COURT

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

7.3 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.

7.3.2 One adult felony credit = Three adult misdemeanor credits = Two juvenile credits.