

CHARTER

Council on Public Defense

Adopted: January 22, 2009. Amended June 12, 2015; June 26, 2020; January 13, 2023; September 7, 2024.

Purpose and Mission

A WSBA Committee on Public Defense was established in 2004 to implement recommendations of the WSBA's Blue Ribbon Panel on Criminal Defense. Original membership was appointed by the WSBA President and confirmed by the Board of Governors. The Committee on Public Defense's recommendations were acted upon by the Board of Governors during fiscal year 2007. One of these recommendations was that the Committee on Public Defense be extended through December 2008 to study, focus, and follow up on unfinished public criminal defense, dependency, and civil commitment issues.

While the extended Committee on Public Defense made significant progress on the issues identified in its charter, it became apparent that maintaining and improving constitutionally effective public defense services in Washington required an ongoing committee with a mandate broad enough to address both new and recurring public defense issues. Having found that the Committee on Public Defense provided a unique and valuable forum for bringing together representatives of the bar, private and public criminal defense attorneys, current and former prosecutors, attorneys, the bench, elected officials, and the public, in 2009 the WSBA Board of Governors established the Council on Public Defense as an advisory council of the WSBA.

The Council on Public Defense is charged with the following tasks:

1. Recommend amendments to public defense standards and performance guidelines and mechanisms to assure compliance with those standards to the BOG and the Washington Supreme Court.
2. Promulgate "Right to Counsel" educational materials and programs for the public, including for clients and community members, the bench, public defense administrators, elected officials, and the bar concerning the constitutional right to counsel.
3. Develop "Best Practices" guidelines for public defense services contracts.
4. Address current issues relating to the provision of constitutional public defense services in Washington, including supporting efforts to ensure adequate funding is available.
5. Seek, review, and recommend possible improvements to the criminal justice system which might impact public defense or the ability to provide public defense services.
6. Improve delivery of defense services in Washington by examining and reporting on public defense systems and projects.
7. Develop recommendations concerning the most effective and appropriate statewide structure for the delivery and accountability for defense services.
8. Evaluate and make recommendations for all practice areas for which counsel may be appointed.

9. Develop performance guidelines for attorneys providing public defense services in criminal, juvenile offender, dependency, civil commitment, Becca petitions, and other cases to which counsel may be appointed.

Membership

The Council on Public Defense consists of 23 voting members and up to seven emeritus members. Nominations are made by the entities listed below, with all appointments confirmed by the WSBA Board of Governors. These members do not serve as official representatives of these entities, but rather are appointed based on their knowledge, expertise, and commitment to providing constitutional public defense services in Washington.

The voting membership is as follows:

Core Members

- The Director of the State Office of Public Defense
- The Director of the Washington Defender Association
- One Washington Supreme Court Justice

Nominated by Outside Parties

- One Superior Court judge, recommended by the Superior Court Judges Association
- One District or Municipal Court judge, recommended by the District and Municipal Court Judges Association
- Three public defenders, recommended by the Washington Defender Association
- One representative from each of the three Washington law schools, recommended by the Dean of the school
- One representative from civil legal services, recommended by the Access to Justice Board

Considered Through WSBA Application Process

- Three current or former prosecutors/city attorneys, recommended by the Council Chair, Chair-Elect, and Board of Governors Liaisons
- Six at-large members, recommended by the Council Chair, Chair-Elect, and Board of Governors Liaisons. At least four of the at-large members must have a contract for or provide public defense services and may include non-lawyers involved in the provision of public defense services. In addition, at least one at-large member must be a non-lawyer impacted by or working in the public defense profession.
- Two representatives from local government or public defense administrators, recommended by the Council Chair, Chair-Elect, and Board of Governors Liaisons

Core members as defined above serve without term limits. All other members of the Council are appointed for two-year terms and are eligible for reappointment for two additional two-year terms, totaling six years of service. The Chair may nominate up to seven former Council members whose eligibility for voting membership has expired, to serve as non-voting emeritus members for two-year terms.¹

The Council must be a diverse, inclusive, and equitable body. This is especially so given that the people served by public defenders are disproportionately members of marginalized communities. When nominating individuals to serve on the Council, the Council should ensure voices from marginalized communities (e.g., people of color, people from the LGBTQ2S+ community, people with disabilities) are represented on the Council. The Council should also ensure that members represent regions throughout Washington to ensure geographically diverse perspectives are considered in Council decisions. With respect to public defender members, the Council should include public defense lawyers from both urban and rural settings, from the regions both to the east and west of the Cascade Mountain range, and from different public defense practice areas.

Council Officers

The officers of the Council on Public Defense consist of a Chair, Chair-Elect, and Immediate Past Chair.

The Chair serves as the spokesperson for the Council and has the authority to call for special meetings of the Council. The Chair's duties include presiding over Council meetings, making appointments to Council committees, and working to ensure the Council's initiatives are progressing.

The Chair-Elect succeeds to the position of Chair upon the end of the predecessor Chair's term or a vacancy in that position. The Chair-Elect's duties include supporting the Chair and serving as Chair when the Chair is unable to fulfill their obligations.

The Immediate Past Chair performs such duties as may be assigned by the Chair or the Council. The Immediate Past Chair will perform the duties of the Chair in the absence, inability, recusal, or refusal of the Chair and Chair-Elect. The Immediate Past Chair is not a voting member of the Council except when acting in the Chair's place at a meeting of the Council and then only if the vote will affect the result.

Term: Council officers serve a term totaling three years—one year as Chair-Elect, one year as Chair, and one year as Immediate Past Chair. Upon conclusion of the Chair's term, the Chair-Elect assumes the role of Chair and the outgoing Chair assumes the role of Immediate Past Chair. Each position takes office on October 1 of each year.

Selection: By no later than May 1 of each year, the voting members of the Council shall nominate a Chair-Elect by secret ballot. The Council shall nominate the candidate for Chair-Elect receiving a majority of member votes for appointment by the WSBA President-Elect as Council Chair-Elect.

In the event the WSBA President-Elect does not appoint the Council nominee and does not appoint an alternate Chair-Elect, the Council will hold a new election to select a nominee for Chair-Elect.

¹ Non-voting emeritus members are not eligible for WSBA expense reimbursements.

Vacancies in the office of Chair and Chair-Elect will be filled by following the above nomination and election procedure. Vacancies in the office of Immediate Past Chair, including due to the expiration of the Chair's six-year term of service on the Council prior to becoming Immediate Past Chair, will not be filled. However, all prior Council Chairs will be informed of the vacancy and invited to assist and advise the Chair and Chair-Elect in an *ex officio* role.

Standing Committees

A Recruitment and Outreach Committee is established as a Council standing committee. The Recruitment and Outreach Committee will consist of the Chair, Chair-Elect, Immediate Past Chair, and two additional Council members appointed to the committee by the Council Chair. The Recruitment and Outreach Committee's responsibilities include cultivating prospective Council members, Council officers, and Council committee members; providing information about Council service to prospective members; cultivating partnerships with other public defense entities; and creating strategies for building community support and involvement.

The Council may create and dissolve additional committees as appropriate.

Voting Procedures

All Council members, other than emeritus members, are eligible to vote. Judicial members may choose to recuse themselves from voting relating to any matters.

A majority of Council voting members constitutes a quorum. The Council may conduct business in the Council's name and make binding decisions at meetings where a quorum is present.

Action by the Council shall be by a majority of Council members in attendance at the time the vote takes place, unless otherwise specified in the WSBA Bylaws, policies adopted by the WSBA BOG, or other requirements binding on the Council. Voting by proxy or email is not permitted.

If judicial members choose to recuse themselves from votes relating to court rules or legislation, on those occasions, and only on those occasions, the membership of the Council, for purposes of determining whether a supermajority have voted in favor or against a proposition, shall be reduced by the number of judges who have recused themselves. This provision does not apply if a judicial member is merely absent.

Attendance Requirements

Council members who have three consecutive unexcused absences in any 12-month period will be considered to have resigned from the Council. The Council may seek a replacement member through the regular WSBA volunteer process, unless the absent member was nominated by an outside party. In that case the outside party will be asked to appoint a replacement.

Council members may be excused for good cause by the Chair. Such an excuse should be sought prior to the meeting.